



COUNTY OF SMITH

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Judge Joel Baker

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September 2, 2014

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

Dear Mr. Lieurance:

Please accept this correspondence as Smith County's response to the Commission's May 2, 2014 Review of Smith County's Indigent Defense Systems. Thank you for your many courtesies in both the evaluation process and assisting with the response.

I have listed the five recommendations with Smith County's response. The observations are addressed after the response to the Recommendations.

Recommendations Regarding Methods to Determine Indigence and Assign Counsel

Recommendation 1: Magistrates in Smith County must document whether an arrestee is requesting counsel, even if the arrestee expects to make bond. Article 15.17 requires that all magistrate warnings record whether the arrestee is requesting counsel.

Recommendation 2: Justices-of-the-peace must report the number of persons requesting counsel as required for the Texas Judicial Council Monthly Court Activity Report.

Response to Recommendations 1 and 2:

In conducting article 15.17 magistrate warnings, each of the justices of the peace is using a form that allows the justice to report whether or not an arrestee requested appointment of counsel. If an arrestee requests appointment of counsel, the justice notes that information on the form, requests the arrestee to complete a pauper's oath affidavit, and forwards the affidavit to the appropriate appointing

court. Presently, the jail software does not allow for the electronic recording of the request for counsel. However, the justices are each committed to recording and reporting the correct number of persons requesting counsel on their Texas Judicial Council Monthly Court Activity Report.

Although certainly not a substitute for the required article 15.17 hearings, each of the courts also monitors the status of counsel for indigent defendants. Most courts conduct a weekly jail call to determine if incarcerated persons are indigent and requesting appointment of counsel. Persons who are not incarcerated have the opportunity to request counsel at any time, but are specifically asked if they are seeking appointment of counsel at an unindicted appearance docket and also at an attorney status hearing scheduled shortly after indictment.

Recommendations Regarding Methods to Capture and Report Indigent Defense Data

Recommendation 3: Attorney payments may not be made until an attorney submits an itemized voucher that is approved by the judge as required by article 26.05(c) and Title 1 Texas Administrative Code, section 174.25. Any payment made without an approved voucher is in contravention of article 26.05(c).

Response to Recommendation 3:

Smith County has modified its attorney payment procedure to conform to Article 26.05(c) and Title 1 Texas Administrative Code, Section 174.25. No payments will be made until the procedure has been followed. Specifically, no payments to contract attorneys will be made until the attorney has completed the voucher, the voucher has been approved by the appointing court, and submitted to the auditor's office for normal accounts payable processing. This procedure conforms to the referenced authority.

Further, the contracts have been modified to reflect this payment system. The modified contract has been approved by the Council of Judges and has been forwarded to the Commissioner's Court for its approval as the contracting authority. A copy of the proposed modified contract is attached hereto for the Commission's review.

Recommendation 4: All cases where an attorney's appointed representation has been completed are to be reported to the Commission as cases paid.

Recommendation 5: Methods must be put in place to accurately report the Indigent Defense Expense Report case total information required by Texas Government Code Section 79.036(e). Accurate reporting will necessitate a method to ensure the accuracy and completeness of the cases listed on the attorney fee vouchers.

Response to Recommendations 4 and 5:

The Commission's Report clearly pointed out that there have been problems with attorneys reporting all of the cases where their representation has terminated. Specifically, the Report discussed circumstances that might not have been thought of as a termination, *e.g.*, where a case is declined or a client has retained other counsel. To address this issue, Mr. Lieurance assisted the county in obtaining a more complete list of possible termination events. After further additions to the list, attorneys have been provided this more complete list of items that they should consider termination of representation. A copy of the expanded list of possible termination of representation events is attached hereto. Attorneys have also been instructed to take great care in reporting their cases. In discussions with attorneys, it is clear that many attorneys were simply not considering terminations of representation other than the traditional disposition of criminal cases.

Smith County Auditor Ann Wilson is prepared to comply with all reporting requirements. She will be uploading the appropriate information based on the Commission's spreadsheet. The Auditor's Office will also be able to correlate the spreadsheet to the general ledger.

Observations Regarding Operation of the Contract Defender System: Smith County could benefit from an internal evaluation of the methods in place to ensure quality representation by contract defenders. This evaluation could include an examination of attorney workloads and attorney-client meetings. Moreover, the current caseloads of appellate contract attorneys raise concerns regarding the quality of representation being provided and may necessitate additional resources to meet the current demand for services.

Response to Observations Regarding Operation of the Contract Defender System:

Smith County appreciates the observations of the Commission regarding the Contract Defender System. As the Commission noted in its Review, the nine trial level contract defender attorneys are required to maintain a high level of proficiency. They have made excellent use of support services of investigators and expert witnesses. Although the Commission noted that a dedicated process server/investigator might be useful, many attorneys are currently requesting appointment of an investigator to assist with serving subpoenas and investigative work. As noted, all attorneys thought that the judiciary regularly approved necessary expenses and the average spending by Smith County on appointed court services exceeds the state average. Further, allowing appointed counsel to request funding for an investigator permits the attorney to use his or her own professional judgment instead of the courts becoming involved in that decision-making. This is consistent with article 26.05(d), which allows an attorney to retain assistance and seek reimbursement later from the court, rather than having the courts make those decisions for counsel.

The Commission expressed concern about the workload of the contract defender attorneys, especially the appellate attorneys. To that end, the courts modified the reporting form for appellate attorneys last year to request information on the number of Anders briefs filed by the appellate attorneys. To date, the appellate attorneys have failed to provide this critical information for the courts' analysis of their workloads. The appellate attorneys have had difficulty meeting deadlines with the Court of Appeals during the last year. As both appellate attorneys conducted monthslong and hard-fought campaigns for elective office last year, it is difficult to determine how much of the difficulty was due to their campaigns or the actual workload. Two of the trial contract defender attorneys also conducted extensive campaigns for elective office.

In light of the Commission's observation, the courts propose a committee to evaluate the attorneys' workloads, the recent discussion about a salary increase for the contract defender attorneys, whether a reduction in caseload should be accompanied by a commensurate reduction in the contractual salary amount, and the effect outside interests have had on the attorneys' ability to perform their contractual obligations and ethical obligations to their clients. This committee's work will certainly be informed by the Commission's expected study on maximum criminal defense attorney caseloads to be published by January 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Baker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joel Baker
County Judge

JPB/ah

cc: Honorable Judge Christi Kennedy