

TEXAS TASK FORCE ON INDIGENT DEFENSE

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CHAIR:

THE HONORABLE SHARON KELLER
Presiding Judge, Court of Criminal Appeals

DIRECTOR:

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VICE CHAIR:

THE HONORABLE OLEN UNDERWOOD
Presiding Judge, 2nd Administrative Judicial Region

June 8, 2011

The Honorable Susan M. Redford
Constitutional County Court Judge
Ector County Courthouse
300 North Grant, Rm. 227
Odessa, Texas 79761

Re: Ector County Fiscal Monitoring Visit

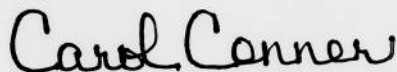
Dear Judge Redford:

A monitoring visit of your county was conducted on March 10, 2011. The financial aspects of the county were monitored to adequately review fiscal records and documentation to ensure compliance with the Task Force on Indigent Defense grant.

A copy of the final monitoring report including your county response is enclosed. The Task Force on Indigent Defense would like to thank county officials and employees for their assistance and courtesy during the course of the monitoring visit. We greatly appreciated the time and cooperation of Ector County's staff.

If you have any questions or need further clarification, do not hesitate to contact me at (512) 936-7561.

Sincerely,



Carol Conner
Fiscal Monitor

cc: The Honorable John W. Smith, Local Administrative District Court Judge
The Honorable James A. Bobo, Local Administrative Statutory County Court Judge
Mr. David R. Austin, County Auditor
Mr. Randy Ragsdale, Grants Administrator
Mr. Bryan Wilson, Grants Administrator, Task Force on Indigent Defense
Mr. Wesley Shackelford, Deputy Director, Task Force on Indigent Defense
Mr. James D. Bethke, Director, Task Force on Indigent Defense



TEXAS TASK FORCE ON INDIGENT DEFENSE
Fiscal Monitoring of Indigent Defense Expenses

Ector County, Texas
on
March 10, 2011

Final
June 8, 2011

TABLE OF CONTENTS

I. INTRODUCTION	4
Task Force Background.....	5
Objectives	5
Scope	5
Methodology.....	5
Summary of Findings	6
II. INDIGENT DEFENSE GRANTS.....	6
A. Formula Grant.....	6
B. Extraordinary Grant.....	6
C. Indigent Defense Expenditure Report (IDER)	7
III. ACCOUNTING OPERATIONS.....	7
Accounting Procedures.....	7
IV. INDIGENT DEFENSE PAID VOUCHERS	8
A. Summary of Attorney Fee Payments.....	8
1. Fee Schedule.....	8
2. Reviewed Assigned Counsel Fee Vouchers	8
3. Summary of Investigations, Experts, and Other Direct Litigation Expenses.....	9
B. Public Appointment List.....	11
1. Approval of Qualified Attorneys by the Judges	11
2. Applied for Public Appointment List	12
3. Continuing Legal Education (CLE) Requirements	12
V. SUMMARY.....	13
General Comments	13
 APPENDICES:	
A. Section 71.0351, Texas Government Code	14
B. Section 71.062, Texas Government Code.....	15
C. Financial Management, UGMS	16
D. Article 26.04, Code of Criminal Procedure	17
E. Article 26.05, Code of Criminal Procedure	20
F. Chapter 174, Rule, 174.1, Texas Administrative Code.....	22

I. INTRODUCTION

Ector County on-site fiscal monitoring visit was conducted on March 10, 2011. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Task Force grant.

Ector County is located on the lower shelf of the Great Plains. Ector, the county seat, is about thirty miles southwest of Midland. The county has an estimated population of 137,130.

Ector County's court system is comprised of a county court, 2 statutory county courts, and 4 district courts with criminal jurisdiction. In 2010, the county received \$62,312 in formula grant disbursement. The county received \$99,000 in extraordinary disbursement. In addition, the county received \$17,953 in equalization disbursement for the increased cost of indigent defense services. The county also collected \$97,092 for reimbursement of attorney fees from defendants.

