Collin Juvenile Board Plan

Preamble

10/31/2013

To implement the Texas Fair Defense Act (FDA, Acts 2001, 77th Leg.), the following Local Rules of Administration are adopted under Texas Local Government code 74.093, effective November 1, 2013.

Prompt Detention Hearings

11/2/2015

A. A child taken into custody must either be brought to a juvenile processing office without unnecessary delay where they may not be detained for longer than six hours pursuant to §52.025, Family Code, or another disposition authorized by §52.02, Family Code, including referral to the office designated by the juvenile board as intake for the juvenile court. The intake officer shall process the child according the requirement of §53.01, Family Code, and shall also inform the child and the child's parents of the right to appointed counsel if they are indigent and provide a form for the purpose of determining eligibility for appointment of counsel. If the child is not released by intake, then a Detention Hearing shall be held not later than the second working day after the child is taken into custody unless the child is detained on a Friday, Saturday or holiday in which case the detention hearing shall be held on the first working day after the child is taken into custody.

B. Prior to the detention hearing the court shall inform the parties of the child's right to remain silent as to the alleged conduct.

C. All juveniles shall be represented by counsel at each detention hearing. If a parent/custodian has not retained an attorney to represent a juvenile at a detention hearing, the court appointed attorney for that day's hearings shall represent the juvenile at the detention hearing.

D. Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.

E. The detention hearing may be conducted without the presence of the child's parent(s) or other responsible adult(s), however, in these cases the court must immediately appoint counsel or a guardian ad litem to represent the child.

F. The court shall provide the attorney for the child access to all written matter to be considered by the Court in making the detention decision.

G. For persons arrested/detained on out-of-county warrants/directives to apprehend, the magistrate/referee will ask the respondent if he/she would like to request appointed counsel. If counsel is requested, the magistrate/referee will provide the arrestee/detainee with the appropriate forms for requesting counsel. The magistrate/referee will ensure assistance in completing the forms at the same time. The forms will be transmitted to the appointing authority in the county issuing the warrant within 24 hours of the request being made. If an indigent respondent is arrested in another county based on this county's warrant, counsel will be appointed within 48 hours or 2 working days of arrest or detention.

Indigence Determination Standards

10/31/2013

Definitions:

A. "Total income" In the case of a juvenile, the income of the child's parents or other person determined legally responsible for the support of the child shall be considered. Total income shall include wages, salaries, tips, taxable interest, dividends, capital gains, business income, IRA distributions, pensions and annuities, rental real estate, royalties, partnerships, S corporations, trusts, etc., farm income, unemployment compensation, Social Security benefits, and other income. Unless there has been a substantial change in income, total income will be determined from line 22 of the most recent U.S. Individual Income Tax return - 1040 or line 4 of the form 1040EZ. The income of the parent(s) or guardian who claimed the juvenile as a dependent on their most recent tax return shall be the primary source for determining income.

B. "Household size" shall be determined by the number of dependents claimed on the most recent U.S. Individual Income Tax Return 1040 or 1040EZ. If a U.S. Individual Income Tax Return has not been filed, the household size shall mean all individuals who are legally dependent on the child's parent(s) for financial support.

C. "Liquid assets" shall include but are not limited to cash, savings, checking accounts, stocks, bonds, certificates of deposit, and equity in real and personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.

Financial Considerations

The financial considerations set forth below shall be used to determine whether a juvenile is indigent and shall be applied equally to each juvenile in the county. The total income of the juvenile, child's parent(s) or other person responsible for the support of the child shall be used to determine whether the juvenile qualifies as indigent.

A juvenile who is determined by the Court to be indigent is presumed to remain indigent for the remainder of the proceedings unless a material change in financial circumstances occurs. The juvenile, juvenile's attorney or State may move for reconsideration of an indigency determination.

