



COUNTY OF MAVERICK

Office of the County Judge

February 9, 2010

Texas Task Force on Indigent Defense
205 West 14th Street, Suite 700
Austin, Texas 78711-2066

RECEIVED
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OFFICE OF
COURT ADMINISTRATION

Attention: Joel Lieurance, Policy Monitor

Subject: Site Visit – Maverick County

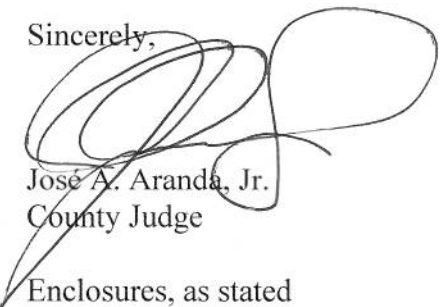
Reference: Your correspondence, subject as above, dated January 22, 2010

Dear Mr. Lieurance,

In accordance with reference above, the following comments are submitted:

See pages 3, 4, and 5 attached.

Sincerely,


José A. Aranda, Jr.
County Judge

Enclosures, as stated

Copy to: 293rd District Judge

both to persons receiving magistrate's warnings from the Eagle Pass Municipal Judge and the Maverick County Justices-of-the-Peace.

Potential Solution to Remedy the Problem: Affidavits of indigence should be available at all magistrate's warning hearings for persons requesting counsel, whether conducted at the County Jail or at the Eagle Pass Police Department. Maverick County jail staff will provide assistance in completing the forms when the assistance is needed. Arrestees who are given magistrate's warnings at the Eagle Pass Police Department will give their affidavits of indigence to Maverick County jail staff upon transfer to the County Jail. County Jail staff will provide assistance in completing the affidavit of indigence to these transferred arrestees if assistance is needed.

Additional Response (state whether you agree with the solution and if not, give an alternative solution):

I agree with the solution provided.

Contact person(s): 293rd District Judge, Cynthia L. Muniz, Local Administrative Judge
Completion date: 12-05-09

Once affidavits of indigence are completed, the affidavits are periodically transported to the courts by jail staff. The transmittal of the request appears to typically be beyond the 24 hour deadline from when the arrestee first indicated that he/she wants appointed counsel.

Follow-up Recommendation 2: Article 15.17(a) requires that "the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel." To ensure that requests are promptly transferred to the courts, affidavits of indigence should be faxed from the jail to the county court for misdemeanors and to the district courts for felonies. This recommendation applies both to persons receiving magistrate's warnings from the Eagle Pass Municipal Judge and the Maverick County Justices-of-the-Peace.

Potential Solution to Remedy the Problem: When the Maverick County Jail receives a request for counsel, requests for counsel will be promptly forwarded (within 24 hours of the request being made) to the courts by the jail. For misdemeanor requests, the requests will be faxed to the county court, whose fax number is 830-773-6450. For felony requests, the requests will be faxed to the 293rd district court, whose fax number is 830-758-1775.

Additional Response (state whether you agree with the solution and if not, give an alternative solution):

I agree with the solution which was proposed. I can state that the new procedures are now in effect and the judges are receiving the request for court appointed counsel on a timely basis.

Contact person(s): 293rd District Judge, Cynthia L. Muniz, Local Administrative Judge
Completion date: 12-05-09

Appointment of Counsel

At the time of the October 2008 monitoring visit, requests for counsel were not typically made until the initial appearance. Since requests for counsel are now taken at magistration, the timeliness of appointments can be measured.

The monitoring report from the October 2008 visit made a recommendation that for bonded defendants, a process must be put in place to comply with *Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008). *Rothgery* held that a criminal defendant's initial appearance before a judicial officer (typically magistration), where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.

Felony Appointments

Reviewers examined 25 felony appointments to determine the timeliness of these appointments. The files examined consisted of appointments made between January 2009 and October 2009 and came from the district clerk's files as well as from the jail's files. Four of the appointments reviewed were for bonded persons. All of the appointments for bonded persons were made shortly after the request for counsel was made as shown by the table below.

Maverick Felony Bonding Appointment Timeliness	Sample Size	Number from sample	Percent
Number of Appointments Examined	4		
Bonded persons received counsel in:			
0 work days		3	75%
1 work day + 24 hour transfer		1	25%

Twenty-one (21) of the appointments were for non-bonding persons. Some of these non-bonding cases involved persons who were not arrested but rather given a summons for an initial appearance. At the initial appearance, they were given an opportunity to request counsel. The sample data gives an indication that requests made in-court are promptly ruled upon and are always timely. However, requests made out-of-court often are not ruled upon timely. One factor causing untimely appointments was the fact that requests were not promptly transferred to the courts. The Task Force

may conduct an additional visit to determine whether obstacles in making timely appointments have been removed. See the table below showing the timeliness of appointments for non-bonding persons.

Maverick Felony Non-Bonding Appointment Timeliness	Sample Size	Number from sample	Percent
Number of Appointments Examined	21		
Non-bonding persons received counsel in:			
0-3 work days + 24 hour transfer (timely appointments)		12	57.1%
More than 3 work days (untimely appointments ranging from 5 – 27 work days)		9	42.9%

Follow-up Recommendation 3: Article 1.051 allows the courts three working days to appoint counsel for persons deemed indigent. When requests for counsel are made out-of-court, the appointments are often beyond statutory deadlines. Problems in transferring requests may have been a large factor contributing to untimely appointments. The courts must ensure that when requests are made out-of-court, that determinations of indigence occur within three working days of the request being made (with an additional 24 hours allowed for transferring the request).

Response:

The staff of the 293rd District Court have been working closely with Warden Osvaldo Perez to assure that the request for counsel of non-bonding persons are received on a timely basis. The requests are FAXed to the Local Administrative Judge on the same day that they are completed by the non-bonding person.

Contact person(s): 293rd District Judge, Cynthia L. Muniz, Local Administrative Judge
Completion date: 12-05-09

Misdemeanor Appointments

Reviewers also examined 23 misdemeanor case files from the county clerk’s office. According to records supplied by the auditor’s office, there were no misdemeanor attorney appointments in FY 2009. However, Reviewers did find records of appointments in FY 2010. All but one of these appointments were made at the November 20, 2009 arraignment docket. The other appointment was made on the November 30, 2009 arraignment docket. All of the appointments showed a request for counsel being made on the date of appointment. Since Reviewers found misdemeanor requests for counsel in the magistration data that was reviewed, Reviewers believe that the misdemeanor requests for counsel made at magistration were not being put into the case file, and may not have been submitted to the county clerk or to the county court.

Follow-up Recommendation 4: Article 1.051 allows the courts three working days to appoint counsel for persons deemed indigent. An additional 24 hours are allowed for the transfer of the request to the