

Orange District Court and County Court Plan

Preamble

10/26/2015

The Judges of the 128th, 163rd, & 260th District Courts, the County Courts at Law of Orange County, and the County Court of Orange County, jointly adopted the following local rules pursuant to Article 26.04 of the Code of Criminal Procedure. These rules provide for timely and fair appointment of counsel for indigent defendants in Orange County arrested for or charged with a felony or a misdemeanor punishable by confinement. Any references to "the Judges" shall mean the Judges of the above courts who shall by majority action promulgate, amend, or enforce such rules and procedures.

Prompt Magistration

10/27/2015

- A.** Each arrested person will be taken before a magistrate for an Article 15.17 hearing without unnecessary delay and no later than 48 hours after arrest.
 - 1. A person arrested for misdemeanor without a warrant must be released on bond in an amount no more than \$5,000.00 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time [Art. 17.033, CCP]
- B.** At the time of the Article 15.17 hearing:
 - 1. A "record" shall be made showing:
 - a. That the magistrate informed the person of the right to request appointed counsel if the person cannot afford counsel;
 - b. That the magistrate asked the person whether he or she wanted to request counsel;
 - c. Whether the person requested counsel
 - d. That the magistrate informed the person of the procedures for requesting appointment of counsel including the person's right to request appointment of counsel in person at the office of the Court Administrator located in the Orange County Courthouse, 801 West Division, Orange, Texas (409) 882-7075 upon his or her release from custody after an Art. 15.17 hearing.
 - 2. The "record" may consist of a written document or an electronic recording.
 - 3. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at that time.
- C.** The magistrate must transmit the defendant's request for counsel to Office of the Court Administrator, Orange County, within 24 hours.

- D. For persons arrested on out-of-county warrants, the magistrate will ask the defendant if he/she would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the arrestee with the appropriate forms for requesting counsel. The magistrate 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. Regarding the appointment of counsel, persons arrested in other counties on local warrants must be appointed counsel in the county that issued the warrant within 1 (one) working day of receipt of the request in counties with a population of 250,000 or more and within 3 (three) working days of receipt of the request in counties under 250,000. Persons arrested on out-of-county warrants must be appointed counsel in the county of arrest if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of the arrest. [Art. 1.051(c-1), CCP]

Indigence Determination Standards

12/1/2010

- A. Definitions, as used in this rule:

- i. “Indigent” means a person who is not financially able to employ counsel
- ii. “Net household income” means all income of the accused and spousal income actually available to the accused. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the accused has no income or lesser income.

- iii. “Household” means all individuals who are actually dependent on the accused for financial support.
- iv. “The cost of obtaining competent private legal representation” includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

B. Eligibility for Appointment

- i. An accused is presumed indigent if any of the following conditions or factors are present:
 - 1. At the time of requesting appointed counsel, the accused is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing; or
 - 2. The accused’s net household income does not exceed 100% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register.
- ii. An accused who does not meet any of the standards above shall nevertheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused’s dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:
 - 1. the nature of the criminal charge(s),
 - 2. anticipated complexity of the defense,
 - 3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;

4. the amount needed for the support of the accused and the accused's dependents;
 5. accused's income,
 6. source of income,
 7. assets and property owned,
 8. outstanding obligations,
 9. necessary expenses,
 10. the number and ages of dependents, and
 11. spousal income that is available to the accused.
- iii. Factors NOT to be considered in determining indigence:
1. The accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.
 2. The resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent.
- iv. Only the accused's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. Indigence Proceedings:

- i. The appointing authority can require the accused to respond to questions about the accused's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.

- ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:
 - 1. Determining if accused is (or is not) indigent; or
 - 2. Impeaching direct testimony of accused regarding the accused's indigence.
- iii. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in Parts I and IV of these rules and contained in Code of Criminal Procedure article 1.051.
- iv. An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused's financial circumstances occurs.
 - 1. An accused's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the accused, the accused's attorney, or the attorney representing the state. The accused's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:
 - a. Evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or
 - b. Additional information regarding the accused's financial circumstances that shows that the accused does not meet any of the standards for indigence contained in these rules.

2. If an accused previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.
- v. If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

Minimum Attorney Qualifications

10/2/2013

A. Qualifications of Appointed Attorneys:

- (1) Trial appointments (through appeal)
 - (a) a minimum of two (2) years of criminal experience or three (3) criminal jury trials, provided however the Judges may waive this by majority vote if the attorney is associated with an attorney who meets this qualification and who is available for consultation and assistance to the appointed attorney;
 - (b) must never have been found to have provided ineffective representation by an appellate court or a Bar disciplinary committee OR if so, receive a waiver from the Judges by majority vote.
 - (c) maintain an office in Orange County, Texas with a telephone which is normally answered by a receptionist or answering service from 9:00 a.m. to noon, and from 1:30 p.m. to 5:00 p.m., Monday through Friday (except for County holidays as approved by Orange County Commissioners Court.) The receptionist or answering service must have the capability to promptly locate the attorney to notify the attorney of appointment and hearing settings.
 - (d) maintain a fax number to which faxes can normally be received 24 hours a day, Monday through Friday. The fax number must be included on the attorney's application to be placed on the Public Appointment List and shall be the official numbers which will be

utilized to notify counsel of appointment and of hearing settings. Any changes in the fax number must be given to the District Court Administrator prior to the change.