A juvenile is considered indigent if:

A. their toal income does not exceed 125% of the Federal Poverty Guidelines established and revised annually by the U.S. Department of Health and Human Services and published in the Federal Register; or

B. the juvenile and the juvenile's parent(s) were not required by law to file the most recent U.S. Individual Income Tax return, either 1040 or 1040EZ) due to gross income below the filing requirements; and

C. the juvenile and the juvenile's parent(s) liquid assets do not exceed $2,500.00; or

D. the juvenile and the juvenile's parent(s) liquid assets do not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the juvenile is charged: or

E. at the time of requesting appointed counsel, the juvenile or the parent(s) of the juvenile have been determined to be eligible to receive Food Stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Social Security Income, public housing or Collin County Indigent Health Care.

Factors Not to be Considered

A. A juvenile's posting of bail or ability to post bail may not be considered, except as provided by law, in determining whether the juvenile is indigent. Even when a juvenile has posted bail, the juvenile's financial circumstances are measured by the financial standards stated in this rule.

B. The resources available to friends and families or relatives of the juvenile may not be considered in determining whether the juvenile is indigent. Only the juvenile's financial circumstances as measure by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. A juvenile shall not be denied the appointment of counsel merely because the person is employed.

Partial Indigence

A. The Court may find a juvenile to be partially indigent if the person is able to pay some part of the cost of legal representation and if the payment does not imposed manifest hardship on the juvenile or the juvenile's household.

B. The family of an accused juvenile found to be partially indigent may be ordered by the Court to pay, while the case is pending, monthly installments commensurate with their ability to pay based upon the family's income and assets.

Reimbursement

A juvenile who is ordered adjudicated and has exhausted all appeals, and his parents, shall be required to reimburse Collin County a sum not more than the amount paid by the County to the juvenile's attorney, provided that a finding is made at the time of disposition that the juvenile and his/her parents have the ability to reimburse the County without substantial financial hardship. Such reimbursement shall be taxed as costs in the juvenile's case.

Form Required for Indigence Determination

A juvenile, parent, or person responsible for the support of the child, who requests a determination of indigency and appointment of counsel shall:

A. complete under oath a questionnaire concerning financial resources, or
B. respond under oath regarding financial resources, or
C. complete the questionnaire and respond to examination.

Minimum Attorney Qualifications

11/1/2019

Procedure for the Fair Allocation of Attorneys

The Juvenile Board will receive written applications for court appointed attorneys and meet periodically to approve and update the list. The list shall be provided to all district judges, county judges, referees and clerks. Appointments are to be allocated among qualified attorneys in a manner that is fair, neutral and nondiscriminatory. The Court shall appoint attorneys from the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the Court makes a finding of good cause on the record. An attorney who is not appointment in the order in which the attorney's name appears on the list shall remain next in order on the list.

Minimum Standards for Court Appointed Attorneys

The minimum standards for placement on the list of qualified attorneys shall:

1. Be licensed and in good standing with the State Bar of Texas;
2. Exhibit proficiency, professionalism and reliability;
3. Maintain an office in Collin County, a telephone number, fax number and email access, and agree to update the District Clerk promptly of any changes; and
4. Complete ten hours average per year of CLE in criminal law, with six of those hours in juvenile law.
5. An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for

adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission/form prescribed by the Texas Indigent Defense Commission to the court administration office in the county.

Graduated Lists
Applications will be received for, and lists approved for, the following graduated lists. Each list details the qualifications required for placement on the list:

A. Level One: Qualifications for Appointment for Conduct Indicating a Need for Supervision (CINS) and Delinquent Conduct (where Commitment to the Texas Juvenile Justice Institutional Division is not an Authorized Disposition)

1. An attorney must have been licensed to practice law for a minimum of six months, meet the Mininum Standards for Court Appointed Attorneys set out above, and
2. That attorney shall have observed at least three stipulated juvenile adjudications, three contested juvenile adjudications, three juvenile dispositions and five detention hearings.

B. Level Two: Qualifications for Appointments for Delinquent Conduct and Commitment to the Texas Juvenile Justice Institutional Division (TJJD) without a Determinate Sentence is an Authorized Disposition

1. Must complete eight (8) hours of CLE in juvenile law.
2. An attorney must have been licensed to practice law for a minimum of one year, meet the Minimum Standards for Court Appointed Attorneys set out above, and
3.. That attorney must have substantial and active participation in one juvenile or criminal (class B misdemeanor or above) contested trial and ten juvenile adjudications or modifications, contested or uncontested, or ten criminal pleas, or a combination of these totaling ten proceedings, or
4. That attorney must be Board Certified in Juvenile Law or Criminal Law.

