



TEXAS INDIGENT DEFENSE COMMISSION

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Executive Director:
James D. Bethke

November 22, 2011

The Honorable Carol L. Bush
Constitutional County Court Judge
Ellis County Courthouse
101 W. Main St., Suite 104
Waxahachie, Texas 75165

Re: Ellis County Fiscal Monitoring Visit

Dear Judge Bush:

A monitoring visit of your county was conducted on June 14-16, 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 Galveston 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 Bob Carroll, Local Administrative District Court Judge
The Honorable Gene Calvert Jr., Local Administrative Statutory County
Court Judge
Mr. Michael S. Navarro, County Auditor
Mr. James D. Bethke, Executive Director, Texas Indigent Defense
Commission
Mr. Wesley Shackelford, Deputy Director, Texas Indigent Defense
Commission
Mr. Bryan Wilson, Grants Administrator, Texas Indigent Defense
Commission

TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring of Indigent Defense Expenses

Ellis County, Texas

on

June 14-16, 2011

Final

November 22, 2011

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I. INTRODUCTION

Ellis County on-site fiscal monitoring visit was conducted on June 14-16, 2011. Bryan Wilson, Grants Administrator, assisted the fiscal monitor in reviewing financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Commission grant.

Ellis County is located in north central Texas, 20 miles south of Dallas. Waxahachie, the largest town and county seat, is on Interstate Highway 35E thirty miles south of Dallas. The county has an estimated population of 149,610.

Ellis County's court system is comprised of a statutory county court (County Court-at-Law No. 2) and two district courts (40th and 378th) with criminal jurisdiction. The statutory county court manages juvenile cases. In 2010, the county received \$69,273 in formula grant funds. The county also received \$117,576 in equalization disbursement for the increased cost of indigent defense services. Additionally, the county collected \$161,428 for reimbursement of attorney fees from defendants.

Ellis County Indigent Defense Expenditures			
Expenditures	2008	2009	2010
Population Estimate	144,391	144,391	149,610
Juvenile Assigned Counsel	\$94,210	\$114,742	\$70,569
Adult Misdemeanor Assigned Counsel	\$337,830	\$340,277	\$344,084
Adult Felony Assigned Counsel	\$544,770	\$527,454	\$508,640
Capital Murder	0	0	\$3,210
Adult Felony Assigned Counsel Appeals	\$8,457	\$2,688	\$13,703
Adult Misdemeanor Assigned Counsel Appeals	0	0	\$100
Juvenile Assigned Counsel Appeals	\$3,288	0	0
Licensed Investigation Expenses	\$15,240	\$9,774	\$9,427
Expert Witness Expenses	\$1,934	\$7,615	\$3,766
Other Direct Litigation Expenses	\$13,235	\$15,742	\$4,500
Total Court Expenditures	\$1,050,471	\$1,053,196	\$960,415
Total Indigent Defense Expenditures (court and administrative)	\$1,050,471	\$1,053,196	\$960,415
Formula Grant Disbursement	\$67,803	\$69,049	\$69,273
Equalization Disbursement	\$113,337	\$142,275	\$117,576
Reimbursement of Attorney Fees	\$170,908	\$162,668	\$161,428
Total Assigned Counsel Cases	2,818	2,778	2,461

Source: Texas Indigent Defense Commission records

The Commission Background

In January 2002, the 77th Texas Legislature established the Texas Indigent Defense Commission (Task Force). In May 2011, the 82nd Texas Legislature changed the name of the Texas Task Force on Indigent Defense (Task Force) to the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council and administratively attached to the Office of Court Administration (OCA). The Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law. The purpose of the Commission 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 promulgated Section 173.401(a), Texas Administrative Code, which provides, “the Commission 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:

- validate the indigent defense expenditure report (IDER).
- obtain an understanding of the county’s internal control activities related to indigent defense services.
- determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.
- validate policies and procedures of fiscal departments relating to indigent defense services.
- provide recommendations regarding operational efficiency.
- assist with any questions or concerns on the indigent defense program requirements.

Scope

The scope of review was limited to obtain a sufficient understanding of internal control activities and operational effectiveness in capturing the amount spent on indigent defense expenses. We reviewed fiscal records at the Ellis County Courthouse (auditor’s office) and Ellis County Courts Building.

Methodology

To accomplish the objectives, the fiscal monitor met with district judge, statutory county court judge, auditor, assistant auditor, and court coordinator. The fiscal monitor reviewed:

- random samples of paid attorney fee vouchers, licensed investigations, expert witnesses, 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 (FY 2010) was reviewed during the fiscal monitoring visit.

