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**JACK SKEEN, JR.**  
JUDGE, 241ST JUDICIAL DISTRICT COURT  
100 N. BROADWAY, ROOM 220  
SMITH COUNTY COURTHOUSE  
TYLER, TEXAS 75702

April 16, 2019

Mr. Joel Lieurance  
Texas Indigent Defense Commission  
209 West 14<sup>th</sup> Street, Suite 202  
Tyler, TX 78701

RE: Smith County Response to the Texas Indigent Defense Commission

Dear Mr. Lieurance:

This letter is the Smith County Response to the Texas Indigent Defense Commission letter dated December 7, 2018 and the Texas Indigent Defense Commission's "Follow-up Review of Smith County's Indigent Defense Systems" Report dated December 2018. The TIDC letter requested a response by February 15, 2019, but you allowed Smith County an extension of the deadline to April 16, 2019. We have listed each of the items in the Report that needed response and then provided a response below.

**Additional Findings/Recommendations from the October, 2018 Review**

**Finding and Recommendation 1:** The courts require defendants to produce income documentation and to obtain quotes from private attorneys. However, the time frames for gathering this information extend beyond those set in the indigent defense plans and in Article 1.051 of the Code of Criminal Procedure. The courts may require defendants to produce documentation indicating whether the defendant's financial resources meet the local standard of indigence, but this documentation cannot delay a determination of indigence.

**RESPONSE:**

Smith County has approved adding a paragraph to our Smith County District Court Indigent Defense Plan (as suggested) to the "Indigency Determination" Section of our Plan to outline the anticipated average attorney's fees a defendant would pay to retain a private attorney. The Court will make an immediate review of a defendant's Pauper's Oath if a defendant requests court appointed counsel (without requiring defendants to attempt to retain counsel and return with names and amounts).

**Finding and Recommendation 2 (felony cases):** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. The sample of attorney appointments in felony cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline in felony cases.

**RESPONSE:**

The Council of Judges has visited with the Smith County Sheriff about the requirements of Texas Code of Criminal Procedure Article 1.051(c)(1). The Sheriff has promised to have his staff deliver all inmates' Pauper's Oaths to the respective district courts daily for the judge's timely review and appointment of counsel. Each district court does address paupers oaths at hearings in court if a defendant has not made such a request prior to said hearings and requests counsel.

**Finding and Recommendation 3 (misdemeanor cases):** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. The sample of attorney appointments in misdemeanor cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in misdemeanor cases.

**RESPONSE:**

All requests for counsel made in the jail in the presence of magistrates should be ruled upon immediately. A person on bond charged with a misdemeanor offense is set for arraignment. At that hearing the defendant is properly arraigned and made aware of his/her right to counsel. Defendants who request counsel are given an application to complete as well as instructions as to what documentation to bring to a later hearing for the court to determine indigence. The misdemeanor courts have routinely set these hearings about one to two weeks after arraignment so as to allow enough time for the defendant to prepare for and plan to be available for the hearing. In order to comply with Article 1.052(c)(1) the misdemeanor courts will have to shorten the time between arraignment and the hearing to determine indigence.

**Finding and Recommendation 4 (misdemeanor cases):** The absence of a ruling on 43 requests for counsel raises the possibility of several statutory violations, including untimeliness [Art. 1.051©] and invalid waiver [Art. 1.051(f-2)]. It is unclear from TIDC's monitoring visit whether these possible failures resulted from procedural breakdown, recording errors, or something else. Smith County must clarify its procedures for receiving, transmitting, and ruling on requests for counsel.

**RESPONSE:**

As indicated in our response above, defendants who request appointed counsel in misdemeanor cases are ordered to appear at a later hearing to evaluate whether evidence supports a finding of indigence. At this hearing many defendants, who have already been arraigned, decide to negotiate again or for

the first time with the prosecutors. If they reach a plea agreement with the State, the courts have considered that a withdrawal of their request for appointed counsel. In the future the Court will more clearly rule on the request for appointed counsel before encouraging or directing defendants to speak with prosecutors.

**Finding and Recommendation 5:** One sample fee voucher was reduced without a written finding. Article 26.05(c) requires the court to make written findings if it approves an amount different than requested. The Smith County courts must make written findings for approving amounts different than requested.

**RESPONSE:**

The courts rarely approve payments different than those requested on attorney fee vouchers. Occasionally the total amount requested does not reflect the individual service amounts reported by the attorney. Attorneys sometimes request more than the maximum allowed as stated on the fee voucher form. Additionally, attorneys sometimes submit fee vouchers with such a small amount requested that some adjustment upwards is befitting the cost of quality legal representation. Going forward, judges will be certain to detail on the form any reason for departure from the amount requested by the attorney.

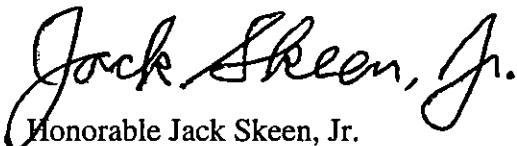
**Finding and Recommendation 6:** Smith County included general court expenditures in the FY2017 IDER. The general court expenditures were for mental health competency evaluations, which are ineligible expenses. Smith County must develop recording procedures to only report expenses related to the defense.

**RESPONSE:**

All mental health competency evaluations are being labeled as such by accounts payable to avoid the inclusion of this expense in the future.

I am available to discuss this further should you or the Texas Indigent Defense Commission need more information.

Very truly yours,



Honorable Jack Skeen, Jr.  
Judge, 241st District Court  
Local Administrative District Judge

cc: Honorable Kerry L. Russell  
Judge, Seventh District Court  
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227 North Spring Street  
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Honorable Nathaniel Moran  
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