



TEXAS INDIGENT DEFENSE COMMISSION

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Presiding Judge, Court of Criminal Appeals

January 20, 2012

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The Honorable Jon Burrows
The Honorable B. Glen Whitley
Mr. Knox Fitzpatrick
Mr. Anthony Odiorne

Executive Director:
James D. Bethke

The Honorable Glenn Beckendorff
Constitutional County Court
Waller County Courthouse
836 Austin Street, Ste. 203
Hempstead, Texas 77445

Re: Waller County Fiscal Monitoring Visit

Dear Judge Beckendorff:

A monitoring visit of your county was conducted on July 11-12, 2011. The financial aspects of the county were monitored to adequately review fiscal records and documentation to ensure compliance with the Texas Indigent Defense Commission grant.

A copy of the final monitoring report including your county response is enclosed. The Texas Indigent Defense Commission 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 Waller 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 Albert M. McCaig, Jr., Local Administrative District Court
The Honorable Jeff Steinhauser, 155th Judicial District Court
The Honorable June Jackson, Local Administrative Statutory County Court
Mr. Alan Younts, County Auditor
Ms. Dena Stafford, First Assistant 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
(formerly Texas Task Force on Indigent Defense)

Fiscal Monitoring of Indigent Defense Expenses

Waller County, Texas

on

July 11-12, 2011

Final

January 20, 2012

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I. INTRODUCTION

Waller County on-site fiscal monitoring visit was conducted on July 11-12, 2011. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grant.

Waller County is located in the lower coastal plain of southeast Texas. Hempstead, the county's seat of government and largest city, is twenty-five miles northwest of Houston. The county has an estimated population of 43,205.

Waller County's court system is comprised of two district courts and a statutory county court hearing criminal cases. In 2010, the county received \$22,315 in formula grant funds. The county also received \$33,066 in equalization disbursement for the increased cost of indigent defense services. Additionally, the county collected \$19,062 for reimbursement of attorney fees from defendants.

Waller County Indigent Defense Expenditures			
Expenditures	2008	2009	2010
Population Estimate	38,898	38,898	43,205
Juvenile Assigned Counsel	\$634	0	0
Juvenile Contract Counsel	\$17,755	\$13,758	\$5,764
Adult Misdemeanor Assigned Counsel	0	0	\$1,125
Adult Misdemeanor Contract Counsel	\$66,990	\$76,242	\$85,636
Adult Felony Assigned Counsel	\$15,250	\$10,934	\$314
Adult Felony Contract Counsel	\$184,940	\$217,500	\$219,150
Adult Felony Assigned Counsel Appeals	0	\$11,728	\$3,500
Licensed Investigation	\$5,067	\$11,312	\$12,655
Expert Witness	\$2,000	\$600	\$17,831
Other Direct Litigation	\$7,075	\$24,466	\$13,190
Total Court Expenditures	\$299,712	\$366,539	\$359,165
Formula Grant Disbursement	\$22,042	\$22,755	\$22,315
Equalization Disbursement	0	\$21,504	\$33,066
Reimbursement of Attorney Fees	\$11,356	\$15,915	\$19,062
Total Contract Counsel Cases	354	407	434
Total Assigned Counsel Cases	25	3	5

Source: Texas Indigent Defense Commission records

The Commission Background

In January 2002, the 77th Texas Legislature established the Texas Task Force on Indigent Defense (Task Force). In May 2011, the 82nd Texas Legislature changed the name of the Texas Task Force on Indigent Defense 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:

- 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

To determine the adequacy and propriety of documentation supporting expenditures against the grant and ensure that payments to vendors were made in accordance with applicable laws, regulations, and provisions of the grant during fiscal year 2010. The fiscal monitor reviewed records located in the Waller County courthouse (county auditor’s office and district court office).

Methodology

To accomplish the objectives, the fiscal monitor met with judges, county auditor, financial analyst, program director, and court coordinators. The fiscal monitor reviewed:

- random samples of paid attorney fee vouchers, contract attorney fee vouchers, licensed investigations, expert witnesses, other direct litigation for verification of expenses;
- general ledger transactions financial spreadsheets, and invoices;
- indigent defense expenditure report, attorney fee schedule, and indigent defense contract agreements;
- public appointment list, attorney applications, and attorney criminal continuing legal education training; and
- county’s indigent defense plan.

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

Waller County's Criminal Courts			
Courts	Courts		Sampled
	Total	Reviewed	
County Court-at-Law	1	1	100%
District Court	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 did not have written accounting procedures for processing criminal indigent defense expenses.
- The contract attorney fee vouchers were not signed by the judge with appointing authority prior to being forwarded to the auditor's office for payment as required by Article 26.05(c), Code of Criminal Procedure and Title 1, Part 8, Chapter 174, Rule 174.25, Texas Administrative Code.
- The county did not follow guidelines for awarding contracts for indigent defense services as specified in Article 26.04(h), Code of Criminal Procedure and Title 1, Part 8, Chapter 174, Rule 174.12(a-c), Texas Administrative Code.
- The contracts for indigent defense services did not have all the required elements as specified in Title 1, Part 8, Chapter 174, Rule 174.15 – 174.25, Texas Administrative Code.