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

Percent Sampled: courts reviewed / courts total

Summary of Findings

- The county did not report indigent defense expenditures and case information associated with those expenditures in the manner prescribed by Section 79.036, Government Code.
- The county paid \$1,125 for mental hearing cases (9) and incorrectly reported the cost as criminal indigent defense expenses.
- The county incorrectly placed 16 other direct litigation expenses (\$773.58) in the attorney fee category of services.
- The county incorrectly placed a licensed investigation expense (\$235.00) in the attorney fee category of services.
- Attorneys' criminal continuing legal education hours were not adequately documented for 7 attorneys in accordance with Title 1, Chapter 174, Texas Administrative Code.

II. INDIGENT DEFENSE EXPENDITURE REPORT

Indigent Defense Expenditure Reporting

The county did not report indigent defense expenditures and case information associated with those expenditures on the indigent defense expenditure report (IDER) in the manner prescribed by Section 79.036, Government Code.

- (a) The county checked the box that stated, *"the case counts are estimates or are for some other reason unreliable"* on the IDER. According to the county auditor, the county checked the box because the case counts were based on the number of pay sheets submitted rather than the case number. The county auditor stated that he was unable to attest to the accuracy and completeness of the IDER.
- (b) In the *"payments made no charges filed by prosecutor category"*, the county reported 151 criminal cases and \$38,933 in expenditures, which are significant in that particular category. For pay sheets submitted without case numbers, the county reported the number of cases and expenditures in the *"payments made and no charges filed by prosecutor"* category. The *"payments made and no charges filed by prosecutor"* category of service is only for cases which the attorney pay sheets do not reveal any information about the level of the charge related to the indigent defense expenses or cannot deduce easily that the case is associated with a particular level of court.

Recommendations

- (a) The Commission recommends that the county develop procedures to accurately capture the amount of money spent on indigent defense, as well as cases the number of cases that are associated with those expenses in the manner prescribed by Section 79.036, Government Code.
- (b) The Commission recommends that the county use “*payments made no charges filed by prosecutor category*” only for cases on which the attorney pay sheet does not reveal any information about the level of the charge related to the indigent defense expenses or cannot deduce easily that the case is associated with a particular level of court. Please refer to Procedure Manual for the Indigent Defense Expenditure Report at: <http://www.courts.state.tx.us/tfid/pdf/FY10IDERManualFinal.pdf>.

Ellis County Action Plan

(a) Ellis County has already taken corrective action to ensure this does not occur on future Indigent Defense Expenditure Report submissions. Specifically, we have developed an excel spreadsheet where each individual pay sheet is entered by cause number. We are then able to do a data sort on cause number, and will be able to accurately determine the number of cases that are associated with indigent defense expenses.

(b) Ellis County has already taken corrective action to ensure this does not occur on future Indigent Defense Expenditure Report submissions. After an in depth conversation with Bryan Wilson, Grants Administrator, we have a much better understanding of what is being requested on the “payments made no charges filed by prosecutor” category. Specifically, in Ellis County, it appears that extradition cases meet the definition of this category as outlined by Mr. Wilson. In the current report, and for the future, we will report those cases as “payments made no charges filed by prosecutor”, and will not report the prior cases we were putting there, but rather put them in the appropriate category.

Contact person(s): Beth Allen

Completion date: Already Implemented.

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). See Appendix C.

Reimbursement of Expenses

An attorney appointed to represent an indigent defendant submits an itemized voucher/pay sheet with court services performed to the judge with dispositive jurisdiction over the case. The submission must occur within 60 days of the judgment. Article of 26.05(c), Code of Criminal Procedure, provides in part that “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.”

The approved attorney pay sheet is routed to the auditor office via inter-office mail. The assistant auditor verifies and enters the submitted pay sheet or invoice and amount of payment for itemized services with each case into the general ledger. After the attorney pay sheet is verified and approved, the pay sheet is routed to the purchasing department for entry into the accounts payable system. The purchasing department creates reports from the pay sheets. The assistant auditor reviews pay sheets for processing and approval to pay. After posting, the checks are submitted to Commissioner’s Court for approval. Checks are disbursed by the treasurer’s office for the amount approved by the judge to the attorney or service provider.

Monitor Comment

The grant review team reviewed the effectiveness of local procedures in tracking expenses necessary to complete the indigent defense expenditure report. Based on reviewing local procedures, the auditor’s records indicate that indigent defense expenses are accurate.