C. Level Three: Qualifications for Appointments for Determinate Sentencing or Certification Proceedings
1. Must complete ten (10) hours per year of CLE in juvenile law.
2. An attorney must have been licensed to practice law for a minimum of three years, meet the Minimum Standards for Court Appointment Attorneys set out above, and
3. That attorney must have substantial and active participation in two felony jury trials, juvenile or criminal, and must have been lead counsel in one county or district level jury trial, or
4. That attorney must be Board Certified in Juvenile Law or Criminal Law.

D. Guardian Ad Litem: Qualifications for Appointment
1. Must meet Level Two Appointment attorney qualifications.
2. Substantial and active participation in and knowledge of placements for adolescents.

Annual Renewal and Review of Counsel: An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work

based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission/form prescribed by the Texas Indigent Defense Commission to the court administration office in the county.

Each year appointed court appointed counsel shall complete and file a renewal application which verifies their contact and other required information. Counsel shall also attach a copy of the State Bar CLE compliance form as proof that he or she has completed the annual CLE requirements in this plan. The renewal application shall be filed with the Indigent Defense Office by December 31 of each year.

Prompt Appointment of Counsel

11/5/2013

IV. Appoint Counsel Promptly for Juveniles –

The Collin County Juvenile Board designates all district and county court at law judges, designated court referees and the Office of Indigent Defense Coordinator within Collin County to appoint counsel for indigent children within the guidelines set forth below.

A. Appointment of Counsel for Children in Detention

i. Prior to the detention hearing the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent, and of the child's right to remain silent as to the alleged conduct.

ii. Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.

iii. Prior to the initial detention hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the detention decision.

iv. If there is no parent or other responsible adult present, the court must appoint counsel or a guardian ad litem for the child.

v. If the juvenile is detained, the child has an immediate right to counsel. If counsel has not already been appointed, the court must either appoint counsel or direct the juvenile's parent or other responsible adult to retain an attorney promptly. The court may enforce an order to retain counsel by appointing an attorney to represent the child and requiring that the child's parent or other responsible adult reimburse the court for attorneys' fees.

vi. Upon appointment, the court administrator shall notify the appointed attorney by fax, e-mail, or personal contact of the appointment and the scheduled hearing time and date.

vii. The appointed attorney shall make every reasonable effort to contact a child in detention by the end of the first working day after receiving the notice of appointment or to inform the court that the appointment cannot be accepted. Contacting the child in detention may be by personal visit (including contact during a detention hearing), by phone, or by video teleconference. Contacting the court may be by fax, email, phone or personal visit. A court-appointed attorney shall contact the child, in one of the ways mentioned above, no less than once every ten working days while the child remains in detention.

viii. An attorney appointed for a detention hearing shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.

ix. Court-appointed attorneys shall make every effort to comply with the Texas State Bar Code of Ethics for communication with a client.

B. Appointment of Counsel for Children not Detained at Intake

i. If the child is released from detention and if a petition to adjudicate or a motion to modify is filed, the juvenile court will use the financial forms gathered at intake to make a determination of indigence. If no financial information is available, the juvenile court shall promptly summon the child's parent/guardian/custodian to the court so that financial information may be gathered for a determination of indigence.

ii. If the court makes a finding of indigence, the court shall appoint an attorney on or before the fifth working day after:

a. The date a petition for adjudication or discretionary transfer hearing has been served on the child; or

b. A motion to modify disposition seeking commitment to TJJD or placing in secure correctional facility has been filed.

iii. If the family does not qualify for appointed counsel or if the parent or guardian is not available, and the family fails to provide an attorney, the juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

iv. The prosecuting attorney/court clerk shall notify the juvenile court upon the filing of and return of service of a motion to modify or the return of service of a petition for adjudication or discretionary transfer.