II. INDIGENT DEFENSE GRANTS

A. Formula Grant

The county submitted the FY 2010 indigent defense on-line grant application to assist in the provisions of the Fair Defense Act. Waller County met the formula grant eligibility requirements.

B. Discretionary Grant

In FY 2003, the Commission awarded Waller County a single year discretionary grant (\$52,401) to establish a contract defender program to provide indigent defense services.

Waller County Discretionary Grant				
Grant		Program Description	FY 2003 Grant	
Title	Type		Award	Funds Disbursed
Contract Defense Attorneys	Single year direct services	Contract with attorneys to provide indigent defense services.	\$52,401	\$52,401

Monitor Comment

The county maintains fiscal accountability of formula and discretionary grants. Additionally, the county continues to maintain contract attorneys to represent indigent defendants or juvenile respondents.

C. Indigent Defense Expenditure Reporting (IDER)

On October 28, 2010, the county submitted the indigent defense expenditure report in a timely manner. However, the indigent defense expenditure report expenditures were based on estimation rather than actual case counts and associated expenses. According to the county auditor's office, the contract attorney(s) inconsistently submitted monthly court activity reports. The 155th and 506th District Courts' total number of cases and associated expenses were divided and reported on the indigent defense expenditure report. The contract attorneys must submit the monthly court activity report to the judge for approval and then to the auditor. The county is required to accurately report the amount paid, cases disposed associated with the amount paid, court(s) in which the cases were disposed and case type. Case types include misdemeanor, felony, juvenile, appeal-felony, appeal-misdemeanor, appeal-juvenile, no charges filed-adult, and no charges filed-juvenile in accordance with Section 79.036, Government Code.

Please refer to the Procedure Manual for the Indigent Defense Expenditure Report FY 2011, page 4 at: <http://www.txcourts.gov/tidc/pdf/FY11IDERManual.pdf>

Recommendation

The Commission recommends that the county develop procedures to accurately report amount paid, cases disposed associated with the amount paid, court(s) in which the cases were disposed and case type in the manner prescribed by Section 79.036, Government Code.

Waller County Action Plan

Attached as Exhibit A to this letter is the newly Monthly Fee Voucher for Disposed Cases (I call this a "Feeder Report") that is now used by all contract attorneys. Beginning in November 2011, all Feeder Reports are signed by the contract attorneys and submitted to the Local Administrative Judge for approval prior to being delivered to the County Auditor. As you can see, the Feeder Report allows us to track appointments and dispositions not only as required by fiscal monitoring but also to determine the efficacy of each contract attorney in managing his or her case load.

Contact person(s): Local Administrative Judge

Completion date: November 2011

III. ACCOUNTING OPERATIONS

Accounting Procedures

The county did not have written accounting procedures to include staff responsibilities and oversight for processing of criminal indigent defense expenses. While there are no written procedures, the county does have a method for processing indigent defense expenses.

Recommendation

The Commission recommends that the county develop and maintain written accounting procedures for processing indigent defense expenses. Formal accounting policies and procedures provide an effective framework for internal controls and financial reporting requirements.

Waller County Action Plan

Attached as Exhibit B is the Instructions for Monthly Fee Voucher for Disposed Cases. This set of instructions has been delivered to all contract attorneys and they are in compliance. As noted, the Feeder Report is due no later than the 5th of the month for the preceding month. The Auditor’s Office uses the Monthly Feeder Report to correctly attribute cases to the court in which assigned rather than merely dividing out the cases between the various courts. Further, the Auditor does not pay the contract attorneys the monthly allocation of fees unless and until the properly signed and approved Feeder Report has been submitted. Thus, internal controls now exist for accurate financial reporting.

Contact person(s): Auditor’s Office

Completion date: November 2011

IV. INDIGENT DEFENSE PAID VOUCHERS

A. Review of Assigned and Contract Counsels Attorney Fee Payments

1. Summary of Assigned Counsel and Contract Attorney Fee Vouchers

A total of 5 paid assigned attorney fee vouchers (county court-at-law - 2 and district court - 3 (2 felony appeal cases and 1 adult non-capital felony case) were reviewed for the period of October 1, 2009 to September 30, 2010.

In reviewing attorney fee vouchers for compensation and payment, the contract attorneys’ fee vouchers were not signed by the judge with appointing authority prior to being forwarded to the auditor’s office for payment as required by Article 26.05(c), Code of Criminal Procedure and Title 1, Part 8, Chapter 174, Rule 174.25, Texas Administrative Code.

