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# FAIR DEFENSE PLAN FOR COLLIN COUNTY DISTRICT COURTS

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**LOCAL RULES ADOPTING STANDARDS AND PROCEDURES FOR THE  
APPOINTMENT OF COUNSEL TO REPRESENT INDIGENT DEFENDANTS  
UNDER FELONY ACCUSATION**

November 1, 2019  
Collin County, Texas

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416<sup>th</sup> Judicial District, Hon. Andrea Thompson

## PREAMBLE

The district judges presiding over criminal cases in Collin County, Texas (hereinafter "district judges") are committed to providing legal representation to indigent persons under felony accusation in a timely manner; to ensuring fair, neutral, and non-discriminatory procedures for attorney selection; and to establishing minimum competency standards for court-appointed attorneys. The district judges are also committed to good stewardship of the public funds expended for indigent defense services.

In accordance with the requirements of Texas Code of Criminal Procedure Arts. 1.051, 26.04, 26.047, 26.05, and 26.052, the district judges adopt this Fair Defense Plan for Collin County District Courts ("Plan").

The district judges expect that attorneys appointed to represent indigent defendants will continuously adhere to all provisions of this Plan.

This Plan supersedes all other plans and standards previously promulgated by the district judges.

### I. **PROMPT AND ACCURATE MAGISTRATION**

#### A. **Definitions**

"Videoconference" means a two-way electronic communication of image and sound and includes secure internet videoconferencing.

"Qualified telephone interpreter" means a telephone service that employs a licensed court interpreter or a federally certified court interpreter.

"Licensed court interpreter" means an individual licensed under Chapter 157, Gov. Code, by the Judicial Branch Certification Commission to interpret court proceedings for individuals who can hear but have no or limited English proficiency.

#### B. **Duties of Arresting Officer**

The person making an arrest or having custody of an arrested person shall take the arrested person or have the person taken before a magistrate as soon as possible, but no later than 48 hours after the person is arrested.

The arrested person may be taken before the magistrate in person or by means of videoconference.

#### C. **Record to be Made**

The magistrate shall cause a record to be made of the proceeding, including all communications between the magistrate and the arrested person. The record shall be preserved until the date the pretrial hearing ends or 120 days after the record is made, whichever is earlier.

**D. Interpreters**

If it appears that an arrested person cannot understand, speak, read, or write the English language, the magistrate shall appoint an interpreter. If the only interpreter available does not have adequate skills to interpret for the accused, the accused may nominate another person to act as an intermediary between the accused and the interpreter. If no intermediary is available, or if no qualified interpreter is available to appear in person, a qualified telephone interpreter may be used.

If it appears that an arrested person is deaf, the magistrate shall appoint a qualified interpreter to interpret the proceedings in any language that the person can understand, including but not limited to sign language. The magistrate may order the testimony of an accused deaf person and the interpretation of that testimony to be administered visually.

**E. Rights and Warnings**

The magistrate shall, for each arrested person, inform the arrested person in clear language of:

1. The accusation against him or her and of any affidavit(s) on file;
2. The right to retain counsel;
3. The right to remain silent and that any statement made by the accused may be used against him or her;
4. The right to have an attorney present during any interview with a peace officer or attorney representing the state;
5. The right to terminate an interview at any time;
6. The right to an examining trial; and
7. The right to have counsel appointed if the accused cannot afford counsel.

If an accused is represented by counsel, the magistrate shall allow the accused reasonable time and opportunity to consult with counsel.

**F. Request for Appointment of Counsel**

The magistrate shall:

1. Provide an arrested person with the procedures for requesting appointment of counsel;
2. Ask the arrested person if he or she is requesting that counsel be appointed;
3. If counsel is requested, provide the accused with the necessary forms for requesting appointment of counsel;
4. If counsel is requested, ensure that reasonable assistance in completing the forms is provided to the accused at the time of the request; and
5. If counsel is requested, transmit or cause to be transmitted any forms requesting the appointment of counsel to the Indigent Defense office no later than 24 hours after the request is made.

If there is reason to believe that the accused lacks the present ability to request counsel or complete the necessary forms because of incompetency or other mental impairment, the arrested person shall be referred to the Mental Health Managed Assigned Counsel (“MHMC”) program for the appointment of counsel.

**G. Filing of Forms**

If a request for counsel is made, the magistrate form and any forms requesting the appointment of counsel shall be given to the district clerk to be filed. If a request for counsel is not made, the magistrate form shall be given to the district clerk to be filed.

**H. Probable Cause Finding**

The magistrate shall determine if there is probable cause to believe that the arrested person committed an offense. The magistrate shall also ensure that any documents establishing probable cause are completed and filed at the time the arrestee is booked into jail, unless the arrest was made pursuant to an arrest warrant, bench warrant, *capias*, or other written order.

A person arrested without a warrant must be released on a bond of \$10,000.00 or less no later than 48 hours after the arrest if the magistrate has not made a finding of probable cause. If the person is not able to obtain a surety or post the bond with cash, the person shall be released on a personal bond. Upon written application by the state pursuant to Code of Criminal Procedure (hereinafter "CCP") Art. 17.033(c), the magistrate may postpone the release of the person for no more than 72 hours.