Ector County Indigent Defense Expenditures			
Expenditures	2008	2009	2010
Population Estimate	128,753	128,753	137,130
Juvenile Assigned Counsel	\$173,350	\$163,020	\$126,250
Adult Misdemeanor Assigned Counsel	\$231,194	\$242,350	\$253,708
Adult Felony Assigned Counsel	\$476,613	\$416,690	\$463,002
Capital Murder	0	\$131,500	\$45,852
Adult Felony Assigned Counsel Appeals	\$32,654	\$139,234	\$25,024
Licensed Investigation Expenses	0	0	0
Expert Witness Expenses	0	0	0
Other Direct Litigation Expenses	0	0	0
Total Court Expenditures	\$913,811	\$1,092,793	\$913,836
Administrative Expenses (paid to the West Texas Regional Capital Public Defender)	0	\$32,455	\$27,237
Total Indigent Defense Expenditures (court and administrative)	\$913,811	\$1,157,703	\$941,074
Formula Grant Disbursement	\$62,968	\$62,885	\$62,312
Equalization Disbursement	\$48,293	\$43,861	\$17,953
Extraordinary Disbursement	0	0	\$99,000
Reimbursement of Attorney Fees	0	\$186,671	\$97,092
Total Assigned Counsel Cases	1,927	1,941	1,792

Source: Task Force on Indigent Defense records

Task Force Background

In January 2002, the 77th Texas Legislature established the Task Force on Indigent Defense (Task Force). The mission of the Task Force is to improve the delivery of indigent defense services through fiscal assistance and professional support to State, local judicial, county, and municipal officials. The purpose of the Task Force is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and Texas. As a result of the legislative requirement, the Task Force promulgated Section 173.401(a), Texas Administrative Code, which provides, "the Task Force or its designees will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of the grant."

Objectives

The objectives of this review were to:

- determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.
- validate policies and procedures relating to indigent defense services.
- provide recommendations pertaining to operational efficiency.
- assist with any questions or concerns on the indigent defense program requirements.

Scope

The county's indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grants during fiscal year 2010. The fiscal monitor reviewed records located in the Ector County Courthouse Administration Building.

Methodology

To accomplish the objectives, the fiscal monitor met with county auditor, first assistant auditor, and grants administrator. The fiscal monitor reviewed:

- random samples of paid attorney fees, expert witnesses, and other direct litigation for verification of expenses;
- general ledger transactions and invoices;
- indigent defense expenditure report and attorney fee schedule;
- public appointment list, attorney applications, and attorney criminal continuing legal education training; and
- county's local indigent defense plan.

The expenditure period of October 1, 2009 to September 30, 2010 (FY2010) was reviewed during the fiscal monitoring visit.

Ector County's Criminal Courts			
Courts	Courts		Percent Sampled
	Total	Reviewed	
County Court	1	1	100%
County Court-at-Law	2	2	100%
District Court	4	4	100%

Percent Sampled: courts reviewed / courts total

Summary of Findings

- The county did not report eight (8) expert witness expenses (\$8,847.61) on the indigent defense expenditure report.
- The county incorrectly placed five (5) other direct litigation expenses (\$367.28) in the attorney fee category of services.
- The continuing legal education hours were not documented for 27 of the 50 court appointed attorneys on the public appointment list.

II. INDIGENT DEFENSE GRANTS

A. Formula Grant

The county submitted the FY2010 indigent defense on-line grant application to assist in the implementation of the provisions of the Fair Defense Act. Ector County met the formula grant eligibility requirements.

B. Extraordinary Grant

In FY2010, the county received \$99,000 in direct reimbursement for providing indigent defense services in three (3) capital murder cases, which created a financial hardship on the county. The county provided support documents substantiating the extraordinary expenses.

Ector County Extraordinary Grant				
Grant		Program Description	FY2010	
Title	Type		Award	Funds Disbursed
Extraordinary	Single	Extraordinary indigent defense expenses that constituted a financial emergency relating to three capital murder cases (FY08 and FY09).	\$99,000	\$99,000

Note: The capital murder cases occurred prior to establishment of the West Texas Regional Capital Murder Public Defender Office.

Monitor Comment

The county maintains fiscal accountability of formula and extraordinary grants. Based on the support documents reviewed, the extraordinary expenses incurred during FY2008 and FY2009.

C. Indigent Defense Expenditure Report (IDER)

During the fiscal review, it was discovered that the county did not report expert witness expenses, licensed investigators expenses, or other direct litigation expenses on the indigent defense expenditure report. Refer to page 9-11, summary of investigations, experts, and other direct litigation expenses. Under Section 71.0351 of the Texas Government Code, counties are required to annually submit data showing the number of cases and report amounts spent on attorney fees, expert witnesses, licensed investigators, and other direct litigation expenses. The annual indigent defense expenditure report is critical in establishing grant eligibility. The data contained in the report is used as the basis for policy evaluation and decisions of the Task Force.