Waller County Courts					
12 Different Paid Attorneys					
Courts	Total				
	Cases		Attorney Fee Vouchers		
	Assigned	Contract Counsel	Assigned	Contract	Total
County Court-at-Law	2	222	\$1,125	\$91,400	\$92,525
155 th District Court	0	106	0	\$109,575	\$109,575
506 th District Court	3	106	\$3,814	\$109,575	\$113,389
Total	5	434	\$4,939	\$310,550	\$315,489

County Court-at-Law = adult misdemeanor contract counsel expenses + contract counsel juvenile expenses + adult misdemeanor assigned counsel

\$92,525 = \$85,636 + \$5,764 + \$1,125

District Courts = adult felony contract counsel expenses + adult assigned felony expense + adult felony appeal expenses

\$222,964 = \$219,150 + \$314 + \$3,500

Recommendation

The Commission recommends that the contract attorney(s) submit an itemized fee voucher(s) to a member of the appointing authority to approve the fee voucher(s) prior to being forward to the county auditor for payment. Article 26.05(c), Code of Criminal Procedure states that, “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.”

The contract attorneys also must submit a monthly court activity report that includes the amount paid, cases disposed associated with the amount paid, the court in which the cases were disposed, and case type. Case types include misdemeanor, felony, juvenile, appeal-felony, appeal-misdemeanor, appeal-juvenile, no charges filed-adult, and no charges filed-juvenile. This information is necessary for the auditor’s office to complete the annual indigent defense expenditure report as required in Section 79.036, Government Code. Additionally, this information may be used as an evaluative element to assist the judges or juvenile board in tracking the performance of the contract attorneys.

Waller County Action Plan

See Exhibits A and B, discussed above.

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

Investigations, Experts, and Other Direct Litigation Expenditures				
Expenditures	Total Vouchers			
	Paid	FY 2010	Reviewed	Reviewed Value
Investigation	10	\$12,665	10	\$12,665
Expert Witness	25	\$17,831	25	\$17,831
Other Direct Litigation	13	\$13,190	13	\$13,190

Monitor Comment

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 2011), page 3-7 at:

<http://www.txcourts.gov/tidc/pdf/FY11IDERManual.pdf> and Uniform Grant Management Standards: www.governor.state.tx.us/files/state-grants/UGMS062004.doc.

Waller County Response

Contract attorneys are reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts, consistent with Texas Code of Criminal Procedure, Article 26.05(d). Requests for expenses must state, as applicable: (1) the type of investigation to be conducted or the type of expert to be retained; (2) specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and (3) an itemized list of anticipated expenses for investigation or each expert. The trial court then grants the request for payment of expenses in whole or in part if the request is reasonable. All expenses to be reimbursed must state the defendant’s name, the cause number, the court, be itemized, be in writing, be supported by invoices or vouchers, and submitted to the trial judge for approval. Once approved by the trial judge, the invoice or voucher is submitted to the County Auditor for payment.

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.

2. Applied for Public Appointment List

The county maintains an approved public appointment list and attorney applications.

Courts	Number of Attorneys		Sampled
	public appointment list	applications reviewed	
County Court-at-Law (Contract Attorneys)	3	3	100%
District Courts (Contract Attorneys)	7	7	100%
District Courts (Assigned Attorneys)	2	2	100%

Percent Sampled: applications reviewed / number on public appointment list

3. Continuing Legal Education (CLE) Requirements

The continuing legal education hours (CLE) were documented for assigned and contract attorneys representing indigent defendants and juvenile respondents.

Courts	Number of Attorneys		
	public appointment list	criminal/juvenile CLE documents	
		reviewed	met minimum hours
County Court-at-Law (Contract Attorneys)	3	3	3
District Courts (Contract Attorneys)	7	7	7

District Courts (Assigned Attorneys)	2	2	2
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Monitor Comment

Waller County ensured that 6 hours of CLE for criminal and/or juvenile law were met during each 12-month reporting period according to the county’s local indigent defense plan and Title 1, Chapter 174, Texas Administrative Code.

Waller County Response

Attached as Exhibit C is a copy of the Notice of Opportunity and Application that is used to notify attorneys of the opportunity to apply for an indigent defense contract in Waller County. For calendar year 2012, the County’s fiscal year, this notice was delivered by email to every attorney in the Court’s file system, as well as posted on the Court’s official website at www.court506.com/id96.html (Indigent Defense).

Attached as Exhibit D are the Instructions for Application that is used for the process of selecting contract attorneys. The dates, times and formats required for the Applications are all included in the Notice of Opportunity and the Instructions for Application. This year there were several attorney applications submitted for the ten available positions. Attorneys were asked to designate which level of appointment they were seeking; either felony or misdemeanor /juvenile.

Using this process, the Panel of Judges (consisting of two district judges and the judge of the County Court at Law) solicited proposals through the widely disseminated notification process. Each applicant was provided an equal opportunity to apply and respond. The Panel of Judges selected the indigent defense contract attorneys for FY 2012. Written notification to all attorneys, both those selected and those not selected, was then delivered in writing to all applying attorneys.

