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October 18, 2012

Ms. Carol Conner
Fiscal Monitor
Texas Indigent Defense Commission
P.O. Box 12066
Austin, Texas 78711-2066

Re: Wilson County Fiscal Monitoring

Dear Ms. Conner:

We have reviewed Wilson County's fiscal monitor report. Please find enclosed our responses to the fiscal monitor report. We are currently revising procedures and will be utilized as we move forward. A more frequent review will be performed to ensure of accurately recording of indigent defense expenses.

Thank you for your attention during the fiscal monitoring visit. We appreciate your professional manner in conducting the fiscal visit. Should you have additional questions or comments, please do not hesitate to contact me.

Sincerely,

Verna Gorzell
County Auditor

Wilson County Summary of Findings with Responses:

- The county did not have written accounting procedures for processing indigent defense expenses.
- The county paid 13-child welfare cases (\$6,811.83), which are not criminal indigent defense and are unallowable under the formula grant.
- The county did not have documents on file that indicated court appointed attorneys were selected and approved by majority of the judges in accordance with Article 26.04(d), Code of Criminal Procedure.
- Attorney applications were not documented for 12 of the 34 court appointed attorneys on the public appointment list in accordance with Article 26.04(d), Code of Criminal Procedure.
- The continuing legal education requirements were not documented for 20 of the 34 court appointed attorneys on the public appointment list in accordance with Title 1, Chapter 174, Texas Administrative Code.

I. INDIGENT DEFENSE GRANT

A. Formula Grant

The county submitted the FY 2011 indigent defense on-line grant application to assist in the provisions of the Fair Defense Act. Wilson County met the formula grant eligibility requirements.

B. Indigent Defense Expenditure Report (IDER)

Under Section 79.036 of the Texas Government Code, counties are required to annually submit data showing cases and associated expenses for indigent defense services. For FY 2011, Wilson County reported spending \$134,857 on 232 felony cases; \$60,574 on 298 misdemeanor cases; and \$14,400 on 72 juvenile cases.

II. 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. The assistant auditor was new to position and did not have training on indigent defense expenses. Written procedures provide instruction and guidance, uniformity and completeness, and ensure correct and secure processing of fiscal information.

Recommendation

The Commission recommends that the county develop written indigent defense accounting procedures and implement controls to ensure that indigent defense expenditures are posted in the correct category of services. 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).

Wilson County Action Plan

Wilson County is in the process of developing a written accounting policies and procedures manual for the County. As part of this process, the County will develop written indigent defense accounting procedures and implement controls to ensure the indigent defense expenditures are posted in the correct category of services.

Contact person(s): Verna Gorzell

Completion date: We expect this manual to be completed in May 2013

III. 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 2011, the attorney fee annual payments ranged from \$200 to \$20,725 per attorney with an average of \$5,111 and a median of \$4,191.

2. Reviewed Assigned Attorney Fee Vouchers

A total of 210 paid attorney fee vouchers were reviewed for the period of October 1, 2010 to September 30, 2011. The attorney fee vouchers reviewed captured the specific data elements (defendant name, case/cause numbers, offense, court number, amount paid, attorney signature, and presiding judge signature).

Wilson County Courts				
36 Different Paid Attorneys				
Courts	Paid Vouchers	Total		
		Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
County Court (includes juvenile)	323	\$74,974	100	\$20,800
81 st District Court	129	\$82,993	75	\$50,318
218 th District Court	76	\$51,864	35	\$23,181
Total	528	\$209,831	210	\$94,299

Court	Juvenile	Adult Misdemeanor	Capital Murder	Adult Felony	Total
County Court	\$14,400	\$60,574.17			\$74,974.17
81 st District Court				\$82,992.73	\$82,992.73
218 th District Court				\$51,863.92	\$51,863.92
Total	\$14,400	\$60,574.17		\$134,856.65	\$209,830.82

Note: As reported to the Commission on the FY 2011 Indigent Defense Expenditure Report

3. Unallowable Attorney Fee Vouchers

As a result of reviewing expenses, it was noted that the county paid 13 child welfare cases (\$6,811.83), which are not criminal indigent defense and are unallowable under the formula grant. Child welfare cases, often referred as child protective services, (CPS) cases, are attorney appointments when child abuse or neglect cases are filed. The assistant auditor was new to the position and unaware that child welfare cases are civil matters; therefore, unallowable under the formula grant.

Wilson County District Courts				
Child Welfare Cases (Civil Payments)	Invoice No.	Check No.	Date	Amount
218th District Court	167160	101513	10/25/2010	\$270.00
218th District Court	167158	101513	10/25/2010	\$631.90
218th District Court	167159	101513	10/25/2010	\$878.90
218th District Court	168497	102379	12/13/2010	\$670.00
218th District Court	170544	103688	3/14/2011	\$470.00
218th District Court	170546	103657	3/14/2011	\$458.33
218th District Court	170674	103737	3/28/2011	\$27.00
218th District Court	170675	103737	3/28/2011	\$753.30
218th District Court	170966	104043	4/11/2011	\$472.50
218th District Court	171476	104172	4/25/2011	\$746.00
81st District Court	170676	103737	3/28/2011	\$676.90
81st District Court	170958	103992	4/11/2011	\$342.00
81st District Court	172646	105023	6/24/2011	\$415.00
Total				\$6,811.83

Recommendation

The Commission recommends that the county implement controls to ensure that child welfare/CPS cases (civil matters) are not reported under the indigent defense expenditure report and thus allocated to the formula grant.