**I. Bail**

The magistrate shall set the amount and conditions of bail if bail has not already been set. If bail has already been set and the magistrate, after receiving information not provided to the judge or magistrate who set the previous bail, finds that a personal bond should be granted or a lower amount of bail set, the magistrate may grant a personal bond or set bail at a lower amount.

**J. Out-of-County Warrants**

If a person is arrested pursuant to a warrant issued by a county other than Collin County, the magistrate shall ask the accused if appointed counsel is being requested. The magistrate shall record the response, and if counsel is requested, the magistrate shall provide the person with the appropriate forms for requesting counsel and provide reasonable assistance in completing the forms. The forms shall be transmitted to the appointing authority in the issuing county within 24 hours of the request being made.

If the issuing county has not taken custody of the person before the 11th day following the date of arrest, the magistrate shall release the person on a personal bond and forward the personal bond to the sheriff of the issuing county or the court that issued the warrant.

**K. Written Record to be Made**

The magistrate shall make a written record that includes:

1. The date and time the accused was arrested, and the date and time the accused was brought before the magistrate;
2. Confirmation that the magistrate informed the accused of the right to request the appointment of counsel;
3. Confirmation that the magistrate asked the accused if the accused was requesting the appointment of counsel; and

4. Confirmation that the accused requested, or did not request, the appointment of counsel.

The magistrate shall cause the written record to be placed into the case file by the district clerk.

## II. INDIGENCE DETERMINATION

### A. Definitions

“Indigent” means financially unable to hire private counsel.

“Net household income” means all income of the accused and spousal income actually available to the accused. Income includes:

1. Take-home wages and salary (gross income earned less any deductions required by law or as a condition of employment);
2. Net self-employment income (gross income minus business expenses and any deductions required by law or as a condition of operating the business);
3. Regular payments from a government income maintenance program, alimony, child support, public or private pensions, or annuities; and
4. Income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts.

Seasonal or temporary income will be considered on an annualized basis, averaged together with periods for which the accused has no or less income.

“Non-exempt assets and property” means cash on hand, stocks and bonds, and accounts at financial institutions.

“Household” means all individuals who are actually dependent on the accused for financial support.

“Costs of obtaining competent private legal representation” include the reasonable costs of support services such as investigators and expert witnesses which are necessary and appropriate given the circumstances of the case.

### B. Eligibility

The financial standards below shall be used to determine whether an accused is indigent and shall be applied equally to every accused person.

An accused is presumed indigent if any of the following circumstances are present:

1. The accused or the accused’s dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
2. The accused’s net household income does not exceed 125% of the United States Department of Health and Human Services poverty guidelines;
3. The accused is currently serving a sentence in a correctional institution, residing in a public mental health facility, or subject to a proceeding in which admission or commitment to a mental health facility is sought; or
4. The accused has been incarcerated for more than 14 days.

If an accused does not meet any of the standards above, he or she shall still be considered indigent if the accused is unable to retain private counsel without

substantial hardship to the accused or the accused's dependents. When determining whether substantial hardship would result from hiring private counsel, the appointing authority shall consider the:

1. Nature of the criminal charge(s);
2. Anticipated complexity of any defense;
3. Estimated costs of obtaining competent private legal representation;
4. Amount needed to support the accused and the accused's dependents;
5. Accused's income, any spousal income available to the accused, and the sources of income;
6. Assets and property owned by the accused;
7. Accused's necessary expenses and outstanding obligations; and
8. Number and ages of dependents.

**C. Factors NOT to be Considered**

The appointing authority shall not consider the following when determining whether an accused is indigent:

1. The accused's posting of bail or ability to post bail.
2. The resources available to friends or relatives (other than the accused's spouse).

**D. Sources of Information**

The appointing authority may require the accused to respond to questions about the accused's finances and to produce supporting documentation. The authority may also request verification from other sources.

Information gathered for the purpose of determining indigence, whether from an affidavit or through testimony, may not be used except to:

1. Determine whether the accused is indigent or not; and
2. Impeach the direct testimony of the accused regarding the accused's finances.

A request by the appointing authority for additional information, documentation, or verification shall not delay the appointment of counsel beyond the timelines established by this Plan.

**E. Review of Status**

An accused found to be indigent is presumed to remain indigent for the remainder of the case unless there is a material change in the accused's financial circumstances. An accused's status may be reviewed in a formal hearing at any stage of a court proceeding on a motion for reconsideration by the accused or by the state. A presumption of indigence can be rebutted with evidence of a material change in the accused's financial circumstances which establishes that the accused no longer meets any standard of indigence.

If an accused previously determined to be indigent is subsequently determined to be not indigent, appointed counsel shall be compensated under the terms of this Plan for services reasonably rendered.

If a court determines that an accused has sufficient financial resources to partially or completely offset the costs of legal services provided, the court may order the defendant to pay said amount as costs of court.