C. Review of Contract Defender Program

At its meeting on August 24, 2006, the Commission voted to adopt new rules to establish minimum requirements for the contract defender program. At the September 20, 2006 meeting, the Texas Judicial Council ratified the new rules. On January 1, 2007, the new rules became effective and all jurisdictions were required to follow them. Refer to Appendix H for contract defender program requirements.

The county has a contract defender program for indigent defense services. In November 2003, the county established the contract defender program. The county maintains \$219,150 in felony contracts and \$91,400 in misdemeanor and juvenile contracts.

No.	Contract Counsel			Fees
	Attorney	Invoices	Cases	
District Courts				
1	Patrice Carrington	12	32	\$31,350
2	Travis Fleetwood	12	23	\$31,350
3	Rebecca Froman	12	42	\$31,350
4	Calvin Garvie	12	36	\$31,350
5	John Harle	12	25	\$31,350
6	Lee Van Richardson	12	24	\$28,700
7	James Rivera	12	30	\$33,700
Total		84	212	\$219,150
County Court-at-Law				
1	Carol Chaney	12	63	\$31,350
2	Rolfe Goode	12	63	\$31,350
3	Richard Senasac	12	96	\$28,700
Total		36	222	\$91,400

(1). The county does not appear to follow the guidelines for awarding indigent defense service contracts as required by the Application Process 174.12(a-c), Contract Defender Program Requirements. The Application Process requires appointing authorities to solicit proposals through a widely disseminated notification of the opportunity to apply (NOA) and applicants to have the same opportunity to respond and be considered for public defender contracts.

§174.12. Application Process – (No). The county has no record that solicitation and selection for contractors were in accordance with the procedure governing alternative appointment programs contained in Article 26.04, Code of Criminal Procedure.

- (a) Notification – (No). The county has no record of notification of the opportunity to apply (NOA) to be a public defender contractor. The contract shall be distributed in a manner that reasonably covers all practicing members of the bar within the county or other region designated by the appointing authority. The notification shall inform attorneys of all requirements for submitting applications.*
- (b) Opportunity to Respond – (No). The county has no record that all potential contractors had the same opportunity to respond to the NOA and be considered for the award of a contract.*
- (c) Application – (No). The county has no record that applications were submitted in writing and maintained by the appointing authority or contracting authority in accordance with the Texas State Library and Archives Commission Retention Schedule for Local Records- Local Schedule GR.*

For further details and commentary on *application of standards and contracting procedures*, refer to contract defender program rules, Texas Administrative Code, Title 1, Part 8, Chapter 174, Rule 174.11 – 174.25, Texas Administrative Code, page 3, at: <http://www.courts.state.tx.us/tfid/docs/Contract%20Defender%20Rules%20w%20Commenary%20and%20Sample%20Fee%20Vouchers%20Final-Rev'd.doc>.

(2). The county did not have all required elements for each reviewed contract for indigent defense services pursuant to the Contract Defender Program Requirements.

Required Elements of a Contract for Indigent Defense Services 174.15 - 174.25

§174.15. *Parties – (Yes). The contract identified the appointing authority, contracting authority, and contractor.*

§174.16. *Term of Contract – (Yes). The contract specified the term of the contract, including any provision for extensions, and a provision for terminating the contract by either party.*

§174.17. *Scope of Contract – (Yes). The county's contract specified the categories of cases in which the contractor is to provide services.*

§174.18. *Minimum Attorney Qualifications – (Yes). The contract specified minimum qualifications for attorneys covered by the contract and require such attorneys to maintain the qualifications during the term of the contract.*

§174.19. *Duration of Representation – (Yes). The contract specified that the contractor have the responsibility to complete all cases once representation is commenced during the term of the contract in accordance with Article 26.04(j)(2), Code of Criminal Procedure.*

§174.20. *Substitution of Attorneys – (Yes). The contract did identify the attorneys who will perform legal representation in each category of case covered by the contract and prohibit the substitution of other attorneys without prior approval by a majority of the appointing authority.*

§174.21. *Caseload Limitations – (Yes). The contract sets the maximum number of cases or workload each attorney may be required to handle pursuant to the contract.*

§174.22. *Standards of Representation – (Yes). The contract specifies directly that the contractors are to provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable laws and the Texas Disciplinary Rules of Professional Conduct.*

§174.23. *Conflicts of Interest – (No). The contract did not state a policy to assure that the contractor and its attorneys do not provide representation to defendants when doing so would involve a conflict of interest.*

§174.24. Investigators and Experts – (Yes). The contract did not specify how investigation services and experts that are necessary to provide competent representation will be made available in a manner consistent with Article 26.05(d), Code of Criminal Procedure.