- (e) an attorney shall complete a minimum of 6 hours of CLE in the area of criminal law and procedure each twelve month reporting period. The reporting period will begin on April 27 of each year. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. All attorneys on the appointment list must file a certificate with the court administration office by April 27th of each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in criminal law. Continuing legal education activity completed within a one year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum of 6 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only. If an insufficient number of attorneys meeting these continuing legal education or board certification requirements is available to handle the court appointed attorney caseload at the time an attorney must be appointed in a case, another attorney may be appointed. The person making an appointment shall give priority to an attorney with experience in criminal law.
- (f) must receive approval from the Judges by majority vote.
- (g) 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 form prescribed by the Texas Indigent Defense Commission to the court administration office in the county.

(2) Death Penalty Capital Cases

Only attorneys approved to provide representation in Capital cases will be appointed in cases where the State seeks the death penalty.

B. Second Chair:

Attorneys who do not meet the qualifications for appointment may volunteer to serve as Second Chair counsel. Second Chair attorneys may volunteer to assist attorneys on the list in order to gain experience and meet the appointment qualifications. Second Chair attorneys may perform any task as long as it is done under the supervision of an attorney on the list. The Courts will make no payment to any Second Chair attorney.

C. Establishment and Maintenance of List:

Appointments will be made to the Public Appointment List by majority vote of the Judges.

D. Removal from list:

Appointed attorneys who fail to promptly and professionally follow all of the rules and procedures adopted by the Judges may be removed from the qualified list by majority vote of the Judges. Removed attorneys may reapply for approval after being removed.

Prompt Appointment of Counsel

10/27/2015

A. The following persons are designated as the Judges designees for the purpose of appointing counsel for indigent defendants in Orange County:

- a. Court Coordinator, 128th District Court
- b. Court Coordinator, 163rd District Court
- c. Court Coordinator, 260th District Court
- d. Court Coordinator, Orange County Court at Law
- e. Court Coordinator, County Court at Law No. 2
- f. Administrative Secretary, Office of Orange County Judge
- g. Office of the Court Administrator, Orange County
- h. Office of Pretrial Release, Orange County

- B.** The magistrate must transmit the defendant's request for counsel to Office of the Court Administrator, Orange County, within 24 hours. The Office of the Court Administrator will handle the request as follows:
1. If the defendant is in custody and charged by indictment or at least one docketed misdemeanor, a Judge or the Office of the Court Administrator, will make a determination of indigence and will appoint counsel for persons determined to be indigent as soon as possible, but always within the third working day after the request for counsel is received.
 2. A person released from custody after an Art. 15.17 hearing may request appointed counsel as per B(1) as above stated.
 3. A person released prior to an Art. 15.17 hearing is entitled to request court appointed counsel at his or her first court appearance. Counsel must be appointed to persons out of custody at the first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.
 4. If the defendant appears without counsel in any adversarial proceeding that may result in punishment by confinement, the court must advise the defendant of the right to counsel and procedures for obtaining counsel.
 5. If an indigent defendant is arrested in another county based on this county's warrant, counsel will be appointed within 3 (three) working days of this county's receipt of the request for counsel.
 6. If a defendant is arrested in this county based on another county's warrant, counsel will be appointed for the defendant if, on the eleventh day after the arrest, the defendant is still in this county's custody.
 7. If a defendant wishes to request counsel prior to the initial appearance, the form required to request counsel is entitled an "Affidavit of Indigence" and may be obtained at the Texas Indigent Defense Commission's website at <http://tidc.tamu.edu/public.net> or from the Orange County Office of the Court Administrator at http://www.co.orange.tx.us/Court_Administrator.html. The defendant may submit the completed form in person to the Office of the Court Administrator located on the 3rd floor of the Orange County Courthouse, 801 West Division, Orange, Texas (409) 882-7075, or by faxing the completed form to (409)882-7016. The Court will rule on all requests for counsel submitted in this manner.

Attorney Selection Process

12/1/2009

- A.** Appointments will be made from the Public Appointment List using a system of rotation in the order in which the attorney's name appears on the list, unless the Court makes a finding of good cause on the record for appointing an attorney out of order.
- B.** Duties of Appointed Counsel
- 1.** The appointed attorney must make every reasonable effort to contact the defendant by the end of the first working day after the date on which the attorney is appointed, and must interview the defendant as soon as practicable after the appointment.
 - 2.** The appointed attorney must comply with all laws, rules, procedures and ethical provisions for providing effective assistance of counsel to the defendant.
 - 3.** The appointed attorney shall timely inform the defendant of all matters relating to the preparation, trial and disposition of the case, plea offers, appellate and writ rights, deadlines and such other matters necessary to provide effective assistance of counsel.
 - 4.** The appointed attorney shall represent the defendant until the charges are dismissed, the defendant is acquitted, appeals are exhausted or the attorney is relieved of duties by the Court or replaced by other counsel after a finding of good cause is entered on the record.
- C.** The judge presiding over a criminal case may remove appointed counsel upon entering a written order, or docket entry, 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 defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;
 - 4.** Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;

5. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
 6. The defendant requests an attorney, other than trial counsel, for appeal; or
 7. The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.
- D. 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

12/1/2009

- A. Appointed counsel in felony cases shall be compensated on a fee basis in accordance with the uniform schedule of fees as follows:
1. Disposition by plea or dismissal
 - a. Single case \$450.00
 - b. \$55.00 per additional case
 2. MTRP/MTIG
 - a. Plea of true, dismissal or amendment of terms \$275.00
 - b. \$55.00 per additional case
 3. Contested hearing, jury trial, bench trial:
 - a. \$250.00 per half day court time
 - b. \$55.00 per hour for preparation time
 4. Appeal
 - a. \$850.00 for appeal of one case
 - b. \$1200 for appeal of multiple cases on the same defendant
 5. Any claim in excess of 15 hours billed must be authorized in advance by the court.

6. J.P. level appointments:
 - a. Compensation for cases that result in charges being filed in a District Court, whether by indictment or information, in which the appointed attorney continues to represent the defendant after charges are filed, will be determined by the Judge of such District Court, pursuant to these rules. Compensation for work done before indictment in excess of these scheduled fees, will be granted only in extraordinary cases.
 - b. Compensation for work under appointment at the J.P. level in the following cases:
 - i. The case is not prosecuted and no indictment is returned; or
 - ii. An Indictment is returned, but the defendant retains counsel at that time; or
 - iii. A different attorney is appointed when an Indictment is returned.

will be determined solely by the District Administrative Judge, and compensation will be limited to a maximum of three (3) hours at the hourly rate paid for out-of-court preparation time. Compensation in these cases under ii and iii above will be considered only if request for payment is received by the appropriate Court by the time of disposal. Compensation for work done before indictment in excess of these scheduled fees, will be granted only in extraordinary cases.

- B.** Appointed counsel in misdemeanor cases shall be compensated on a fee basis in accordance with the uniform schedule of fees as followed:
 1. Disposition by plea or dismissal
 - a. Single case \$150.00
 - b. \$50.00 for one or more additional cases
 2. MTRP/MTIG
 - a. Plea of true, dismissal or amendment of terms \$150.00
 - b. \$50.00 for one or more additional cases.
 3. Contested hearing
 - a. \$50.00 per hour, not to exceed \$175.00 per half day
 - b. \$50.00 per hour for preparation time, not to exceed six (6) hours
 4. Jury or bench trials
 - a. \$175.00 per half day

- b. \$50.00 per hour for trial preparation not to exceed six (6) hours

5. Appeal

- a. \$850.00 for appeal of one case
- b. \$1200.00 for appeal of multiple cases on same defendant

6. J.P. level appointments:

a. Compensation for cases that result in an Information being filed in a County Court at Law in which the appointed attorney continues to represent the defendant after an Information is filed, will be determined by the Judge of such County Court at Law, pursuant to these rules.

b. Compensation for work under appointment at the J.P. level in the following cases:

- i. The case is not prosecuted and no information is filed or
- ii. Charges are filed but the defendant retains counsel when the charges are filed; or
- iii. A different attorney is appointed when charges are filed,

will be determined solely by the County Administrative Judge, and compensation will be limited to a maximum of three (3) hours at the hourly rate paid for out-of-court preparation time. Compensation for work done before an information is filed, in excess of these scheduled fees, will be granted only in extraordinary cases. Compensation in these cases under ii and iii above will be considered only if request for payment is received by the appropriate County Court at Law by the time of disposal

- C. Sufficient documentation must be provided with fee payment requests based in whole or in part on hourly compensation or expense reimbursement. Fee claims **MUST** be submitted by counsel at time of sentencing/disposition, or the standard rate will be applied by the court. If counsel requests leave to submit a late fee claim, counsel will have five (5) working days after the sentencing/disposition, or the standard rate will be applied by the Court.
- D. All fee payment requests must be itemized by appointed counsel on forms approved by the Judges. All requests shall be submitted to the Judge presiding over the case for review and approval, and the District Court Administrator will submit the approved request to the County Auditor for payment.
- E. Counsel appointed in a non-capital case shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior court approval shall be reimbursed, according to the procedures set forth below. When possible, prior

court approval should be obtained before incurring expenses for investigation and for mental health and other experts.

1. Procedures With Prior Court Approval: Appointed counsel may file with the trial court a pretrial *ex parte* confidential request for advance payment of investigative and expert expenses. The request for expenses must state, as applicable:
 - a. the type of investigation to be conducted or the type of expert to be retained;
 - b. specific facts that suggest the investigation will result in admissible evidence or that services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
 - c. an itemized list of anticipated expenses for each investigation or each expert.

The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the Court denies in whole or in part the request for expenses, the court shall:

- a. state the reasons for the denial in writing;
 - b. attached the denial to the confidential request;
 - c. submit the request and denial as a sealed exhibit to the record.
2. Procedures Without Prior Court Approval: 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 of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.