**F. Review When Accused is in Jail**

An unrepresented person who has been in custody for 14 days following a finding that he or she is not indigent shall be presumed indigent and have his or her status re-reviewed.

**III. APPOINTMENT OF COUNSEL**

**A. Authority to Appoint Counsel**

The local administrative district judge shall appoint lead counsel for a defendant accused of capital murder from the First Administrative Judicial Region of Texas' List of Attorneys Qualified to Represent Indigent Defendants in Death Penalty Cases. If appropriate, the presiding trial court judge will appoint second-chair counsel following indictment.

For all other felony accusations, the district judges designate the following as authorities to appoint counsel for indigent defendants:

1. The Indigent Defense Office;
2. A judge or magistrate presiding over a proceeding for which the appointment of counsel is sought; and
3. The MHMC director (for mental health-designated cases).

Forms to request court-appointed counsel are available at the Indigent Defense Office, 2100 Bloomdale Rd., Ste. 20209, McKinney, Texas 75071.

**B. Circumstances Requiring Appointment of Counsel**

**1. Generally**

An indigent accused is entitled to court-appointed representation in an adversarial judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require the appointment of counsel. The indigent accused is also entitled to sufficient time to consult in private with counsel in advance of a proceeding.

**2. Appeals**

An indigent defendant is entitled to appointed counsel in the following appellate and post-conviction habeas corpus matters:

- a. An appeal to the Fifth District Court of Appeals;
- b. An appeal to the Court of Criminal Appeals if the appeal is made directly from the trial court or if a petition for discretionary review has been granted;
- c. A habeas corpus proceeding if the court makes a written finding that the interests of justice require representation; and
- d. Any other appellate proceeding if the court makes a written finding that the interests of justice require representation.

**C. When Counsel Appointed**

Counsel shall be appointed to an indigent arrestee as soon as practicable, but no later than the end of the first working day after the date the appointing authority receives the indigent arrestee's request for appointed counsel. Counsel shall be appointed regardless of whether a case has been filed in a district court.

If an arrested person is released from jail prior to counsel being appointed, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever occurs first.

**D. Procedures for Appointment**

Attorneys qualified to provide representation in felony cases shall be appointed from public lists established by the district judges or their designee. The lists shall be graduated according to the seriousness of the offense or the category of case subject to appointment.

Appointments shall be made using a system of rotation, with each appointment made from among the next five names on the list in the order in which the names appear. Upon a finding of good cause in writing or on the record, an attorney may be appointed out of order. Good cause includes, but is not limited to, the following:

1. The defendant requesting counsel does not understand English, in which case the attorney whose name appears next in order and who speaks the clients' language will be appointed, if one is available;
2. An attorney was appointed to represent the same defendant in a different or prior matter. The same attorney may be appointed to the new matter;
3. The appointment is made during a court proceeding and the appointment of a qualified attorney who is present in court on a different matter would serve the efficient and expeditious administration of justice; or
4. Any other sufficient cause that would serve the interests of justice.

Once appointed, an attorney's name will be moved to the bottom of the list. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order.

**E. Out-of-County Warrants**

If a person is arrested in another county based on a warrant issued by Collin County, and the person is indigent, counsel will be appointed within one working day of the appointing authority's receipt of the request for counsel.

If a person is arrested in Collin County pursuant to a warrant issued by a different county, and the person is indigent, counsel shall be appointed to represent the person in a bail or habeas corpus proceeding if the person is still in the custody of Collin County on the 11<sup>th</sup> day following the arrest. If counsel is appointed in Collin County, Collin County may seek from the issuing county reimbursement for the actual costs paid by Collin County for appointed counsel's reasonable and necessary legal services.

**F. Defendants Appearing Without Counsel**

If a defendant appears in court without counsel:

1. The court may not direct or encourage the defendant to communicate with an attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.
2. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and after the denial, the defendant:
  - a. Was given a reasonable opportunity to retain counsel and failed to retain counsel; or
  - b. Waived the opportunity to retain counsel.
3. An attorney representing the state may not initiate or encourage any attempt to obtain from the defendant a waiver of the right to counsel or communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and after the denial, the defendant:
  - a. Was given a reasonable opportunity to retain counsel and failed to retain counsel; or
  - b. Waived the opportunity to retain counsel.

**G. Waiver of Right to Counsel**

A defendant may waive the right to counsel if it is voluntary and intelligent. If a defendant desires to waive the right to counsel, the court shall advise the defendant of the nature of the charge(s) and the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntary and intelligent, the court shall provide the defendant with a statement substantially similar to the following, which shall be filed in the record of the proceeding if it is signed by the defendant.