§174.25. Compensation and Payment Processes – (No). The contract did not set the amount of compensation to be paid to the contractor and the designated method and timing of payment. The contract shall state that the contractor shall be required to submit an itemized fee voucher. The voucher must be approved by a member of the appointing authority prior to being forwarded to the county financial officer for approval and payment. The contract shall also specify how a contractor is to be compensated for cases assigned but not disposed within the term of the contract as provided in Section 174.19.

For further details and commentary on *required elements of a contract for indigent defense services*, refer to contract defender program rules, Title 1, Part 8, Chapter 174, Rule 174.15 – 174.25, Texas Administrative Code, page 3, at:

<http://www.courts.state.tx.us/tfid/docs/Contract%20Defender%20Rules%20w%20Comme ntary%20and%20Sample%20Fee%20Vouchers%20Final-Rev'd.doc>.

Recommendations

The Commission recommends that the county:

- Follow the guidelines for awarding contracts for indigent defense services as specified as specified in Article 26.04(h), Code of Criminal Procedure and Title 1, Part 8, Chapter 174, Rule 174.12(a-c), Texas Administrative Code.
- Revise contracts for indigent defense services to meet the contract defender program requirements in accordance with Title 1, Part 8, Chapter 174, Rule 174.15 – 174.25, Texas Administrative Code.

Note: During the fiscal monitoring visit, the county was provided with copies of the contract defender program rules and a sample attorney contract. Please see Appendix F for sample attorney contract.

Waller County Action Plan

Following the filing requirements set out in the Notice of Opportunity and Application (**Exhibit C**) as well as the Instructions for Application, all attorney applications are received in the central location of the Office of the Local Administrative Judge. As provided in the public notices, the Panel of Judges (consisting of the two district judges and the judge of the County Court at Law) met to review and discuss the applications.

Indigent Defense Contract Attorney contracts have been completely revised to comply with the Commission Rules, the minimum requirements established by the Commission, as well as Texas contract law. Required elements of a contract for indigent defense services as provided under the Texas Administrative Code, Title 1, Part 8, Chapter 174, are now used.

Waller County uses one set of six attorneys for felony level indigent defense, serving the two district courts. One set of four attorneys serves the misdemeanor and juvenile level indigent defense. Attached as Exhibit E is a copy of the felony indigent defense contract. Attached as Exhibit F is a copy of the misdemeanor/juvenile defense contract.

Contact person(s): Office of the Local Administrative Judge

Completion date: November 2011

V. SUMMARY

General Comments

The Commission wishes to express its appreciation to local county officials and employees of Waller County for the time and courtesy extended during the fiscal monitoring visit. In particular, my gratitude extends to Judge Glenn Beckendorff, Constitutional County Court; Judge Albert M. McCaig, Jr., Local Administrative District Court; Judge June Jackson, Local Administrative Statutory County Court; Mr. Alan Younts, County Auditor; Ms. Dena Stafford, First Assistant Auditor, and Ms. Susie Schubert, District Court 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.

Waller County Response

It is my belief that Waller County has established procedures that not only meet but greatly exceed the minimum requirements set for fiscal monitoring of indigent defense. Having access to competent legal counsel when charged with a serious criminal offense is a right afforded to everyone under both state and federal laws. The trial courts of Waller County, as well as the fiscal support agencies of the County, fully support the policies of the State of Texas as promulgated by the Texas Indigent Defense Commission in the appointment and compensation of attorneys appointed to represent the indigent.

It is my hope that you can use the forms and procedures established here in Waller County as an example for others of how to not only accomplish the letter of the law, but the spirit of the law in dealing with indigent defense. We in Waller County welcome your comments and thoughts on this response.

Albert M. McCaig, Jr.
Judge, Presiding

c: Honorable Jeff Steinhauser, Judge, 155th Judicial District Court
c: Honorable Glenn Beckendorff, Judge, Waller County, Texas
c: Honorable June Jackson, Judge Waller County Court at Law
c: Mr. Alan Younts, Auditor, Waller County, Texas

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.

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

Art. 26.04. Procedures for Appointing Counsel (Continued)

- (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

CONTRACT FOR LEGAL SERVICES TO CRIMINAL DEFENDANTS

This Contract is made by and between Morris County, Texas ("County"), a political subdivision of the State of Texas, and _____, State Bar No. _____ ("Attorney") on the ____ day of _____, 20____. The purpose of this agreement is for the County to provide legal services to indigent defendants in the Criminal Courts of Morris County. Attorney has agreed to provide all services requested, except for those hereinafter described.

