

**220th Judicial District Court
Bosque, Comanche & Hamilton Counties
State of Texas**

P.O. Box 529
Meridian, Texas 76665-0529
254-435-6626 Tel.
Email: crtadm220@bosquecounty.us

Phil Robertson
Judge

Linda Meinkowsky
Court Coordinator

November 7, 2017

Honorable Don Pool
Bosque County Judge
P.O. Box 647
Meridian, TX 76665

Honorable James R. Arthur
Comanche County Judge
Courthouse, 101 W. Central
Comanche, TX 76442

Joel Lieurance
Senior Policy Analyst
Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, Texas 78701

Re: 2017 Policy Monitoring Reviews of Bosque County's and Comanche County's
indigent defense processes

Gentlemen:

This letter is sent to address the deficiencies in the process for appointing counsel to adult indigent defendants in the 220th District Court for both Bosque and Comanche Counties. After receiving the Monitoring Reviews, I wrote the Judges, Justices of the Peace, and Sheriffs in both counties and have visited with many of them since that date.

The reports indicate a failure to rule and a failure to timely rule on requests for appointed counsel by the District Court. As far as I can determine, many of those instances resulted from the untimely transmission of the requests to the court. Many of our inmates for Bosque County are housed outside the county which makes it difficult to track the time of the request for counsel. Most of our inmates for Comanche County are housed there unless the inmate was arrested outside the County or transferred to another jurisdiction for some other reason.

Rural counties have some unique issues, but our law enforcement and magistrates are well educated about their duties. I believe the magistrates understand both the obligation to inform individuals of their right to counsel and to assist in timely completing the applications for appointed counsel. It

Letter concerning appointment of counsel

November 7, 2017

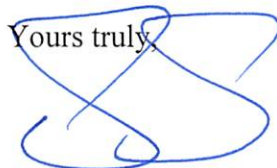
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seems that the majority of the delays in appointing counsel occur in the completion and transmission of the applications from the inmates. In order to raise awareness of the time limitations and to accurately track the transmission of the applications, it is important to document the times each step is begun and completed. The magistrates document on the magistration form the time the accused is informed of his right to counsel. The Sheriff's offices (or the magistrates) will note on the application form the times the application is delivered to and completed by the accused. It is also important to record the time the completed application is transmitted to the judge making the ruling.

For felony cases, the District's Court Coordinator will note both the time the application for appointed counsel is received and the time a ruling is made. She too understands the time limitations involved and will help expedite and document the process. The Court Coordinator keeps copies of the applications and rulings and sends copies of the orders to the office from which the application was received.

At least at the felony / district level, I believe these changes will result in a noticeable improvement in performance.

Yours truly,



Phil Robertson

County of Comanche

Gary "Corky" Underwood
Commissioner, Precinct No. 1

Russell Gillette
Commissioner, Precinct No. 2

James R. Arthur - County Judge

101 W. Central
Comanche, TX 76442-3299
Phone: 325-356-2466 or 2773
Fax: 325-356-3710

Sherman Sides
Commissioner, Precinct No. 3

Jimmy Dale Johnson
Commissioner, Precinct No. 4

November 15, 2017

Mr. Joel Lieurance
Texas Indigent Defense Commission
209 West 14th Street, Room #202
Austin, Texas 78701

Dear Mr. Lieurance,

Attached is Comanche County's response to the findings of the September 2017 onsite review.

"Exhibit A" is the new Magistrate's Warnings to be used when each inmate is informed of their rights. If the inmate requests appointment of counsel, the Magistrate will inform the inmate of the procedures for making an application, and the Sheriff's Office jail staff will follow the procedures outlined in the Sheriff's response dated October 12, 2017, and attached as "Exhibit B".

Once an Application for Counsel is received by the County Judge, the procedures outlined in "Exhibit C", will be use in ruling on Defendant's request for counsel.

I believe that following these procedures will address the issues raised by the reviews.