*I have been advised by the court of my right to be represented by counsel in this case. I have also been advised that if I cannot afford to hire counsel, counsel will be appointed at no cost to me. I understand my right to counsel and to have counsel appointed to represent me if I cannot afford to hire counsel. I wish to waive my right to counsel and I ask the court to proceed with my case without an attorney being appointed to represent me. I freely waive my right to counsel.*

A defendant may revoke a waiver of the right to counsel at any time. However, if a waiver is revoked, the defendant is not entitled to repeat a proceeding previously held or waived solely because counsel has been appointed or retained. If the defendant revokes a waiver, counsel shall be given at least ten (10) days to prepare for a proceeding.

**H. Additional Procedures for Mental Health Appointments**

When an indigent defendant is identified in the CCQ/TLET match system or meets other program requirements, the defendant will be assigned to the MHMC office,

which will promptly appoint counsel. The court in which a case is pending may also refer an indigent defendant to the MHMC office for assignment and appointment of counsel.

If a defendant referred to the MHMC office is not identified in CCQ/TLET match or does not meet other program requirements, the MHMC office may decline to accept the case for assignment and appointment if:

1. There is a conflict of interest which has not been waived by the defendant;
2. The office has insufficient resources to provide adequate representation;
3. The office is incapable of providing representation in accordance with the rules of professional conduct; or
4. The office shows other good and sufficient cause for declining the appointment.

An attorney appointed to represent a defendant assigned to the MHMC program may utilize the services of the MHMC office case managers.

#### **IV. ATTORNEY LISTS**

##### **A. Application Review and Approval**

Applications for placement on the MHMC felony list will be reviewed and decided by the MHMC director. The MHMC list is comprised of a limited number of attorneys. Placement on the list will be determined by the MHMC director based on the needs of the MHMC program, attorney qualifications, and attorney performance.

Applications for all other felony lists will be reviewed by the district judges and decided by majority vote.

Applications must be submitted during one of two periods each calendar year: July 1 through July 14; and December 1 through December 31.

The district judges and MHMC director reserve the authority to limit the number of attorneys on the appointment lists as necessary to ensure the effective representation of indigent defendants, to maintain the integrity of the lists and appointment process, and to comply with legal and ethical standards governing the provision of indigent defense services.

##### **B. Qualifications and Eligibility**

The minimum standards for placement on a felony appointment list include the following.

An attorney must:

1. Provide accurate and complete information on his or her application;
2. Be a licensed practicing attorney and member in good standing of the State Bar of Texas;
3. Have at least two (2) years of experience practicing criminal law;
4. Be a resident of Collin County, maintain a principal office in Collin County, or have at least 80 percent of the attorney's practice in Collin County;
5. Be certified in criminal law by the Texas Board of Legal Specialization; OR complete a minimum of ten (10) hours of continuing legal education ("CLE") in the area of criminal law each year. New applicants must have completed at least ten (10) hours of CLE in the calendar year preceding the submission

of their application. An attorney must file a certificate with the Indigent Defense Office each year attesting to completion of required CLE. CLE completed during any reporting period in excess of the minimum may be applied to the following period's requirement. The carryover provision applies to one year only;

6. Submit on or before October 15<sup>th</sup> of each year a statement describing the percentage of the attorney's practice time in connection with Collin County appointments for adult criminal and juvenile delinquency cases for the prior twelve (12) months (October 1–September 30). The report must be submitted electronically using the Texas Indigent Defense Commission ("TIDC") website;
7. Not have been the recipient of a public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States within the last five (5) years;
8. Maintain an office capable of sending and receiving email, fax, and voice calls;
9. Have the means to produce typed motions and orders;
10. Notify the local administrative district judge promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule, or this Plan from receiving appointments to represent indigent defendants; and
11. Provide three (3) letters of reference from members of the Collin County Bar Association or Collin County Criminal Defense Lawyer's Association;

Additional eligibility requirements for each graduated list are described below.

Attorneys may apply for and be placed on more than one list.

1. State Jail and Third Degree Felonies

An attorney must:

- a. Be certified in criminal law by the Texas Board of Legal Specialization; OR have experience as lead counsel in at least four (4) criminal cases tried to verdict before a jury. The styles and cause numbers of each case must be included in the application.

2. Second and First Degree Felonies

An attorney must:

- a. Have at least four (4) years of experience practicing criminal law; and
- b. Be certified in criminal law by the Texas Board of Legal Specialization; OR have experience as lead counsel in at least eight (8) cases tried to verdict before a jury, at least four (4) of which were felonies. The styles and cause numbers of each case must be included in the application.