NOW, THEREFORE, the parties agree as follows:

1. Term. The term of this Contract shall be for eleven (11) months, beginning on November 1, 2007 and ending on September 30, 2008, unless sooner terminated as set forth herein.
2. Compensation. Attorney will receive the sum of \$_____ per month, for a total of \$_____ for the term of the contract (unless the Contract is terminated sooner).
3. Case Load. Attorney may handle up to a maximum of 485 cases per year (i.e., a maximum of 200 felonies, 250 misdemeanors, 25 juvenile cases, and 10 appeals). If the total volume of cases requires that Attorney be appointed to handle more than 485 cases a year, Attorney will be compensated for work on such extra cases at the rate of one and one-half times the normal rate for indigent defense cases in each respective county, or the reasonable fee that the presiding judge finds by order to be appropriate. In these cases, the Attorney must present a form listing the time spent on each case, together with the activities for which the time was incurred, to the presiding judge for approval.
4. Expense Reimbursement. Attorney may receive reimbursement for reasonable and necessary expenses, including expenses for investigation, and other experts, consistent with Texas Code of Criminal Procedure art. 26.05(d), and travel outside of Morris County, separate from the Attorney's compensation. Travel expenses (mileage, etc.), are eligible for reimbursement in accordance with Morris County's policy on travel reimbursement for employees. All expenses to be reimbursed must be itemized in writing, supported by invoices and /or vouchers, and submitted to the presiding judge for approval.
5. Independent Contractor. Attorney is not an employee of the County, and is, at most, an independent contractor, who shall complete the requirements of this Contract by Attorney's own means and methods of work, and in accordance with the Attorney's professional legal judgment, which shall be in the exclusive charge and control of the Attorney, and is not subject to control or supervision of the County or any judge, except as specified in this Contract. THE DEFENDANT IS YOUR CLIENT – NOT THE COUNTY. YOU MUST PROVIDE COMPETENT, ZEALOUS LEGAL SERVICES TO EACH CLIENT IN ACCORDANCE WITH YOUR RESPONSIBILITIES UNDER

THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT AND THE TEXAS CODE OF CRIMINAL PROCEDURE.

6. Standard of Performance.

- (a) Attorney will provide all services required by Senate Bill 7 as passed by the 77th Session of the Texas Legislature in 2001. (As it amends the Texas Code of Criminal Procedures).
- (b) Attorney shall provide competent, zealous legal services to each client in a professional, skilled manner consistent with the Attorney's responsibilities under the Texas Disciplinary Rules of Professional Conduct and the Texas Code of Criminal Procedure.
- (c) Attorney shall ensure continuity of representation of the client unless relieved or replaced in accordance with art. 26.04(j)(2) of the Texas Code of Criminal Procedure.
- (d) Attorney shall not assign, subcontract or delegate any part of the services to be provided by the Attorney under this Contract.
- (e) Attorney must submit a monthly progress report to be approved by the Morris County Judge prior to any payment being made under this Contract, in accordance with art. 26.05 of the Texas Code of Criminal Procedure. The report must include the number of cases disposed of in the previous month and the types of cases (adult felony, adult misdemeanor, and juvenile) as well as the number of cases currently open and assigned by the courts. The County Judge may require other information, which is necessary and relevant, and may confer with the presiding judge on any case.
- (f) Attorney must maintain the minimum qualifications to practice law in the state of Texas, and must immediately inform the County Judge of any change in the status of the Attorney's licensure. The Attorney must provide the County with proof of licensure in good standing upon request.
- (g) Attorney agrees to indemnify and hold harmless Morris County from any and all claims rising from the delivery of professional services under this contract.
- (h) Attorney must report to the County Judge the number of continuing legal education hours completed.
- (i) Attorney shall maintain an office in Morris County, Texas and shall maintain the ability to receive facsimile correspondence twenty-four hours a day, seven days a week.
- (j) Attorney must provide quality, effective legal assistance and representation to clients to whom Attorney is assigned.

- (k) Attorney shall complete all cases once representation is commenced during the term of the contract, unless the attorney is relieved or replaced in accordance with Article 26.04(j)(2), Code of Criminal Procedure. Attorney will be compensated for these uncompleted cases on a case-by-case basis according to the SB7 approved plan.
 - (l) Attorney is prohibited from accepting any payments from a client or third party for legal services provided in a case assigned under this contract
 - (m) Attorney is prohibited from releasing confidential attorney-client information or work product related to any case covered by this contract, except when authorized by the Texas Disciplinary Rules of Professional Conduct.
 - (n) Attorney agrees he will not run for county attorney, within two years of the termination of this contract.
7. Conflict. In the event of a conflict of interest between Attorney and any defendant, Attorney shall present evidence to the court in which the case is pending, and if ordered by the Judge presiding, be allowed to withdraw from representation in that case. Such withdrawal shall not affect the other terms of this agreement.
8. Termination. This Contract may be terminated by the County for good cause, with the approval of the majority of the County and District Judges serving Morris County. If a reason for termination is found to exist by any of the judges or the program director, written notice will be given to Attorney, and a private meeting will be held with the Attorney and judges present to discuss the relevant issues, and, thereafter, the judges will vote on the termination of Attorney's contract.
- (a) County may terminate this agreement if Attorney closes his active office for the practice of law in Morris County.
 - (b) County may terminate this agreement if Attorney fails to perform the duties required by this agreement. Such failure must be supported by judicial findings of that failure.
 - (c) Attorney may terminate this agreement if County fails to make timely payments hereunder.
 - (d) Attorney may terminate this agreement if, for reasons beyond the control of Attorney, Attorney is unable to perform the duties required hereunder.
 - (e) This agreement may be mutually terminated for any force majeure or any change in the law, which makes the agreement moot.
9. Administration. The District Judges and the Morris County Judge will provide oversight and monitoring to assure that Attorney performs as required under this Contract. Nothing

herein shall be interpreted as creating a right or remedy against the County, the Morris County Judge, or the District Judges on the part of any person.