Note: The Task Force staff is available to provide technical assistance to counties to improve indigent defense services. Targeted assistance and discretionary grants may be available to the county. Should you need any technical assistance or interest in applying for a discretionary grant, please contact Bryan Wilson, Grant Administrator, at 512-936-6996.

Recommendation

The Task Force recommends that the county develops and implements policy and procedures to comply with statute, which requires that all Texas counties report amounts spent on attorney fees, licensed investigators, expert witnesses, and other direct litigation costs on the indigent defense expenditure report as specified in Section 71.0351, Government Code.

Ector County Action Plan

The Ector County Auditor's Office will conduct additional reviews of the statutes and guidelines regarding Indigent Defense with responsible staff and will implement a more thorough review of the reports submitted to insure all expenditures are reported according to Government Code 71.0351. Specifically, the County Auditor, First Assistant Auditor or Internal Auditor will provide a more thorough review prior to the signature of the County Judge.

Contact person(s): David R. Austin, County Auditor

Completion date: May 31, 2011

III. ACCOUNTING OPERATIONS

Accounting Procedures

The county has written accounting procedures relating to criminal indigent defense expenses. Written procedures provide instruction and guidance; uniformity and completeness; and ensure correct and secure processing of fiscal information. The Uniform Grant Management Standards (UGMS) requires grantees financial systems to provide an "effective control and accountability of funds, property and assets..." (para 20, page 68).

Monitor Comment

Copies of the accounts payable and receivable procedures were provided to the fiscal monitor. The formal documentation of accounting policies and procedures provides an effective framework for internal control over accounting and financial reporting.

IV. INDIGENT DEFENSE PAID VOUCHERS**A. Summary of Attorney Fee Payments****1. Fee Schedule**

The attorney fee vouchers reviewed were paid in accordance with the fee schedule adopted by the formal action of the judges hearing criminal cases.

In FY2010, the attorney fee payments ranged from \$200 to \$21,190 per attorney with an average of \$18,502 and a median of \$13,275.

2. Reviewed Assigned Counsel Fee Vouchers

A total of 235 paid attorney fee vouchers (160 district courts and 75 county courts-at-law) were reviewed for the period of October 1, 2009 to September 30, 2010.

County Courts				
11 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
County Court	182	\$70,250	25	\$10,575
County Court-at-Law	534	\$195,500	25	\$11,200
County Court-at-Law No. 2	252	\$109,050	25	\$15,400
Total	968	\$374,800	75	\$37,175

County Court and County Courts-at-Law = adult misdemeanor expenses + juvenile expenses

\$374,800 = \$248,550 + \$126,250

District Courts				
19 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
70th District Court	246	\$150,758	40	\$64,406
161 st District Court	194	\$159,221	40	\$27,700
244 th District Court	171	\$102,718	40	\$27,798
358 th District Court	213	\$126,388	40	\$19,956
Total	824	\$539,085	160	\$139,860

District Courts = felony assigned counsel + felony assigned counsel appeals + misdemeanor expenses + capital murder assigned counsel

\$539,085 = \$463,002 + \$25,024 + \$5,158 + \$45,852

Monitor Comment

All attorney fee vouchers reviewed met the statutory requirements for payment, which states, “no payment shall be made until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and approves the payment” in accordance with Article 26.05(c), Code of Criminal Procedure.

The attorney fee vouchers reviewed captured the specific data elements (defendant name, case/cause numbers, court number, offense, amount paid, attorney signature, and presiding judge signature).

3. Summary of Investigations, Experts, and Other Direct Litigation Expenses

FY2010 Investigations, Experts, and Other Direct Litigation Expenditures				
Expenditures	Total Vouchers			
	Paid	FY2010	Reviewed	Reviewed Value
Investigation	0	0	n/a	n/a
Expert Witness	0	0	8	\$8,847.61
Other Direct Litigation	0	0	5	\$367.28

- (a) The county did not report eight (8) expert witness expenses (\$8,847.61) on the indigent defense expenditure report. In reviewing the general ledger, the eight expert witness expenses were incorrectly recorded as licensed investigation expenses.

1. A competency examination is an assessment of an indigent defendant ability to understand and rationally participate in the criminal court process; therefore, it is considered an expert witness expense, a direct cost in providing indigent defense services. Expert witness expenses include “money paid by the county to a person/entity qualified by the court in a field of study or *expertise* to provide assistance to a licensed attorney in preparing or presenting a defense for an indigent defendant” (Procedure Manual for the Indigent Defense Expenditure Report FY2010).