Yours truly,



James Arthur

Exhibit A

Law Enforcement Agency: _____
Date Of Arrest: _____
Time Of Arrest: _____
Place Of Arrest: _____

Court for Trial: County / District (circle one)
County/State: _____
Warrant #, If Any: _____

HAS A PROBABLE CAUSE AFFIDAVIT BEEN FILED? __ YES __ NO

MAGISTRATE'S WARNING

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THE STATE OF TEXAS §
COUNTY OF COMANCHE §

Before me, the undersigned, magistrate of Comanche County, Texas on the ____ day of _____, at ____ O'clock AM/PM.,
appeared _____. I gave said person the following warning:

- You are charged with the offense of _____ a felony a misdemeanor
- You have a right to hire an attorney to represent you.
- You have the right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- You have the right to remain silent.
- You are not required to make a statement, and any statement you make can and may be used against you in court.
- You have the right to stop any interview or questioning at any time.
- You have the right to have an examining trial (felonies only).
- You have the right to request appointment of counsel if you cannot afford counsel.*

***THE MAGISTRATE SHALL ENSURE THAT THE PERSON IS INFORMED OF THE FOLLOWING PROCEDURES:**

- a. That an application for a court appointed attorney must be completed to determine if he/she qualifies for court appointed attorney;
- b. That reasonable assistance will be provided to him/her when filling out the application for a court appointed attorney, if needed;
- c. That a financial affidavit must be signed;
- d. That an affidavit is a written or printed declaration or statement of facts made voluntarily and confirmed by oath before a person having authority to administer such oath;
- e. That if he/she meets indigence standards he/she will qualify for court appointed attorney; and,
- f. Attorney should attempt to contact him/her by the end of the first working day after appointment and to interview him/her as soon as practicable after appointment. If appointment is made when the accused is before the court, the accused will be given attorney's name, address, and phone number.

THE ACCUSED DOES / DOES NOT WANT TO REQUEST COURT APPOINTED ATTORNEY.

Circle One

I acknowledge that I was given the above warning (This is NOT an admission of guilt):

Person warned

Accused refused to sign acknowledgement of warning:

Magistrate Remarks

Magistrate
Place of warning: _____
Time: _____
Date: _____

Witness (if any):
Name _____
Address _____

The hearing was interpreted by: _____

Exhibit B



300 Industrial Blvd
Comanche, Texas 76442

Office: 325/356-7533
DeLeon: 254/893-3510
Fax: 325/356-3783

JEFF LAMBERT
Comanche County Sheriff

October 12, 2017

Sheriff's Office response to the Texas Indigent Defense Commission Audit Report.

My understanding of the Audit report there are deficiencies regarding procedures that include our Office. My understanding of the issue is the timeliness of getting applications from the inmate to the Judges Offices. I am told that from the time that the inmate indicates to the magistrate or officer that they desire a court appointed attorney that the time begins to run. I understand that the Judge has 3 business days plus 24 hours to rule on indcency.

Current Procedures

When the inmate is magistrated in the jail the inmate is asked if they want to apply for a court appointed attorney. At that time the Magistrate or Corrections Officer hands the inmate an application. The inmate returns to their cell with the application. When the inmate decides to turn the application in the application is dropped in to the deposit drop box. The deposit drop box is reconciled on Monday Wednesday and Friday. The Front Office personnel who reconcile the drop box scans and emails the application to the appropriate Judge's Office.

Recommended Procedures

When the Inmate is magistrated the Magistrate hands the application to the inmate to be filled out. The Magistrate tells the inmate the time limit for the application. The Corrections staff documents on the count dry erase board inmates who have outstanding applications. Prior to placing the inmate back into their cell the Corrections Officer asks the inmate if they require assistance in completing the application and to notify the assigned Corrections Officer on the hall that the application is completed. Inmates that need assistance with the application will be given assistance either by Corrections staff the Jail Administrator or Chief Deputy. The Corrections Officer that receives the application will before end of shift scan and email the application to the appropriate Judge's Office. Corrections Officers will change the documentation on the count board to reflect that the application is sent. At the end of each shift the Corrections Staff, at shift change head count, will verify that all applications given have been turned in and sent.

Exhibit C

In order to satisfy Article 1.051 (c) (1) 's appointment timeline in Misdemeanor cases, the jail shall transfer a request for counsel to the County Judge's Office within 24 hours of the request being made. All requests for counsel shall be time stamped upon receipt by County Judge. The County Judge shall rule on the request for counsel within three working days of the receipt of the request from the jail by filling out and signing the attached Order on Application for Appointment of Counsel. If the County Judge finds that the Defendant is indigent then counsel shall be appointed.