Attorney Selection Process

11/5/2013

A. The appointing authority will identify which of the appointment lists, discussed in the attorney qualifications section, is most appropriate based on the accusations against the child and will appoint the attorney whose name is first on the list, unless the court makes a finding of good

cause on the record for appointing an attorney out of order. The court may provide the lists of attorneys qualified at each level to probation staff and parents. Good cause may include:

i. The child requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients' language, if one is available;

ii. The child has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case;

iii. An initial detention hearing is scheduled and the first attorney on the list is unavailable; or

iv. Other good cause exists for varying from the list.

B. Once appointed, an attorney's name will be moved to the bottom of the appointment 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 on the list.

C. Attorneys qualified for Level 2 cases will be assigned detention hearings in the same manner as described in the graduated lists. The court officer shall make the detention hearing calendar available to the Level 2 attorneys upon request.

D. Judicial Removal from Case:

i. The judge presiding over a case involving a child may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:

1. Counsel's failure to appear at a court hearing;
2. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
3. Current information about the child and the charges against the child indicate that another qualified attorney is more appropriate for the child under these rules;
4. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;

5. The child requests an attorney, other than trial counsel, for appeal; or
6. The child shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the child.

ii. Appointment of Replacement Counsel - Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

Fee and Expense Payment Process

11/1/2019

The juvenile board adopts the following fee schedule for appointed attorneys:

The flat, fixed fees are **preferred and expected in most cases**. However, for unique cases the court will consider a minimum of $75 an hour and a maximum of $100 an hour; or a total fixed fee as set forth below:

1. Detention hearings: $100.00

2. Motion hearings (e.g., Chapter 55): $650.00

3. Misdemeanors, CINS or uncontested dispositions: $650.00 ($250.00 for second and each subsequent case at the discretion of the Judge)

4. Contested Misdemeanor dispositions and Felony pleas: $1,000.00 ($250.00 for each subsequent case pled on the same day); Contested Felony Dispositions: $1,100.00; First Degree Felony pleas: $1,250.00 ($250.00 for each subsequent case pled on the same day at the discretion of the Judge); Contested First Degree Felony dispositions: $1,500.00

5. Misdemeanor/2nd/3rd Degree Felony/State Jail Felony case which results in a trial before the court of any case, including a motion for new trial: 1,250.00; First Degree Felony trials before the court: $1,500.00

6. Case which results in a jury trial and Determinate Sentence or Certification/Transfer Hearings: $2,500.00, including motion for new trial; 1st Degree or Capital Felony case which results in a jury trial $3,000.00.

7. Appeals: $3,500.00, except for Anders briefs and complicated appeals, as determined by the Judge

8. Supplemental payment in addition to a flat fee up to $1,250.00 for miscellaneous items including, but not limited to: cases involving juveniles with mental illness or intellectual disability or developmental disability, speedy trial motions, motions to suppress, etc.

9. Guardian ad litem fees will follow the CPS fee schedule as appointments of GAL/AAL are in accordance with the Texas Family Code. ($100.00 an hour for attorney work at the discretion of the Court.)

The Court may vary from these guidelines in unusual circumstances or where the fee would be manifestly inappropriate because of the circumstances beyond the control of the appointed counsel.

Miscellaneous

12/1/2009

This plan is subject to amendments.

Plan Documents

Collin Juvenile Board Affidavit of Indigence.pdf (3/1/2018 10:11:47 AM) view
Collin Juvenile Board Application for Attorneys to be Placed on Court Appointment List - Juvenile Court.pdf (10/23/2017 10:20:29 AM) view
Collin Juvenile Board Attorney Annual Renewal Application for Appointment.pdf (10/21/2015 9:27:41 AM) view
Collin Juvenile Board Attorney Application for Appointment.pdf (12/8/2009 9:42:30 AM) view
Collin Juvenile Board Attorney Fee Schedule.docx (11/2/2015 10:15:29 PM) view
Collin Juvenile Board Attorney Fee Voucher.pdf (12/8/2009 9:42:54 AM) view
Collin Juvenile Board Collin Juvenile Board Renewal Application FY18.pdf (10/23/2017 10:02:16 AM) view
Collin Juvenile Board Indigence Acknowledgement Form.xls (10/31/2013 11:48:15 PM) view
Collin Juvenile Board Parent Petition Letter .docx (11/3/2015 11:32:02 AM) view