3. Crimes Against Children ("CAC")

An attorney must:

- a. Have at least five (5) years of experience practicing criminal law;
- b. Have at least three (3) years of experience handling CAC cases;
- c. Have at least eight (8) hours of CLE in sex crimes; and

- d. Be certified in criminal law by the Texas Board of Legal Specialization; OR have experience as lead counsel in at least six (6) felony cases tried to verdict before a jury, and experience as lead counsel in at least six (6) trials of CAC cases tried to verdict before a jury. The styles and cause numbers of each case must be included in the application.
4. Capital Cases
- a. Within 24 hours of arrest, the local administrative district judge shall appoint lead counsel from the list of attorneys approved by the local selection committee of the First Administrative Judicial Region for appointment as lead counsel in death penalty cases pursuant to the requirements of CCP Art. 26.052(e).
  - b. Upon indictment, the presiding district judge shall promptly appoint second-chair counsel, unless the state gives notice in writing that that the state will not seek the death penalty. In a non-death penalty case, the presiding judge may appoint second-chair counsel at his or her discretion.
  - c. Second chair counsel shall be appointed from the list of attorneys approved by the local selection committee of the First Administrative Judicial Region for appointment as lead counsel or second-chair counsel in death penalty cases.
  - d. Appellate counsel shall be appointed from the list of attorneys approved by the local selection committee of the First Administrative Judicial Region for appointment as appellate counsel in death penalty cases.
5. Appeals and Non-Capital Writs
- An attorney must:
- a. Be certified in criminal law or criminal appellate law by the Texas Board of Legal Specialization;
  - b. Have personally authored and filed at least three (3) criminal appellate briefs or post-conviction writs of habeas corpus;
  - c. Have submitted an appellate writing sample approved by a majority of the district judges; or
  - d. Have worked as a briefing clerk of an appellate court of record for at least one (1) year.
6. MHMC Cases
- An attorney must:
- a. Be approved for the corresponding felony list;
  - b. Have served as a prosecutor in a county or district attorney's office for at least two (2) years or have practiced criminal defense law on a regular basis for a minimum of two (2) years;
  - c. An attorney must be certified in criminal law by the Texas Board of Legal Specialization OR have experience as lead counsel in at least eight (8) cases tried to verdict before a jury;
  - d. Have been lead counsel in at least three (3) mental health cases, in all of which at least one of the following issues was presented: competency,

sanity, or court-ordered mental health treatment. The styles and cause numbers of each case must be included in the application;

- e. Complete at least six (6) hours of mental-health-related CLE each year. New applicants must have completed at least six (6) hours of CLE in the calendar year preceding the submission of their application;
- f. Be familiar with the Texas Mental Health Code; and
- g. Comply with all MHMC program policies and procedures.

**C. Review of Attorneys on List**

The MHMC director, for attorneys on the MHMC list, and the district judges or their designee, for all other felony lists, will monitor the performance of attorneys on their respective lists on a continuing basis to ensure the attorneys' competency and eligibility.

**D. Removal from List**

The MHMC director may remove or suspend an attorney from the MHMC list. For all other felony lists, an attorney may be removed or suspended by a majority of district judges. An attorney who is removed or suspended from a list shall be notified immediately. The notice shall include the reason(s) for the decision.

**E. Removal from Case**

An appointed attorney may be discharged from continued representation of a defendant in a particular case by the presiding judge.

**F. Grounds for Removal**

Grounds for removal include, without limitation:

1. An attorney's submission of a claim for legal services not performed or supervised by the attorney;
2. An attorney's submission of an application for placement on an attorney list that contains false or misleading information;
3. An attorney's failure to appear at a court hearing without sufficient justification;
4. An irreconcilable conflict or breakdown of communication between the attorney and client that renders continued representation untenable;
5. A finding by the presiding judge that another qualified attorney is more appropriate for the defendant;
6. Replacement of appointed counsel in a death penalty case is required under CCP Art. 26.052(e);
7. An attorney's illness, workload, or scheduling difficulties; or diminished mental or physical capacity to such an extent that the attorney's ability to provide adequate representation can reasonably be questioned;
8. An attorney is convicted of or received deferred adjudication for any felony or crime of moral turpitude; or is under indictment or other formal criminal accusation for any offense if the attorney's ability to fully and effectively represent his or her appointed clients is compromised or otherwise adversely affected by the pending accusation;

9. A trial court proceeding has concluded and the defendant has requested appellate counsel;
10. The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant;
11. An attorney's failure to make reasonable efforts to contact the client not later than the end of the first working day after the date on which the attorney is appointed and to interview the client as soon as practicable after the attorney is appointed;
12. An attorney's failure to provide effective representation to the client, including an attorney who has been found to have rendered ineffective assistance of counsel by a court of record, and all appeals from said finding have been exhausted;
13. An attorney's failure to comply with the Texas Disciplinary Rules of Professional Conduct, or the Texas Code of Criminal Procedure;
14. An attorney's failure to provide the required practice-time report to the Texas Indigent Defense Commission by October 15 of each year;
15. Public disciplinary action or reprimand by the State Bar of Texas or any other attorney licensing authority of any state or the United States; and
16. An attorney's failure to comply with the provisions of this Plan.

**G. Additional Grounds for Removal from Appeals List**

Appellate counsel shall immediately notify the trial court upon receipt of notice from an appeals court that the deadline for filing a brief has not been met. The attorney shall be temporarily suspended from the appeals list until the brief has been filed. Reinstatement shall be contingent on providing the trial court with a written or electronic copy of the brief and proof of filing.

Appellate counsel shall also immediately notify the trial court, and shall be permanently removed from the appeals list, upon receipt of an order to show cause why counsel should not be held in contempt for failure to timely file a brief.