In order to comply with Article 1.051 (f) (2), if the request for counsel is denied then the County Judge shall go over the attached Judge's Explanation of Rights to Defendants without Attorney prior to the Defendant speaking with the prosecutor. If the Defendant initials the choice that he or she wants to waive his or her right to an attorney and represent his or her self, then the Defendant will be allowed to speak with the prosecutor without counsel. If Defendant indicates that he or she wants to hire his or her own counsel, then the case will be reset to give Defendant a reasonable opportunity to retain private counsel.

In order to assure compliance with Section 54.01 (b-1) of the Family Code, the County Judge shall appoint counsel prior to all juvenile detention hearings unless the County Judge makes written findings that the appointment of counsel is not feasible due to exigent circumstances. If the County Judge finds appointment is not feasible due to exigent circumstances, the County Judge shall immediately appoint counsel if there is a decision to detain the juvenile, as required by Section 51.10 (c) of the Family Code.

CAUSE # _____

THE STATE OF TEXAS

§ COUNTY COURT

VS.

§ OF

§ COMANCHE COUNTY, TEXAS

ORDER ON APPLICATION FOR APPOINTED COUNSEL

This Defendant is charged with _____
and IS/IS NOT in jail in _____ County, Defendant has filed with the Court
a sworn Questionnaire and Affidavit.

_____ The Application is denied. Defendant's income/assets exceed those for appointment of counsel under
the Court's Indigent Defense Plan.

_____ The Application is denied. The Application is incomplete or has insufficient financial information.

_____ The Application was received after the Defendant had bonded out. Consideration of Application
will be deferred until Defendant's first court appearance.

_____ The Court finds that Defendant is not financially able to employ counsel of his/her choosing and/or the
interests of justice require Defendant to be represented by counsel.

_____ The Court finds that the Defendant, while indigent, has the ability to pay at least the amount of \$ _____
which is a minimum attorney's fee based on this Court's fee schedule. Defendant is ORDERED to deposit
with the County Clerk of this county the sum of \$ _____ per week beginning one week from the date of this order
until the full amount of the minimum fee is paid. If in custody, defendant is ORDERED to begin making deposits to the
County Clerk one week from the date of his/her pretrial release from custody.

Therefore, it is ORDERED that the attorney listed below, licensed to practice in the State of Texas is appointed to
represent the Defendant in the criminal proceedings against defendant until charges are dismissed, the Defendant is
acquitted, appeals are exhausted, until the Court permits withdrawal, or there is substitution of counsel.

ATTORNEY _____
ADDRESS _____
CITY, STATE, ZIP CODE _____
PHONE NUMBER _____

It is further ORDERED that this cause is set on the docket of this Court as follows:

DATE _____, 201__

TIME _____ O'CLOCK ____ .M.

PURPOSE OF SETTING _____

SIGNED THIS _____ DAY OF _____, 201__.

JAMES R. ARTHUR, COUNTY JUDGE

Cause Number: _____

IN THE COUNTY COURT
COMANCHE COUNTY, TEXAS

**JUDGE'S EXPLANATION OF RIGHTS TO DEFENDANTS
WITHOUT ATTORNEY**

As a defendant in a criminal case, you have three options:

1. You may hire an attorney;
2. If you do not have enough money to hire an attorney, you may request an attorney be appointed to represent you;
3. You may represent yourself.

If you want an attorney to represent you and have enough money to hire an attorney, the case will be reset to give you time to do so.

If you want an attorney and do not have the money to hire one, you will need to fill out a financial questionnaire so that the proper person can determine whether or not to appoint an attorney to represent you.

You may not speak to the prosecutor about your case unless you sign a written waiver of your right to be represented by an attorney.

Be aware that there are dangers to self-representation. Waiving your right to an attorney and representing yourself may result in a worse outcome for you and your case, including the loss of significant legal rights and opportunities relating to military service, possession of a firearm, housing and public benefits, child custody, immigration status for non-citizens, and employment.

If you choose to proceed without an attorney, you may change your mind at any time and may request counsel from the Court.

Judge Presiding

DEFENDANT'S CHOICE [mark initials next to only ONE choice]

- _____ I want to reset this case to hire my own attorney.
- _____ I have hired an attorney, whose name is: _____
- _____ I want to apply for court-appointed counsel.
- _____ I have a court-appointed attorney, whose name is: _____
- _____ I want to waive my right to an attorney and represent myself.

Defendant: _____ Date: _____

Defendant's Printed Name