2. Licensed investigation expense is “money(s) paid by the county to a person licensed as an investigator or otherwise legally able to conduct *investigations* for a licensed attorney in preparing a defense for an indigent defendant” (Procedure Manual for the Indigent Defense Expenditure Report FY2010).

Unreported Expert Witness Expenses

Recorded as Licensed Investigation Expenses in General Ledger				
Services	Check No.	Date	Court	Expense
Mark Cunningham, Ph.D., Forensic Psychologist	153110	11/9/2009	70th District Court	\$1,350.00
Roy J. Mathew, M.D. Psychologist	153193	11/9/2009	161st District Court	\$2,800.00
Jarvis Wright, Ph.D., Psychologist	153038	10/26/2009	244th District Court	\$944.10
Jarvis Wright, Ph.D., Psychologist	154739	2/22/2010	244th District Court	\$886.51
Jarvis Wright, Ph.D., Psychologist	157841	8/23/2010	244th District Court	\$936.00
Jarvis Wright, Ph.D., Psychologist	155801	8/23/2010	161st District Court	\$931.00
Ravi Medi, M.D., Psychologist	154385	1/25/2010	161st District Court	\$500.00
Ravi Medi, M.D., Psychologist	155360	3/22/2010	County Court-at-Law	\$500.00
			Total	\$8,847.61

(b) Additionally, the county incorrectly placed five (5) other direct litigation expenses in the attorney fee category of services. Other direct litigation expenses are services other than counsel that may include but not necessarily limited to, postage, copies, and travel mileage. Other direct litigation expenses include “money paid by the county to a person or entity for materials, supplies, or services determined by the attorney or court necessary for the licensed attorney to prepare an adequate defense for an indigent defendant” (Procedure Manual for the Indigent Defense Expenditure Report FY2010).

Other Direct Litigation Expenses

Services	Check No.	Date	Court	Expense
Brief copies and postage	154140	1/11/2010	244th District Court	\$133.32
Collect calls and clothing for defendant	158123	9/13/2010	70th District Court	\$103.38
Collect calls and clothing for defendant	157659	8/9/2010	70th District Court	\$103.38
Postage	155108	3/8/2010	244th District Court	\$15.74
Postage	154866	2/22/2010	70th District Court	\$11.46
Total				\$367.28

Recommendations

Task Force recommends that the county develop and implement internal procedures to:

- (a) identify, capture, and report expert witness expenses on the indigent defense expenditure report pursuant to Section 71.0351(e), Government Code.
- (b) identify, capture, and report other direct litigation expenses in the appropriate category of services pursuant to Section 71.0351(e), Government Code.

The correct classification of expenses is the precursor to accurate reporting under the Fair Defense Act. Please refer to Procedure Manual for the Indigent Defense Expenditure Report FY2010, page 3-7 at:

<http://www.courts.state.tx.us/tfid/pdf/FY10IDERManualFinal.pdf>.

Ector County Action Plan

The Ector County Auditor's Office will conduct additional reviews of the statutes and guidelines regarding Indigent Defense with responsible staff and will implement a more thorough review of the reports submitted to insure all expenditures are reported according to Government Code 71.0351. Specifically, the County Auditor, First Assistant Auditor or Internal Auditor will provide a more thorough review prior to the signature of the County Judge.

Contact person(s): David R. Austin, Ector County Auditor

Completion date: May 31, 2011

B. Public Appointment List

1. Approval of Qualified Attorneys by the Judges

A majority of the judges approved the attorneys on the public appointment list.

Monitor Comment

Ector County criminal courts maintained support documents that indicated a majority of the judges approved the attorneys on the public appointment list pursuant to Article 26.04(d), Code of Criminal Procedure.

2. Applied for Public Appointment List

Courts	Number of Attorneys		Percent Sampled
	public appointment list	applications reviewed	
County Courts-at-Law	11	11	100%
District Courts	50	50	100%

Percent Sampled: applications reviewed / number on public appointment list

Monitor Comment

Ector County criminal courts maintained attorney applications for placement on the public appointment list in accordance with Article 26.04(d)-(e), Code of Criminal Procedure.

3. Continuing Legal Education (CLE) Requirements

The continuing legal education hours were not documented for all court appointed attorneys on the public appointment list. Of the 50 attorneys on the district courts' public appointment list, 23 attorneys' criminal continuing legal education hours were not on file. Without the CLE documentation for court appointed attorneys on the public appointment list, the county auditor may not make proper payments consistent with Sections 174.1 and 174.2 of the Texas Administrative Code. Attorneys accepting appointments are required to obtain ten (10) hours of criminal and/or juvenile law during each 12-month reporting period as indicated in Ector County's local indigent defense plan, while the Task Force rules require at least six (6) hours per Title 1, Chapter 174, Texas Administrative Code. The minimum CLE requirement is a grant funding condition.