10. Disputes. Venue of any proceeding arising under or with regard to this Contract shall be in a court of competent jurisdiction in Morris County.

11. Additional Terms and Conditions.

(a) The cases to be handled under this Agreement shall be non-capital murder cases in which the death penalty is sought. The appointments hereunder may include juvenile cases.

(b) Attorney will be responsible for three different categories of cases in County and District Court, which include appeals:

Level One. Felonies

Level Two. Misdemeanors

Level Three. Juveniles

(c) A determination that Attorney has given false information in the materials submitted to the County in response to the Request for Qualifications will be grounds for immediate cancellation of this Agreement under the procedures set forth above.

(d) Falsification of any report, invoice, billing documentation or other submission by the Attorney will be grounds for immediate cancellation of this Agreement under the procedures set forth above. In addition, such could subject the Attorney to both professional discipline and criminal prosecution. Therefore, it is very important that submissions be thorough and truthful.

ATTORNEY:

COUNTY:

Printed Name

COUNTY JUDGE

Morris County

500 Broadnax

Address

Daingerfield, TX 75638

903-645-3691 phone

903-645-5729 fax

Phone: _____

Fax: _____

Date: _____

Date: _____

Appendix G

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.

Appendix H

**CHAPTER 174, RULE 174.10 – 174.25, TEXAS ADMINISTRATIVE CODE,
CONTRACT DEFENDER PROGRAM REQUIREMENTS**

TITLE 1. ADMINISTRATION

Part 8. TEXAS JUDICIAL COUNCIL

Chapter 174. INDIGENT DEFENSE POLICIES AND STANDARDS

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission adopts new §§174.10 - 174.25, concerning the establishment of contract defender program requirements. The new sections are adopted without changes to the adopted text as published in the June 16, 2006 of the *Texas Register* (31 TexReg 4819). The Texas Judicial Council pursuant to Section 71.060(b), Government Code, ratified the new sections on September 20, 2006.

The new sections are adopted to establish minimum requirements for the use of contract defender programs to provide indigent defense services. The rules provide for an open attorney application and selection process by the judges or juvenile board in whose court the attorney will serve. The rules also require that certain specific items be included in a contract for indigent defense services and the contract be approved by the county.

No comments were received regarding adoption of the rules.

Subchapter B. CONTRACT DEFENDER PROGRAM REQUIREMENTS

1 TAC §§174.10 - 174.25

The new rules are adopted under the Texas Government Code §71.060(a)(7). The interprets §71.060(a)(7) as authorizing the Commission to develop policies and standards for providing legal representation to indigent defendants under a contract defender program.

No other statutes, articles, or codes are affected by the adopted new rules.

Part I. DEFINITIONS

§174.10. Subchapter Definitions.

The following words and terms when used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise.

- (a) **Appointing Authority.** The appointing authority is the:
- (1) Judge or judges who have authority to establish an indigent defense plan and approve attorneys to represent indigent defendants in criminal cases under Article 26.04, Code of Criminal Procedure; and/or

- (2) Juvenile board that has authority to establish an indigent defense plan and approve attorneys to represent indigent respondents in juvenile cases under Section 51.102, Family Code.
- (b) Contract Defender Program. Contract defender program means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.
- (c) Contracting Authority. The contracting authority is the county or counties that have the authority to conclude a contract and to obligate funds for the provision of indigent defense services.
- (d) Contractor. The contractor is an attorney, law firm, professional association, lawyer's association, law school, bar association, non-profit organization or other entity that can be bound by contract.
- (e) Itemized Fee Voucher. An itemized fee voucher is any instrument, such as an invoice, that details services provided by a contractor providing indigent defense services. The itemized fee voucher may be in paper or electronic form. It shall include at a minimum all the information necessary for the county auditor or other designated official to complete the expenditure report required to be submitted to the Office of Court Administration by Section 79.036, Government Code.

PART II: APPLICATION OF STANDARDS AND CONTRACTING PROCEDURES

§174.11. Application of Subchapter. This Subchapter applies to all contract defender programs. This Subchapter does not apply to public defender programs established and governed by Chapter 26, Code of Criminal Procedure.

