

## **Orange Juvenile Board Plan**

### **Prompt Detention Hearings**

*8/3/2010*

Detention hearings will be conducted in accordance with all applicable Texas Laws.

If child taken into custody, then must hold detention hearing by second working day, or first working day if detained on Friday or Saturday. Prior to detention hearing, court must inform parents of child's right to appointed counsel if they are indigent.

### **Indigence Determination Standards**

*11/15/2010*

Indigence of a child shall be determined by the assets and income of the parent, parents, custodian or other person responsible for the support of the child.

#### **A. Definitions, as used in this rule:**

- i. "Indigent" means a person who is not financially able to employ counsel.
- ii. "Net household income" in the case of a child is the income of the child's parents or other person determined responsible for the support of the child. 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 person determined responsible for the support of the child has no income or lesser income.
- iii. "Household" means all individuals who are actually dependent on the child's parent (s) or person(s) deemed responsible for the support of the child, 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. A child is presumed indigent if any of the following conditions or factors are present:
  1. At the time of requesting appointed counsel, a child is presumed indigent if the child's parent(s) or other person(s) determined responsible for the support of the child is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.
  2. The net household income of the child's parent(s) or other person(s) determined responsible for the support of the child does not exceed 130% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register;
  3. The child's parent(s) or other person(s) determined responsible for the support of the child is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought; or
- ii. The child who does not meet any of the standards above shall nevertheless be considered indigent if the child's parent(s) or other person(s) responsible for the child is unable to retain private counsel without substantial hardship. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:
  1. the nature of the 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 child, the child's parent(s)/person(s) responsible, and other dependents of the child's parent(s)/person(s) responsible;
  5. child's parent(s)' income or the income of other person(s) determined responsible for the support of the child;
  6. source of income;

7. assets and property owned by the child, child's parent(s), or other person(s) determined responsible for support of the child;
  8. outstanding obligations;
  9. necessary expenses; and
  10. the number and ages of any siblings of the child.
- iii. Factors NOT to be considered in determining indigence:
1. The resources available to friends or relatives of the child, other than the child's parent(s) or other person(s) deemed responsible for the child, may not be considered in determining whether the child is indigent.
  2. Only the child's parent(s) or other person(s) responsible for the child and the child'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 child and the child's parent(s) or other person(s) responsible for the child to respond to questions about the child's household 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 child is (or is not) indigent; or
  2. Impeaching direct testimony of the child or the child's parent(s)/person(s) responsible regarding the child'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.
- iv. A child determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the child's financial circumstances occurs.

1. A child's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court. The child'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 child's parent(s)/person(s) responsible and the child's financial circumstances; or
  - b. Additional information regarding the child's parent(s)/person(s) responsible and the child's financial circumstances that shows that they do not meet any of the standards for indigence contained in these rules.
2. If a child 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 child's parent(s) or other person(s) responsible for the child 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 child's parent(s) or other person(s) responsible for the child to pay during the pendency of the charges or, if found to have engaged in delinquent conduct or CINS, as court costs the amount that it finds the child's parent(s) or other person(s) responsible for the child is able to pay

Indigence can be determined at any stage of the proceeding where counsel has already been appointed to represent the child. If a child or parent, custodian or other person responsible for the support of a child is not indigent, cost and fees attributable to the appointment of counsel may be collected from said persons upon voluntary payment or upon show cause based upon notice and hearing to such person or persons.

### **Minimum Attorney Qualifications**

*10/10/2013*

1. Without prejudice to the inherent power of a court to appoint counsel to represent a juvenile respondent, in order to be placed on the appointment list, an attorney must apply for placement on the list, meet the objective qualifications specified by the Juvenile Board, meet any applicable qualifications specified by the Task Force on Indigent Defense and be approved by the Juvenile Board. An attorney applying for

inclusion on the list may be appointed by the appropriate judge of the court where a juvenile matter is filed pending approval of inclusion on the list by the Juvenile Board.

The Juvenile Board recognizes the following five (5) categories or types of juvenile cases and that qualification for representing juvenile offenders differ depending on the category of conduct alleged against the child:

- A. conduct indicating a need for supervision;
- B. delinquent conduct with TJJD (formerly TYC) commitment not an option;
- C. delinquent conduct with TJJD commitment an option;
- D. determinate sentence petition approved by grand jury;
- E. discretionary transfer to criminal court or certification petition.