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 FY 2010, the attorney fee payments ranged from \$245 to \$83,754 per attorney with an average of \$25,727 and a median of \$20,316.

2. Reviewed Attorney Fee Vouchers

A total of 597 paid attorney fee vouchers (375 county court-at-law and 222 district courts) were reviewed for the period of October 1, 2009 to September 30, 2010. The attorney fee vouchers reviewed captured the specific data elements (defendant name, case/cause number, court number, type of offense, amount paid, attorney signature, and presiding judge signature) as required in Section 79.036(e), Government Code.

County Court-at-Law				
27 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
County Court-at-Law No. 2 (Misdemeanor)	915	\$344,084	260	\$105,859
County Court-at-Law No. 2 (Juvenile)	345	\$70,569	115	\$23,002
Total	1,260	\$414,653	375	\$128,861

County Courts-at-Law No. 2= (misdemeanor + misdemeanor appeals + felony + juvenile)
 $\$414,653 = \$343,294 + \$100 + \$690 + \$70,569$

District Courts				
17 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
40th District Court	767	\$523,013	220	\$167,322
378 th District Court	10	\$4,265	2	\$1,405
Total	777	\$527,278	222	\$168,727

District Courts = felony + felony appeals + capital murder + adult misdemeanor
 $\$527,278 = \$508,640 + \$13,703 + \$3,210 + \$1,725$

3. Unallowable Attorney Fee Vouchers

The county paid \$1,125 for mental hearing cases (9) and incorrectly reported the cost as criminal indigent defense expenses. A mental hearing case is for an incapacitated person due to inability to manage property and financial affairs. Child Protective Services (CPS) cases are acts or omissions that constitute child abuse or neglect from the designated social services agency to receive reports, investigate, and provide intervention and treatment services to children and families. Mental hearing and CPS cases are civil matters and are not allocated as criminal indigent defense expenses.

Ellis County Court		
Mental Hearing Cases	Date	Amount
County Court-at-Law No. 2	7/23/2010	\$125
County Court-at-Law No. 2	8/9/2010	\$125
County Court-at-Law No. 2	8/9/2010	\$125
County Court-at-Law No. 2	8/9/2010	\$125
County Court-at-Law No. 2	8/23/2010	\$125
County Court-at-Law No. 2	8/23/2010	\$125
County Court-at-Law No. 2	9/13/2010	\$125
County Court-at-Law No. 2	9/13/2010	\$125
County Court-at-Law No. 2	9/13/2010	\$125
	Total	\$1,125

Recommendation

The Commission recommends that the county implement procedures to ensure that civil matters such as mental hearing and CPS cases are not allocated as criminal indigent defense expenses. In accordance with the UGMS and Commission policy on reporting indigent defense expenses, civil cases are unallowable costs. Please refer to the Indigent Defense Expenditure Report procedure manual:

<http://www.courts.state.tx.us/tfid/pdf/FY07%20IDER%20Manual.pdf> and

Uniform Grant Management Standards: <http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc>.

Ellis County Action Plan

We are now doing a better job of training both the employees and administrators in what is allowed to be a cost reported on the indigent defense expenditure report.

When we pick up these expenses monthly on our spreadsheets, we will not include civil matters such as mental hearings and CPS cases.

Contact person(s): Beth Allen

Completion date: Already Implemented.

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

Investigations, Experts, and Other Direct Litigation Expenditures				
Expenditures	Total Vouchers			
	Paid	FY2010	Reviewed	Reviewed Value
Investigation	10	\$9,426	10	\$9,426
Expert Witness	4	\$3,766	4	\$3,766
Other Direct Litigation	38	\$4,500	38	\$4,500

- (a) The county incorrectly placed 16 other direct litigation expenses (\$773.58) 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.