Courts	public appointment list	Number of Attorneys		
		criminal/juvenile CLE documents reviewed	met minimum hours	
			Yes	No
County Courts-at-Law	11	11	11	n/a
District Courts	50	27	27	23

Recommendation

Task Force recommends that the county develop a system to document the continuing legal education hours for all attorneys on the public appointment list.

Note: Failure to maintain adequate documentation upon request may result in disallowed costs of the activity or action that is not in compliance and the Task Force may seek a return of the cost as specified in Rule 173.307, Chapter 173, Texas Administrative Code.

Ector County Action Plan

CLE hours are collected by the Court Administrator of the 161st District Court. Quarterly the County Auditor's Office will conduct a review of approved indigent defense attorney payments order to insure CLE hour forms maintained by the Court. Should an attorney with insufficient CLE hours be determined, the attorney will be notified that payment will be withheld until the hours are completed.

Contact person(s): David R. Austin, Ector County Auditor

Completion date: May 31, 2011

V. SUMMARY**General Comments**

The Task Force wishes to express its appreciation to local county officials and employees of Ector County for the time and courtesy extended during the fiscal monitoring visit. In particular, my gratitude extends to Judge Susan Redford, Constitutional County Court; Judge John W. Smith, Local Administrative District Court; Judge James A. Bobo, Local Administrative Statutory County Court; Mr. David Austin, County Auditor; and Mr. Randy Ragsdale; Grants Administrator, for accommodating the fiscal monitor activities. These activities included providing workspace, allocating employee time, and exercising flexibility in meeting the schedule of the fiscal monitor. Thank you for your time and cooperation during the monitoring visit.

Ector County Response

Ector County appreciates the professionalism displayed by the Task Force Monitor. We strive to provide the best possible legal services for those who are found to be indigent.

Appendix A

Texas Government Code, Section 71.0351. Indigent Defense Information

a) In each county, not later than November 1 of each odd-numbered year and in the form and manner prescribed by the Task Force on Indigent Defense, the following information shall be prepared and provided to the Office of Court Administration of the Texas Judicial System:

(1) a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code;

(2) any revisions to rules or forms previously submitted to the office of court administration under this section; or

(3) verification that rules and forms previously submitted to the office of court administration under this section still remain in effect.

(b) Except as provided by Subsection (c):

(1) the local administrative district judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the district courts trying felony cases in the county; and

(2) the local administrative statutory county court judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county.

(c) If the judges of two or more levels of courts described by Subsection (b) adopt the same formal and informal rules and forms, the local administrative judge serving the courts having jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, shall perform the action required by Subsection (a).

(d) The chair of the juvenile board in each county, or the person designated by the chair, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the juvenile board.

(e) In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the Office of Court Administration of the Texas Judicial System in the form and manner prescribed by the Task Force on Indigent Defense and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county:

(1) in each district, county, statutory county, and court;

(2) in cases for which a private attorney is appointed for an indigent defendant;

(3) in cases for which a public defender is appointed for an indigent defendant;

(4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and

(5) for investigation expenses, expert witness expenses, or other litigation expenses.

(f) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the Office of Court Administration of the Texas Judicial System under this section and under a reporting plan developed by the Task Force on Indigent Defense under Section 71.061(a).

Appendix B

Texas Government Code, Section 71.062. Technical Support; Grants

- a) The Task Force on Indigent Defense shall:
- (1) provide technical support to:
 - (A) assist counties in improving their indigent defense systems; and
 - (B) promote compliance by counties with the requirements of state law relating to indigent defense;
 - (2) direct the comptroller to distribute funds, including grants, to counties to provide indigent defense services in the county; and
 - (3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by directing the comptroller to:
 - (A) withdraw grant funds; or
 - (B) require reimbursement of grant funds by the county.
- (b) The Task Force on Indigent Defense shall direct the comptroller to distribute funds as required by Subsection (a)(2) based on a county's compliance with standards developed by the task force and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.
- (c) The Task Force on Indigent Defense shall develop policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a fair manner.
- (d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the Task Force on Indigent Defense under this section.