## 2. QUALIFICATIONS FOR APPOINTMENT TO CATEGORY (A), (B), and (C)

- A. Be licensed to practice law in Texas and be in good standing with the State Bar of Texas; and
- B. Must have represented a minimum of three (3) juvenile respondents in detention hearings or cases resulting in final disposition in category (A), (B), and/or (C): and
- C. Certify misdemeanor defendant representation to final judgment; or
- D. Accompany application with recommendation of juvenile judge as to the attorney's skills and diligence in juvenile matters.

## 3. QUALIFICATIONS FOR APPOINTMENT TO CATEGORY (D) and (E)

In addition to standards A – D in #2 above, as applicable, counsel:

- A. Must have represented three (3) or more juvenile respondents to final disposition in category (D) and/or (E) litigation; or
- B. Must be approved for appointment to felony or misdemeanor cases courts of Orange County; or
- C. Must be recommended for appointment to category (D) and/or (E) cases by the juvenile judge based upon the assessment of the skills and diligence of said attorney.

- 4. An attorney shall complete a minimum of 6 hours of CLE in the area of juvenile law and procedure each twelve month reporting period. The reporting period will begin on April 27 or 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 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 20. The report must be submitted through the form prescribed by the Texas Indigent Defense Commission to the court administration office in this office.

### **Prompt Appointment of Counsel**

*10/2/2013*

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.

A juvenile charged with conduct indicating a need for supervision or delinquent conduct shall be entitled to appointed counsel at the time the child is produced in court pursuant to a request for detention filed by the county attorney with the county clerk.

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..

It shall be the duty of the designated juvenile court judge, the court's designee, magistrate, or alternate juvenile judge or designee to appoint Counsel for the child, whether indigence of the parents, custodian, guardian or person responsible of the financial support of the child has been determined.

Counsel so appointed shall remain as the attorney of record for the child throughout the pendency of the proceeding against the child, including detention, subsequent detention, trial, and appeal until such proceeding is dismissed or final judgment is entered or until such attorney is properly released from such obligation by the court in which the proceeding is pending.

Counsel for the juvenile shall be appointed from the public rotational list of attorneys eligible for appointment maintained by the Juvenile Board of Orange County.

If a child is released prior to the filing of a request for detention, the child shall be entitled to appointed counsel at the time of the filing of a petition for adjudication or discretionary transfer. It is the duty of the juvenile court, juvenile court designee, magistrate, alternate juvenile court or designee to appoint counsel for the child, and promptly notify counsel, the child and child's parents, custodian, guardian or person responsible for the child of the appointment.

If the whereabouts of the child the subject of the petition is unknown, appointment of counsel does not have to take place until the child is located.

It is the responsibility of the attorney so appointed to contact by mail or electronic means the child or child's parents within (3) three working days of notice of appointment.

If a final judgment exists and a motion for modify is filed with the proper court, the child shall be appointed counsel in accordance with these rules and procedures where such petition seeks confinement in the Texas Youth Commission or other secure facility.

### **Attorney Selection Process**

*2/20/2015*

- 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. 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. 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**

*11/6/2017*

Fees and costs for appointed counsel shall be payable to counsel in accordance with the following schedule:

1. Detention hearing
  - a. \$150 per case
2. Adjudication/Disposition or Motion to Modify plea of true
  - a. \$400 per case
3. Contested hearing in Motion to Modify
  - a. \$75 per hour, not to exceed \$300 per half day



- b. \$75 per hour for preparation time not to exceed 6 hours
4. Jury or Bench trials
    - a. \$300 per half day
    - b. \$75 per hour trial preparation, not to exceed 6 hours
  5. Appeal
    - a. \$950 for appeal of one case
    - b. \$1200 for appeal of multiple case on same respondent

Counsel appointed in a juvenile 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.

### Plan Documents

Orange Juvenile Board Attorney Fee Schedule.docx (8/2/2010 4:28:44 PM) [view](#)  
 Orange Juvenile Board Attorney Fee Voucher.pdf (8/3/2010 2:07:03 PM) [view](#)