Placed in Attorney Fee Category of Services				
No.	Court	Date	Amount	Expenses
1	County Court-at-Law No. 2	10/12/2009	\$6.47	Postage
2	County Court-at-Law No. 2	10/12/2009	\$20.00	Video tape
3	County Court-at-Law No. 2	10/26/2009	\$5.00	DVD
4	County Court-at-Law No. 2	12/14/2009	\$37.54	DVD and Postage
5	County Court-at-Law No. 2	1/25/2010	\$10.00	Video tape
6	County Court-at-Law No. 2	2/8/2010	\$6.00	Copies
7	County Court-at-Law No. 2	3/8/2010	\$3.10	DVD
8	County Court-at-Law No. 2	8/9/2010	\$5.00	DVD
9	County Court-at-Law No. 2	8/23/2010	\$442.35	Copies, DVD, and Postage
10	County Court-at-Law No. 2	9/13/2010	\$132.10	Copies, DVD, and Postage
11	40th District Court	5/24/2010	\$3.00	Postage - certified letter
12	40th District Court	5/24/2010	\$10.00	Video tape
13	40th District Court	5/24/2010	\$20.00	Video tape
14	40th District Court	5/24/2010	33.02	Clothes and postage
15	40th District Court	7/26/2010	\$10.00	Video tape
16	40th District Court	7/26/2010	\$30.00	Video tape
		Total	\$773.58	

- (b) Additionally, the county incorrectly placed a licensed investigation expense (\$235.00) in the attorney fee category of services. Licensed investigation fees include “money paid by the county to a person licensed as an investigator or

otherwise legally able to conduct investigations for a licensed attorney in preparing or presenting a defense for an indigent defendant.” (Procedure Manual for the Indigent Defense Expenditure Report FY 2010).

Placed in Attorney Fee Category of Services			
Investigation	Date	Court	Expense
Vansyckle and Associates Private Investigation Agency	7/26/2010	40th District Court	\$235
		Total	\$235

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 FY 2010, page 3-7 at: <http://www.courts.state.tx.us/tfid/pdf/FY10IDERManualFinal.pdf> and Uniform Grant Management Standards: www.governor.state.tx.us/files/state-grants/UGMS062004.doc.

Recommendation

The Commission recommends that the county correctly place licensed investigations and other direct litigation expenses in the appropriate category of services in accordance with Section 79.036, Texas Government Code.

Ellis County Action Plan

We are implementing another level of review before the report is submitted to the Task Force on Indigent Defense to help ensure that ALL expenses are reported in the proper category, even if the attorney pay sheet has them in the incorrect box.

Contact person(s): Beth Allen

Completion date: Will be done every year prior to submission.

B. Public Appointment List

1. Approval of Qualified Attorneys by the Judges

Ellis County 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

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

Courts	Number of Attorneys		Percent Sampled
	public appointment list	applications reviewed	
County Court-at-Law No. 2 (juvenile)	13	13	100%
County Court-at-Law No. 2 (misdemeanor)	30	30	100%
40 th District Court	15	15	100%

Percent Sampled: applications reviewed / number on public appointment list

3. Continuing Legal Education (CLE) Requirements

The continuing legal education hours were not documented for attorneys on the misdemeanor (5) and juvenile (2) County Court-at-Law No. 2 public appointment list. 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 6 hours of criminal and/or juvenile law during each 12-month reporting period as indicated in Ellis County’s local indigent defense plan, while the Commission rules require a minimum of 6 hours per Title 1, Chapter 174, Texas Administrative Code. Court appointed attorneys meeting the minimum CLE requirement is a grant funding condition.

Note: The Commission commends Ellis County 40th District Court for maintaining documentation that ensures the attorneys’ criminal CLE requirement is reported annually as specified in the Ellis County local indigent defense plan and per Title 1, Chapter 174, of the Texas Administrative Code.

Courts	public appointment list	Number of Attorneys		
		criminal/juvenile CLE documents reviewed	met minimum hours	
			Yes	No
County Court-at-Law No. 2 (juvenile)	13	13	11	2
County Court-at-Law No. 2 (misdemeanor)	30	30	25	5
40 th District Court	15	15	15	n/a

Percent Sampled: documents reviewed / number on public appointment list

Recommendation

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

Ellis County Action Plan

The County Court at Law #2 for Ellis County, Texas anticipates seeking the following revisions and modifications to The Plan before the end of 2011:

- All attorneys will be required to submit a new application for consideration of being placed on The List for 2012. All attorneys on the current list have already signed a verification and have provided documentation to demonstrate CLE compliance in order to remain on The List for the remainder of 2011. Each attorney must submit a new application for consideration on The List for 2012.
- The records related to the List and Plan related to misdemeanor cases will be maintained in the coordinator's office of the County Court at Law #2. The List for juvenile cases will also be maintained in the Coordinator's office of the County Court at Law #2. A duplicate copy of the Plan for juvenile cases will also be maintained in the coordinators' office of the County Court at Law #2. The original copy of the Plan will be kept and maintained with the records of the Juvenile Board. The auditor will be provided with updated copies of each List.
- The Plan for each calendar year will be kept and maintained with the applications and List(s) for that year. Each revision of The List will be maintained in the records for that year with a notation of the date that the revisions occurred. Each modification, amendment, or supplement to the Plan will be kept with the records of that year.
- If a material change in The Plan occurs during a calendar year, the effective date will be prominently noted on The Plan. If the effective date of a newly approved Plan occurs prior to the expiration of a previously approved Plan, attorneys will be required to reapply or submit approval and/or acceptance of any changes prior continuation of appointments to that attorney.
- Every attorney wishing to be considered for placement on The List of attorneys approved for appointments by the Court will continue to be required to submit an application indicating that the attorney meets the eligibility requirements and agrees to provide services according to The Plan. The applications will continue to be reviewed by the judges prior to being placed on The List. No attorney will be allowed to be placed on The List apart from this process. Each and every attorney placed on The List for juvenile cases must have their application submitted to and approved by the Juvenile Board prior to placement on the List.
- There will be an increased emphasis that the Plan not only requires that the attorney be compliant prior to submitting an application, but also requires the attorney to maintain compliance. The attorney has an affirmative duty to inform the Court of any reason that the attorney becomes ineligible to receive appointments or provide services after being approved for The List. If the Court is made aware of circumstances worthy of inquiry, then the attorney is requested to review The Plan and verify compliance. If the attorney fails to provide proof of compliance with The Plan, the attorney is removed from The List. This process will continue.
- Due to the possible confusion that may arise during an audit or review of records, temporary suspensions will no longer be allowed. Removal and/or suspension from the List (including temporary and voluntary requests) will have a notation of

the reason for removal/suspension and the effective date noted. A new application will be required after every removal or suspension from The List before any further appointments will be made under The Plan. Each new application will continue to require an attorney verification and independent proof of CLE compliance. Each application will be valid for only one submission for the given calendar year. Each new application will require independent consideration and approval.

- An attorney on The List appointed according to The Plan will be presumed to remain eligible and continue representation of the defendant in the appointed case until the case is concluded or until the attorney's duties are resolved according to The Plan. An attorney, therefore, may continue to actually be paid on a subsequent date in which the attorney is not on The List. To determine whether the appointment and payment were proper, The List and application relevant to the appointment date should be reviewed. Reference to any other List or application may result in inaccurate findings. Records will be maintained separately for each year of The Plan / List. Records for juvenile and adult cases will continue to be maintained separately. Attorneys will continue to have to submit separate applications for each Plan and List. Approval by the Juvenile Board will continue to be required for juvenile cases.
- Invoices must be submitted in a timely manner or risk nonpayment.

Contact person(s): County Court at Law #2

Completion date: Before the end of 2011

V. PROCESS-IMPROVEMENT RECOMMENDATION

Internal Reviews

The Commission recommends that the county internally verify indigent defense procedures (e.g., expert witness expenses, licensed investigation expenses, and other direct litigation expenses).

An internal review can be a valuable management tool for:

- protecting institutional knowledge;
- training employees; and
- ensuring familiarity with operational practices and the county's local indigent defense plan.

VI. SUMMARY

General Comments

The Commission wishes to express its appreciation to local county officials and employees of Ellis County for the time and courtesy extended during the fiscal monitoring visit. In particular, my gratitude extends to Judge Carol Bush, Constitutional County Court; Judge Bob Carroll, Local Administrative District Court; Judge Gene Calvert Jr., Local Administrative Statutory County Court; Mr. Michael S. Navarro, County Auditor; Ms. Beth Allen, First Assistant Auditor; Ms. Donna Tay, 40th Court Coordinator; and Ms. Tierney Lilley, Official Court Reporter, for accommodating the fiscal monitor's 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.

Ellis County Response

We appreciate the funding that is provided through the Texas Indigent Defense Commission and will incorporate the suggestions made as a result of the fiscal monitoring visit. The suggestions will enable Ellis County to more accurately report on the cases that require court appointed attorneys and ensure that the funds provided by the commission are used effectively and efficiently in compliance with the grant standards. On behalf of Ellis County, I would like to personally thank Carol Conner and Bryan Wilson for their work and willingness to provide suggestions and explanations.

Michael S. Navarro, CPA
Ellis County Auditor

Appendix A

Texas Government Code, Section 79.036. 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 commission, the following information shall be prepared and provided to the commission:
- (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 under this section; or
 - (3) verification that rules and forms previously submitted 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 commission in the form and manner prescribed by the commission 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 appellate 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 commission under this section.