Appellate counsel will also be permanent removed from the list if an appeal is abated and the trial court is ordered to determine whether the appellant still desires to pursue an appeal following counsel's failure to respond to a notice from the appeals court that a brief is overdue.

An attorney permanently removed from the appeals list may apply for reinstatement only upon submission of:

1. A statement claiming exceptional circumstances which reasonably prevented counsel from meeting the appellate deadlines; or
2. A statement of measures taken by the attorney to prevent any future recurrence of failing to meet appellate deadlines.

**H. Appointment of Replacement Counsel**

When an attorney is removed from a list or from representation in a particular case, replacement counsel shall immediately be selected and appointed in accordance with this Plan.

**I. Appeal of Removal from List**

If an attorney is removed from a list, the attorney may appeal the decision by notifying the local administrative district judge. If a request for hearing is granted, the attorney may attend a meeting of the district judges and present his or her appeal. Following the appeal, the district judges will decide by majority vote whether to sustain the removal, reinstate the attorney, or suspend the attorney's placement on the wheel for a specified period of time. If an attorney is suspended, the suspension may be imposed or probated.

**J. Reinstatement**

If an attorney seeks reinstatement following removal, the attorney must file an original application during the appropriate period. An attorney removed for not submitting the annual practice-time report must present proof that the required report was submitted to TIDC.

**K. Discharge When Defendant is Unapprehended**

When a defendant under felony accusation has been unapprehended for six or more months, appointed counsel may be discharged by the presiding judge *sua sponte* or at the request of appointed counsel. If the client is later apprehended, the same attorney may be appointed until disposition, unless the attorney is no longer on the list at the time of the defendant's apprehension, or there is other good cause for the appointment of different counsel.

Upon a defendant's subsequent arrest, appointed counsel is obligated to contact and interview the defendant pursuant to the requirements of [Section V, Duties of Counsel, Subsection A, Duties to Client, Paragraph 2](#).

**L. Electronic Attorney Appointment System**

An appointing authority shall make all appointments using the Odyssey electronic attorney appointment system. If Odyssey is not available, an appointing authority shall appoint an attorney from the public list of approved attorneys and update the electronic appointment system when possible. The public list shall conform to the list in the electronic attorney appointment system at all times.

The electronic attorney appointment system shall contain identifying information for the attorneys who have been specially approved for appointment in cases involving mental illness or mental defect.

**M. Temporary Inactive Status**

An attorney on a list may request to be inactive for up to 90 days by submitting a written request to the Indigent Defense Office. During the inactive period, the attorney will not be appointed to any new cases. If an attorney is inactive for more than 90 days, the attorney must submit a written request for reinstatement along with proof of CLE compliance.

An attorney appointed to represent a defendant charged with capital murder in which the death penalty is sought will be temporarily suspended from the felony appointment list(s) beginning 30 days before the beginning of trial and lasting until the trial is over.

## **V. DUTIES OF COUNSEL**

### **A. Duties to Client**

An attorney appointed to represent an indigent defendant shall:

1. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case;
2. Make every reasonable effort to:
  - a. Contact the defendant by the end of the first working day after the date on which the attorney is appointed;
  - b. Interview the defendant as soon as practicable after the attorney is appointed;
  - c. Visit a client who is incarcerated in the county jail at least once every thirty (30) days;
3. Represent the defendant until:
  - a. The charge is no-billed or dismissed;
  - d. The defendant is acquitted;
  - e. The defendant is sentenced, and counsel has advised the defendant of the right to file a motion for new trial or notice of appeal, and if the defendant wishes to pursue either or both, counsel has assisted the defendant with requesting the prompt appointment of appellate counsel; and in cases where appellate counsel is not promptly appointed, filed a motion for new trial or notice of appeal; or
  - f. The attorney is discharged by the presiding judge or replaced by other counsel;
4. Investigate, either personally or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
5. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
6. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through an agreed disposition;
7. Be prepared to try the case to conclusion either with or without a jury;
8. Be prepared to file post-trial motions, give notice of appeal, and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure; and
9. Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case;
10. Render professional legal services in accordance with this Plan, the requirements of the Code of Criminal Procedure, and applicable rules of ethics; and
11. Manage the attorney's workload in accordance with TIDC recommendations and in such a manner as to allow for the provision of quality representation and the execution of responsibilities imposed by this Plan.

**B. No Remuneration from Clients**

An attorney appointed to represent a client shall neither solicit nor accept remuneration from the client on the appointed case(s) unless the presiding judge determines that there has been a change in financial status and approves such payment. If the client is charged with a new offense or is in need of other legal services during the pendency of an attorney's appointment, the attorney shall not accept remuneration for representation in those matters without notice to, and approval by, the presiding judge.

**C. Maximum Caseload Limit**

An attorney with a pending felony caseload of 90 or more shall be suspended from all future felony appointments until the attorney reduces his caseload to less than 85 pending felony cases.

