

Henderson District and County Courts Plan

Prompt Magistration

11/9/2009

A. Arresting Officer Responsibilities

- i. The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested.
- ii. Unless arrested pursuant to an arrest warrant, bench warrant, capias, or other order of a magistrate or judge, necessary forms establishing probable cause must be completed and filed at the time an arrestee is booked into jail for any felony or misdemeanor punishable by incarceration.
- iii. Release of defendants arrested without warrant
 1. A person arrested for a misdemeanor without a warrant and who is detained in jail must be released not later than the 24th hour after arrest, on a bond in an amount not to exceed \$5,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense.
 2. A person arrested for a felony without a warrant and who is detained in jail must be released not later than the 48th hour after arrest, on a bond in an amount not to exceed \$10,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense.
 3. If requested by the state, a magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest if a probable cause determination has not been made, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

B. Magistrate Duties

- i. At the Magistrate's hearing, the magistrate should determine if accused can speak and understand English, or if the defendant is deaf.

- ii. After making such determination, the magistrate shall, in an appropriate manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, do the following:
 1. Advise the accused of the accusation against him/her and any affidavit filed therewith;
 2. Admonish the accused of:
 - a. The right to retain counsel;
 - b. The right to remain silent;
 - c. The right to have an attorney present during any interview with peace officers or attorneys representing the state;
 - d. The right to terminate an interview at any time;
 - e. The right not to make a statement and that any statement made by the accused may be used against him/her; and
 - f. The right to an examining trial.
 3. Inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel.
 4. Inquire as to whether accused is requesting that counsel be appointed.
 5. Provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the accused at the time of the magistrate's hearing.
 6. If the magistrate has reason to believe the accused is not mentally competent, the magistrate shall enter a request for counsel on behalf of the accused. Such a request will alert the appointing authority that counsel competent to represent mentally ill persons should be appointed.
- iii. In cases where the individual was arrested without an arrest warrant, bench warrant, capias, or other order of magistrate or judge, the magistrate shall determine if there is probable cause to believe the person committed the offense.

1. If probable cause has not been determined by a magistrate:
 - a. A person arrested for a misdemeanor must be released on bond, in an amount not to exceed \$5,000, not later than 24 hours after the person's arrest.
 - b. A person arrested for a felony must be released on bond, in an amount not to exceed \$10,000, not later than 48 hours after the person's arrest.
 - c. If requested by the state, the magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.
- iv. The magistrate shall set the amount of bail and any conditions of bond for the accused, if bail is allowed by law and has not been set by the court or magistrate issuing a warrant.
- v. The magistrate shall record the following:
 1. The date and time the accused was arrested and the date and time when he/she was brought before the magistrate.
 2. Whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel.
 3. Whether the accused requested appointment of counsel
- vi. If the magistrate is not authorized to appoint counsel and if the accused requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the magistrate form and any other forms requesting appointment of counsel to **Counsel Coordinator, located at 109 W. Corsicana, Ste. 105, Athens, Texas 75751, whose number is 903-677-7211 office, 903-677-7212 fax**. The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel.
- vii. If the magistrate is authorized to appoint counsel, the magistrate shall make a determination of indigence and appoint counsel if the defendant is indigent within

three working days unless the County has a U.S. Census population over 250,000, in which case counsel shall be appointed within one working day.

- viii. If a request for counsel was made at magistration, the appointing authority shall forward the magistrate form and any other forms requesting appointment of counsel to the appropriate Counsel Coordinator to be put into the case file.
- ix. If a request for counsel was not made at magistration, the magistrate will forward the magistrate form to the Counsel Coordinator to be put into the case file.

Indigence Determination Standards

8/11/2010

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 or 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 Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register; or
 3. The accused 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.
- 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.
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

10/28/2011

- A. The Judges hearing criminal cases shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists. To be eligible for an appointment list, an attorney must meet the following minimum requirements:
- i. **Misdemeanor Qualification Requirements:**
 1. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;
 2. Exhibited proficiency and commitment to providing representation to criminal defendants;
 3. Exhibits professionalism and reliability when providing representation to criminal defendants;
 4. An attorney shall complete a minimum of **10 hours of CLE** in the area of criminal law and procedure each year. All attorneys on the appointment list must file a certificate with the court administration office 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 with-in 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 10 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;

5. Have tried to verdict at least **two** misdemeanor or felony criminal jury trials as lead counsel or as participating second chair counsel in at least **two** misdemeanor jury trials;
 6. An attorney must maintain a law office **in Henderson County or resides in Henderson County** and capable of receiving email, fax, and telephone calls;
 7. An attorney must have the ability to produce typed motions and orders;
 8. An attorney shall notify the court administration office promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.
- ii. **Felony Qualification Requirements:**
1. Have met qualifications for placement on the Misdemeanor List;
 2. Have tried to verdict at least **one** felony jury trial as lead counsel or as participating second chair counsel in at least **two** felony jury trials to verdict;
 3. A minimum of 10 hours of Certified CLE credit annually in criminal law matters;
 4. Attorney must maintain a law office or resides in **Henderson County** and capable of receiving email, fax, and telephone calls;
- iii. Capital Case Qualification Requirements:

1. Lead trial counsel must be on the list of attorneys approved by the local selection committee of this Administrative Judicial Region for appointment as lead counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
 2. Second chair counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as lead trial counsel or second chair counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
 3. Appellate counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as appellate counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
- iv. **Appeal Qualification Requirements** - An attorney must meet the following criteria:
1. Be currently board certified in criminal law by the Texas Board of Legal Specialization;
 2. Have met qualifications of trial counsel unless excused by Court;
 3. Have tried at least **one felony** jury trial to verdict.
- B. Approval for Appointment Lists
- i. Misdemeanor List – An attorney must be approved by a majority of the Statutory County Court Judges hearing criminal cases; including Motion to Revoke/Motion to Proceed.
 - ii. Felony List and Appeal List - An attorney must be approved for each list by a majority of the District Court Judges hearing criminal cases; including Motion to Revoke/Motion to Proceed.
- C. Removal from Appointment List - The judges will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed

or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges.

D. Reinstatement to Appointment Lists

- i. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan.
- ii. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process and can reapply after for approval one year after being removed.

E. Duties of Appointed Counsel - **Appointed Counsel shall:**

- i. Notify the court/defendant within **72 hours** of the receipt of appointment;
- ii. Attorney shall, as a condition to remaining on the list make every reasonable effort to:
 1. Communicate with the defendant in accordant with the provision of subsection (j) (1) of the Texas Indigent Defesne Commission by the end of the first working day after the date on which the attorney is appointed; and
 2. Personally interview the defendant as soon as practicable after the attorney is appointed. It is presumed that a period of **seven (7) days** from the date of appointment is a reasonable time in which to **personally interview the defendant**.
 3. Further, Attorney's shall represent a defendant in accordance with the highest standards of the Code of Professional Conduct.
- iii. Represent the defendant until:
 1. Charges are dismissed;
 2. The defendant is acquitted;
 3. Appeals are exhausted; or

4. The attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.
- iv. Investigate, either by self 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;
- v. 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;
- vi. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
- vii. Be prepared to try the case to conclusion either with or without a jury;
- viii. 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;
- ix. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case; and
- x. 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; and
- xi. Perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics.
- xii. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

Prompt Appointment of Counsel

6/21/2010

. Prompt Appointment of Counsel

- i. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the third working day after the date on which the appointing authority receives the defendant's request for court appointed counsel. Working day means

Monday through Friday, excluding official county and or state holidays. Counsel must be appointed whether or not a case has been filed in the trial court.

- ii. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.
- iii. Appointment Authority
 1. If no case has been filed in the trial court, the appointing authority for misdemeanors is: Counsel Coordinator.
 2. If no case has been filed in the trial court, the appointing authority for felonies is: Counsel Coordinator.
 3. If the case has been filed in the trial court, the appointing authority is: Counsel Coordinator.

B. Defendants Appearing Without Counsel - If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement:

- i. The court may not direct or encourage the defendant to communicate with the 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.
- ii. 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, subsequent to the denial, the defendant:
 1. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
 2. Waived or has waived the opportunity to retain private counsel.
- iii. The attorney representing the state may not:
 1. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or

2. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:
 - a. Has been given a reasonable opportunity to retain counsel; or
 - b. Waives or has waived the opportunity to retain private counsel.

C. Waiver of the Right to Counsel

- i. A defendant may voluntarily and intelligently waive the right to counsel.
- ii. A waiver obtained in violation of section IV.B above is presumed invalid.
- iii. If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

“I have been advised this ___ day of ___, 2___, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed. Understanding my right to have counsel appointed if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”

- iv. A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

Attorney Selection Process

11/13/2009

- A. The appointing authority will identify which of the appointment lists, discussed in the Section III (attorney qualifications), is most appropriate based on the accusations against the defendant 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 defendant 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 defendant 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; or
 - iii. 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 criminal case 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 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.
- 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

11/13/2009

- A. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the judges hearing criminal cases in the county.
- B. Payment Process: No payment of attorney's fees will be made other than in accordance with the rules set forth below.
 - i. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered.
 - ii. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.
 1. If a judge disapproves a request for compensation, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.
 2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.
- C. Payment of Expenses:
 - i. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts.

Expenses incurred with and without prior approval shall be paid according to the procedures set forth below. Whenever possible prior court approval should be obtained before expenses are incurred.

ii. Procedure With Prior Court Approval:

1. 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 the below, 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 the 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 and/or each expert.
2. 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. Attach the denial to the confidential request; and
 - c. Submit the request and denial as a sealed exhibit to the record.

Plan Documents

Henderson District and County Court Acknowledgement of conditions for Court appointed attorneys.docx (10/26/2011 11:42:28 AM) [view](#)

Henderson District and County Court Attorney Application for Appointment.doc (11/13/2009 4:24:01 PM) [view](#)

Henderson District and County Court Attorney Fee Voucher.xls (10/20/2011 4:10:50 PM) [view](#)

Henderson District and County Court Magistrates Warning Form.doc (11/30/2009 3:24:47 PM) [view](#)