This section replaced Sec. 71.0351 *effective Sept. 1, 2011 (HB 1754, §20)*.

Appendix B

Texas Government Code, Section 79.037. Technical Support; Grants

- (a) The commission 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) to assist counties in providing indigent defense services in the county, distribute in the form of grants any funds appropriated for the purposes of this section; and
 - (3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by:
 - (A) withdrawing grant funds; or
 - (B) requiring reimbursement of grant funds by the county.
- (b) The commission shall distribute funds as required by Subsection (a)(2) based on a county's compliance with standards adopted by the board and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.
- (c) The board shall adopt 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 commission under this section.

Addition of this Section effective Sept. 1, 2011 (HB 1754, §20).

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. 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 charged with, or taking an appeal from a conviction of 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), (f-1), (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 for purposes of a criminal proceeding that a defendant charged with or appealing a conviction of a felony or a misdemeanor punishable by confinement is indigent or that the interests of justice require representation of a defendant in the proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to represent 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.

(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);

Art. 26.04. Procedures for Appointing Counsel (Continued)

- (3) meets any applicable qualifications specified by the Texas Indigent Defense Commission; 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, the attorneys' qualifications, and whether representation will be provided in trial court proceedings, appellate proceedings, or both; 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, the attorneys' qualifications, and whether representation will be provided in trial court proceedings, appellate proceedings, or both.
- (f) In a county in which a public defender's office is created or designated under Article 26.044, the court or the courts' designee may appoint that office to represent the defendant in accordance with guidelines established for the office.
- (f-1) In a county in which a managed assigned counsel program is operated in accordance with Article 26.047, the managed assigned counsel program may appoint counsel to represent the defendant in accordance with the guidelines established for the program.
- (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:

Art. 26.04. Procedures for Appointing Counsel (Continued)

- (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 for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; 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 for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; 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 or convicted of a felony may appoint an attorney from any county located in the court's administrative judicial region.
- (j) An attorney appointed under this article shall:
 - (1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed;
 - (2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record; and
 - (3) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:
 - (A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;
 - (B) if the defendant wishes to pursue either or both remedies described by Paragraph (a), assist the defendant in requesting the prompt appointment of replacement counsel; and

- (C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal.
- (k) A court may replace an attorney who violates Subsection (j)(1) with other counsel. 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 from consideration for appointment an attorney who intentionally or repeatedly violates Subsection (j)(1).
- (l) Procedures adopted under Subsection (a) must include procedures and financial standards for determining whether a defendant is indigent. The procedures and standards shall apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail.
- (m) In determining whether a defendant is indigent, the court or the courts' designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The court or the courts' designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.
- (n) A defendant who requests a determination of indigency and appointment of counsel shall:
- (1) complete under oath a questionnaire concerning his financial resources;
 - (2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or
 - (3) complete the questionnaire and respond to examination by the judge or magistrate.
- (o) Before making a determination of whether a defendant is indigent, the court shall request the defendant to sign under oath a statement substantially in the following form: "On this _____ day of _____, 20 ____, I have been advised by the (name of the court) Court of my right to representation by counsel in connection with the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)"
- (p) A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigency or non-indigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.
- (q) A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant. This subsection does not prohibit prosecution of the defendant under Chapter 37, Penal Code.
- (r) A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel.

Amendments to (a), (d), and (f) and addition of (f-1) effective Sept. 1, 2011 (HB 1754, §20).

Amendments to (a), (c), (e), (g), (i), (j), and (o) effective Sept. 1, 2011 (SB 1681, §4). Section 3 provides: "The change in law made by this Act applies only to a criminal proceeding that commences on or after the effective date of this Act. A criminal proceeding that commences before the effective date of this Act is governed by the law in effect when the proceeding commenced, and the former law is continued in effect for that purpose."

Appendix E

Art. 26.05. Compensation of Counsel Appointed to Defend

(a) A counsel, other than an attorney with a public defender's office or an attorney employed by the office of capital writs, 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 appellate 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 or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act 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 or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, 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.

Art. 26.05. Compensation of Counsel Appointed to Defend (Continued)

(d) A counsel in a non-capital case, other than an attorney with a public defender's office, 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. 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 without prior court approval shall be reimbursed in the manner 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.

Amendment to (a), (c), and (d) effective Sept. 1, 2011 (HB 1754 §20).

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
Rule §174.1	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.