**VI. ATTORNEY COMPENSATION**

Court-appointed counsel shall be compensated for all reasonable and necessary services rendered in representing an accused. Compensation shall be in accordance with the Schedule of Fees for Compensation of Appointed Counsel (which is attached to this Plan and incorporated for all purposes).

**A. Requests for Compensation**

An attorney shall complete and submit a request for compensation for services rendered using the county auditor's approved form, *Appointed Counsel Request for Compensation*. Upon its implementation, attorneys shall submit requests for compensation using the electronic Court Appointed Attorney Payment System ("CAAPS").

Only an appointed attorney of record may complete and submit a request for compensation. Appointed counsel shall perform all work within the scope of the attorney-client relationship. No attorney who is appointed on a case shall delegate, subcontract, or otherwise permit a different attorney who is not appointed to provide legal services in the same case, unless the appointed attorney is unavailable and the other attorney is appearing at a non-dispositive setting, or the appointed attorney is unavailable and the substituting attorney is approved for the same list from which the appointed attorney was selected.

Subsequent to indictment, a request for compensation must include ALL services performed during the period of appointment. Partial-payment applications shall not be submitted nor approved, with the exception of capital cases.

Except as stated below for MHMC cases, a request for compensation shall be submitted only to the judge who presided over the proceeding for which payment is sought, unless the judge was sitting by assignment, in which case the request shall be submitted to the presiding judge for whom the assigned judge was sitting. The presiding judge shall review the request for compensation and either approve or disapprove the amount requested.

No request for compensation shall be submitted other than in accordance with the rules set forth in this Plan. Requests which do not comply with the provisions of this Plan may be reduced or disapproved.

**B. MHMC Procedures**

For MHMC cases, requests for compensation shall be submitted to the MHMC director. The MHMC director shall review the request and either approve or disapprove the amount requested. If the MHMC director disapproves a request, the director may, but is not required to, forward the request to the presiding judge. If forwarded to the presiding judge, the presiding judge, after review, will either approve the amount requested, disapprove the amount requested, or take no action.

**C. Timely Submission of Requests for Compensation**

For a case resolved by pretrial disposition (e.g., plea agreement or dismissal), counsel shall submit the request for compensation within seven (7) days of the date of disposition.

If a case is disposed of by trial, the request for compensation shall be submitted within thirty (30) days of the date on which the trial is concluded.

Requests for compensation not submitted within thirty (30) days of the date of disposition will not be approved, absent extenuating circumstances submitted in writing and attached to the request.

**D. Fixed-Rate Fee Schedule**

For legal services subject to the fixed-rate fee schedule, the following rules must be observed in all cases.

1. Overhead Costs

Normal postage, copying, etc., are considered normal overhead costs and are not subject to reimbursement. If there is a special expense, such as a required overnight or special delivery, an especially voluminous printing, or some other out-of-the-ordinary expense necessitated by the case, receipt(s) must be submitted with a written explanation.

2. Paralegal Fees

Legal services performed by paralegals are included in the fixed rates and no additional claims for compensation will be approved.

3. Travel

Normal traveling expenses are included in the fixed rates and no additional claims for compensation will be approved. For any necessary and out-of-the-ordinary travel expenses, travel time may be billed at \$50 per hour, in 0.1-hour (six minute) increments. Mileage for roundtrips greater than 50 miles may be reimbursed at current IRS rates (\$0.58 per mile as of 2019).

**E. Hourly Rates**

For legal services subject to approved hourly rates, attorneys shall submit an itemized billing statement, attached to the request for compensation, which segregates the time billed for each client and matter. No claim shall duplicate any time that may also be charged to a different client or matter. Time shall be billed in 0.1 hour (six-minute) increments. The statement must include each legal service provided, separated by each individual task, the time expended, and the date.

An attorney shall not bill for any services performed prior to the date of appointment or after the period of appointment has concluded.

1. Normal and Customary Costs

Usual and customary costs of a law practice, including postage, copying, preparation of vacation letters, billing statement preparation, opening and closing of files, receipt and review of automated responses from the district clerk, reviewing the court's file, etc. shall not be included in requests for reimbursement, and shall not be approved for payment. For any unusual or out-of-the-ordinary expenses, such as necessary overnight or special delivery, voluminous printing costs, receipt(s) must be submitted with a written explanation.

2. Paralegal Fees

Work performed by a paralegal who is employed by appointed counsel shall not be submitted or approved for payment.

3. Travel

Attorney travel time may be billed at \$50 per hour, in 0.1-hour (six minute) increments. Attorneys may not bill for travel to or from the courthouse or jail. Mileage for roundtrips greater than 50 miles may be reimbursed at current IRS rates (\$0.58 per mile as of 2019). Food and lodging will not be reimbursed unless pre-approved by the court.

**F. Investigator & Expert Expenses**

Appointed counsel may file with the trial court a pretrial ex-parte motion for advance payment of investigative and/or expert services. The motion must state:

1. The type of investigation to be conducted or type of expert to be retained;
2. Specific facts which support a conclusion that an investigation will result in admissible evidence or that the services of an expert witness are reasonably necessary to assist in the preparation of a defense; and
3. An itemized list of anticipated expenses for each investigation or expert.