Appendix C

Uniform Grant Management Standards (As adopted June 2004)

paragraph 20, page 68. Standards for Financial Management Systems *[This section does not apply to procurement contracts.]*

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

- (1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
- (2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
- (3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- (4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- (5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
- (6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

Appendix D

Art. 26.04. [494] [558] [547] Procedures for Appointing Counsel

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. 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.

(b) Procedures adopted under Subsection (a) shall:

- (1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;
- (2) apply to each appointment of counsel made by a judge or the judges' designee in the county;
- (3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;
- (4) require appointments for defendants in capital cases in which the death penalty is sought to comply with any applicable requirements under Articles 11.071 and 26.052;
- (5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and
- (6) ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.

(c) Whenever a court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines that a defendant charged with a felony or a misdemeanor punishable by confinement is indigent or that the interests of justice require representation of a defendant in a criminal proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to defend the defendant in accordance with this subsection and the procedures adopted under Subsection (a). If the court or the courts' designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the court or the courts' designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.

Art. 26.04. Procedures for Appointing Counsel (Continued)

(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:

- (1) applies to be included on the list;
- (2) meets the objective qualifications specified by the judges under Subsection (e);
- (3) meets any applicable qualifications specified by the Task Force on Indigent Defense; and
- (4) is approved by a majority of the judges who established the appointment list under Subsection (e).

(e) In a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) shall:

- (i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; and
- (ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications; and

(2) the judges of the district courts trying felony cases in the county, by formal action:

(A) shall:

- (i) establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and
- (ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications.

(f) In a county in which a public defender is appointed under Article 26.044, the court or the courts' designee may appoint the public defender to represent the defendant in accordance with guidelines established for the public defender.

(g) A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An alternative program for appointing counsel in felony cases may be established in the manner

provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

- (1) the alternative program may:
 - (A) use a single method for appointing counsel or a combination of methods; and
 - (B) use a multicounty appointment list using a system of rotation; and
- (2) the procedures adopted under Subsection (a) must ensure that:
 - (A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement:
 - (i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in misdemeanor cases punishable by confinement; and
 - (ii) are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;
 - (B) attorneys appointed using the alternative program to represent defendants in felony cases:
 - (i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in felony cases; and
 - (ii) are approved by a majority of the judges of the district courts trying felony cases in the county;
 - (C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052; and
 - (D) appointments are reasonably and impartially allocated among qualified attorneys.

(h) In a county in which an alternative program for appointing counsel is established as provided by Subsection (g) and is approved by the presiding judge of the administrative judicial region, a court or the courts' designee may appoint an attorney to represent an indigent defendant by using the alternative program. In establishing an alternative program under Subsection (g), the judges of the courts establishing the program may not, without the approval of the commissioners court, obligate the county by contract or by the creation of new positions that cause an increase in expenditure of county funds.

(i) A court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused of a felony may appoint an attorney from any county located in the court's administrative judicial region.

Appendix E

Art. 26.05. [494a] Compensation of Counsel Appointed to Defend

(a) A counsel, other than an attorney with a public defender, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county.

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment. If the judge disapproves the requested amount of payment, 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. An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment and determine the appropriate amount of payment. In reviewing the disapproval, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

(d) A counsel in a noncapital case, other than an attorney with a public defender, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts.

Art. 26.05. [494a] Compensation of Counsel Appointed to Defend (Continued)

Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred provided for capital cases by Article 26.052(h).

(e) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as costs of court.

(g) 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.

(h) Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

Appendix F

Texas Administrative Code

<u>Title 1</u>	Administration
<u>Part 8</u>	Texas Judicial Council
<u>Chapter 174</u>	Indigent Defense Policies And Standards
<u>Subchapter A</u>	Minimum Continuing Legal Education Requirements
<u>Rule §174.1</u>	Appointment In Criminal Cases

An Attorney who meets the requirements of this rule may be appointed to represent an indigent person arrested for or charged with a crime, if the attorney is otherwise eligible under the procedures developed under Article 26.04, Code of Criminal Procedure. Crime has the meaning assigned by §173.2(2). An attorney may be appointed under this rule only if an attorney:

- (1) Completes a minimum of six hours of continuing legal education pertaining to criminal law during each 12-month reporting period. The judges of criminal courts of the county shall set the 12-month reporting period applicable to the jurisdiction. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. The judges may require attorneys to complete more than the minimum number of hours of continuing legal education in criminal law in the procedures developed under Article 26.04, Code of Criminal Procedure; or
- (2) Is currently certified in criminal law by the Texas Board of Legal Specialization.