§174.12. Application Process. The appointing authority shall solicit and select contractors in accordance with the procedure governing alternative appointment programs contained in Article 26.04, Code of Criminal Procedure.

- (d) Notification. The notification of the opportunity to apply (NOA) to be a contractor shall be distributed in a manner that reasonably covers all practicing members of the bar within the county or other region designated by the appointing authority. The notification shall inform attorneys of all requirements for submitting applications.
- (e) Opportunity to Respond. All potential contractors shall have the same opportunity to respond to the NOA and be considered for the award of a contract.
- (f) Application. All applications must be submitted in writing and shall be maintained by the appointing authority or contracting authority in accordance with the Texas State Library and Archives Commission Retention Schedule for Local Records- Local Schedule GR.

§174.13. Application Review Process. Following the review of all applications the appointing authority shall by a majority vote select contractor(s), specify the types of cases each contractor is qualified to handle, and authorize the contracting authority to enter into a contract. The attorneys associated with the selected contractor(s) must meet the attorney qualification requirements contained in the indigent defense procedures adopted pursuant to Article 26.04, Code of Criminal Procedure. If the contract does not exclude capital cases in which the death penalty is sought, the attorneys associated with the selected contractor(s) must also meet the attorney qualifications set by the regional selection committee and be approved by the regional selection committee to represent clients in capital cases. The appointing authority shall consider at least the following factors when evaluating applications:

- (a) Experience and qualifications of the applicant;
- (b) Applicant's past performance in representing defendants in criminal cases;
- (c) Applicant's disciplinary history with the state bar;
- (d) Applicant's ability to comply with the terms of the contract; and
- (e) Cost of the services under the contract.

§174.14. Awarding the Contract. In accordance with Article 26.04(h), Code of Criminal Procedure, the contracting authority may approve the recommended contractor(s) and enter into a contract for services. The contracting authority shall enter into a contract only if it complies with these standards and all applicable law governing professional services contracts entered into by counties. A contract shall not be awarded solely on the basis of cost.

PART III: REQUIRED ELEMENTS OF A CONTRACT FOR INDIGENT DEFENSE SERVICES

Each component below shall be included in a contract for indigent defense services and shall serve as the basis for the NOA.

§174.15. Parties. Identify the appointing authority, contracting authority, and contractor.

§174.16. Term of Contract. The contract shall specify the term of the contract, including any provision for extensions, and a provision for terminating the contract by either party.

§174.17. Scope of Contract. The contract shall specify the categories of cases in which the contractor is to provide services.

§174.18. Minimum Attorney Qualifications. The contract shall specify minimum qualifications for attorneys covered by the contract and require such attorneys to maintain the qualifications during the term of the contract. The qualifications shall equal or exceed the qualifications provided in the indigent defense procedures adopted pursuant to Article 26.04, Code of Criminal Procedure. If the contract does not exclude capital cases in which the death penalty is sought, the qualifications shall equal or exceed the minimum attorney qualifications set by the regional selection committee and the attorneys covered by the contract shall be required to be on the list of attorneys approved by the regional selection committee to represent clients in capital cases. If

a contract covers services provided by more than one attorney, qualifications may be graduated according to the seriousness of offense and each attorney shall be required to meet and maintain only those qualifications established for the offense level(s) for which the attorney is approved to provide defense services.

§174.19. Duration of Representation. The contract shall specify that the contractor has the responsibility to complete all cases once representation is commenced during the term of the contract, unless an attorney covered by the contract is relieved or replaced in accordance with Article 26.04(j)(2), Code of Criminal Procedure.

§174.20. Substitution of Attorneys. The contract shall identify the attorney(s) who will perform legal representation in each category of case covered by the contract and prohibit the substitution of other attorneys without prior approval by a majority of the appointing authority. Nothing in the contract shall prohibit an attorney covered by the contract from being relieved or replaced in accordance with Article 26.04(j)(2) of the Code of Criminal Procedure.

§174.21. Caseload Limitations. The contract shall set the maximum number of cases or workload each attorney may be required to handle pursuant to the contract.

§174.22. Standards of Representation. The contract shall require that the contractor provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable laws and the Texas Disciplinary Rules of Professional Conduct.

§174.23. Conflicts of Interest. The contract shall state a policy to assure that the contractor and its attorneys do not provide representation to defendants when doing so would involve a conflict of interest.

§174.24. Investigators and Experts. The contract shall specify how investigation services and experts that are necessary to provide competent representation will be made available in a manner consistent with Article 26.05(d), Code of Criminal Procedure.

§174.25. Compensation and Payment Processes. The contract shall set the amount of compensation to be paid to the contractor and the designated method and timing of payment. The contract shall state that the contractor shall be required to submit an itemized fee voucher. The voucher must be approved by a member of the appointing authority prior to being forwarded to the county financial officer for approval and payment. The contract shall also specify how a contractor is to be compensated for cases assigned but not disposed within the term of the contract as provided in Section 174.19.

The Commission hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.