The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. Ordinarily, advance payments for investigator expenses may not exceed \$750.00 and advanced payments for expert witness services may not exceed \$2,000.00. Investigators may not bill at an hourly rate that exceeds \$65.00.

Travel must utilize the least expensive means and airfare must be booked at least 21 days in advance. Reimbursement for mileage may only be submitted for roundtrips exceeding 50 miles, and will be approved at current IRS rates. A Google or other internet map of the route of travel must be included with a request.

If the court denies in whole or in part a request for expenses, the court shall:

1. State the reasons for the denial in writing;
2. Attach the denial to the confidential request; and
3. Submit the request and denial as a sealed exhibit to the record.

Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall

order reimbursement for the expenses only if they are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

In MHMC cases, the MHMC director may complete and submit requests for compensation of experts appointed to conduct competency, sanity, or other psychological exams. Requests for compensation of expert witnesses in MHMC cases shall not exceed \$2,000.00 unless approved by the presiding judge.

In all other cases, requests for compensation of services rendered by a private investigator or expert must be certified to, signed, and submitted by the attorney of record, even if the auditor is to release payment directly to the investigator or expert.

**G. Appeal of Disapproval or Inaction**

If a judge or the MHMC director disapproves (or reduces) a request for compensation, the judge or MHMC director shall make written findings, stating the amount of payment approved and each reason for approving an amount different from the requested amount.

An attorney whose request for payment is disapproved or is not otherwise acted on by the 60<sup>th</sup> day after the date the request for compensation is submitted may appeal the disapproval or failure to act by filing a notice of appeal with the Presiding Judge of the First Administrative Judicial Region.

After receiving a notice of appeal, the presiding district judge may enter a revised payment order within ten (10) days. If the judge does not enter a revised payment order, and the judge has not already done so, the judge shall, within five (5) days of the filing of the motion, file written findings detailing the reason(s) for disapproving the requested attorney's fees.

If the judge enters a revised payment order, the judge shall file it with the Presiding Judge of the First Administrative Judicial Region. If a revised payment order resolves the dispute to the satisfaction of the appealing attorney, the attorney shall file a notice withdrawing the appeal with the Presiding Judge of the First Administrative Judicial Region. If the revised payment order does not fully resolve the issue to the attorney's satisfaction, the attorney shall, within five (5) days of the signing of the revised payment order, file with the presiding district judge and the Presiding Judge of the First Administrative Judicial Region a notice stating that the matter remains subject to contest. The attorney shall attach a copy of the trial court's revised payment order to said notice.

**H. Petitions for Nondisclosure and Petitions for Expunction**

Petitions for nondisclosure and petitions for expunction (other than acquittal expunctions) will not be approved for payment.

**VII. MISCELLANEOUS**

**A. Amendments**

This plan is subject to amendment.

**B. Availability of Forms**

Forms referenced in this plan are accessible through the links provided on the final page and may also be available on the Collin County website:

[http://www.collincountytx.gov/indigent\\_defense](http://www.collincountytx.gov/indigent_defense)

**C. Effective Date**

This plan is effective November 1, 2019, and the provisions herein apply to all appointments made on or after that date.

SIGNED ON THE 16<sup>TH</sup> DAY OF OCTOBER 2019.



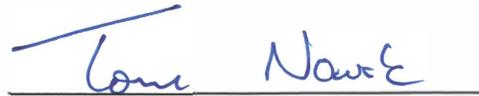
HON. ANGELA TUCKER  
199<sup>TH</sup> JUDICIAL DISTRICT COURT



HON. JENNIFER EDGEWORTH  
219<sup>TH</sup> JUDICIAL DISTRICT COURT



HON. JOHN ROACH, JR.  
296<sup>TH</sup> JUDICIAL DISTRICT COURT



HON. TOM NOWAK  
366<sup>TH</sup> JUDICIAL DISTRICT COURT



HON. BENJAMIN SMITH  
380<sup>TH</sup> JUDICIAL DISTRICT COURT



HON. MARK RUSCH  
401<sup>ST</sup> JUDICIAL DISTRICT COURT



HON. ANDREA THOMPSON  
416<sup>TH</sup> JUDICIAL DISTRICT COURT

## PLAN DOCUMENTS

Affidavit of Indigence [view](#)

Affidavit of Indigence (Spanish) [view](#)

Attorney Application for Felony List [view](#)

Attorney Annual Renewal Application for Felony List [view](#)

Attorney Application for MHMC Felony List [view](#)

Attorney Fee Schedule [view](#)

Attorney Request for Compensation [view](#)

Federal Poverty Guidelines [view](#)

Magistrate's Warning Form [view](#)

Mental Health Managed Assigned Counsel Plan of Operation [view](#)

Trial Court's Findings on Attorney's Request for Compensation [view](#)

Waiver of Counsel [view](#)

Waiver of Counsel (Spanish) [view](#)