Note: Failure to follow instructions for submitting the indigent defense expenditure report may result in a termination of grant or other funds, in whole or in part, and the Commission may impose a remedy under Title 1, Part 8, Chapter 173, Rule 173.307, Texas Administrative Code.

Wilson County Action Plan

The County is implementing policies and procedures to ensure that child welfare/CPS cases are not included under the indigent defense expenditure report.

Contact person(s): Verna Gorzell

Completion date: We expect to have written procedures in place by December 31, 2012

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

FY2011 Licensed Investigations, Experts, and Other Direct Litigation Expenditures				
Expenditures	Total Vouchers			
	Reported		Reviewed	Reviewed Value
	Paid	FY 2011		
Investigation	0	0	n/a	n/a
Expert Witness	0	0	n/a	n/a
Other Direct Litigation	0	0	n/a	n/a

Monitor Comment

The county did not report any licensed investigations, expert witnesses, other direct litigation on the FY2011 indigent defense expenditure report.

B. Public Appointment List

1. Approval of Qualified Attorneys by the Judges

The county did not have documents on file that indicated court appointed attorneys were selected and approved by majority of the judges in accordance with Article 26.04(d)-(e), Code of Criminal Procedure. The judges by formal action determine which attorneys are qualified to represent indigent defendants and juvenile respondents. The county is required to substantiate and maintain documents of the approved court appointed attorneys on the public appointment list. A link to the relevant provision in the Texas Code of Criminal Procedure is available at: <http://www.statutes.legis.state.tx.us/Docs/CR/htm/CR.26.htm#26.04>

Recommendation

The Commission recommends that the county maintain documents on file that indicates a majority of the judges selected and approved the attorneys on the public

appointment list. The county must establish and maintain an approved public appointment list of all court appointed attorneys representing indigent defendants and juvenile respondents. The support documents establish that all court appointed attorneys were selected, approved, and paid properly.

Wilson County Action Plan

The audit was for counties of Atascosa and Wilson. The files audited included all five of our counties, so some that non-compliant were from counties that were not being audited. However all files, including those from the other three counties have been reviewed. Two of the attorneys cited as non-compliant were actually current on their CLE's when the files were audited. A procedure for monitoring the continuing legal education of the attorneys has been implemented. Letters will be sent each January requiring a response by a certain date to remain on the list. Any attorney no complying will be removed from the list.

Contact person(s): District Judge's Office (830) 769-3750

Completion date: August 6, 2012

2. Applied for Public Appointment List

The county did not maintain applications or support documents for 12 of the 34 court appointed attorneys on the public appointment list. Under Article 26.04(d), Code of Criminal Procedure, the court appointed attorneys are required to apply to be included on the list; meet the objective qualifications specified by the judges; meet applicable qualifications specified by the Commission; and are approved by a majority of the judges.

Courts	Number of Attorneys		
	public appointment list	Attorney Applications on file	
		Yes	No
County Court and District Court	34	24	12

Recommendation

The Commission recommends that the county implement procedures to ensure that only qualified attorneys are on the public appointment. The county must maintain attorney application or support documents for all court appointed attorneys on the public appointment list as indicated in the county's local indigent defense plan.

Furthermore, the attorney application or support documents would substantiate that all court appointed attorneys were qualified to receive payments.

Wilson County Action Plan

All of the attorney applications have been reviewed. Any attorneys not meeting the qualifications have been removed. A procedure of review of qualifications has been implemented.

Contact person(s): District Judge's Office (830) 769-3750

Completion date: August 6, 2012

3. Continuing Legal Education (CLE) Requirements

The continuing legal education hours were not documented for 20 of the 34 attorneys on the public appointment list. According to the district court coordinator, an increase in the number of court appointed attorneys from San Antonio combined with a high volume of court administrative work and indigent defense duties has made it difficult to maintain the CLE requirements for Wilson, Atascosa, Frio, and LaSalle counties.

As stated in Title 1, Sections 174.1 and 174.2 of the Texas Administrative Code, attorneys appointed in criminal and juvenile cases are required to receive at least 6 hours of continuing legal education (CLE) in criminal/juvenile law annually. Wilson County's local indigent defense plan requires court appointed attorneys to complete a minimum of 12 hours of CLE annually.

Courts	Number of Attorneys			
	public appointment list	criminal/juvenile CLE documents		
		reviewed	met minimum hours	
			Yes	No
County Court and District Court	34	34	14	20

Without CLE documents for court appointed attorneys, the county auditor may not make proper payments consistent with Sections 174.1 and 174.2 of the Texas Administrative Code. In FY 2011, the county made payments totaling \$127,035 to 20 court appointed attorneys without the required documented CLE hours.

Note: Failure to maintain CLE support documents may result in disallowed costs of the activity and the Commission may seek a return of the costs as specified in Title 1, Chapter 173 of the Texas Administrative Code.

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 and ensure proper payments of qualified attorneys.

Wilson County Action Plan

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the continuing legal education of the attorneys has been implemented. Letters will be sent each January requiring a response by a certain date to remain on the list. Any attorney no complying will be removed from the list.

Contact person(s): District Judge's Office (830) 769-3750

Completion date: August 6, 2012

IV. SUMMARY

General Comments

The Commission wishes to express its appreciation to local county officials and employees of Wilson County for the time and courtesy extended during the fiscal monitoring visit. In particular, my gratitude extends to Judge Marvin C. Quinney, Constitutional County Court; Judge Donna S. Rayes, Local Administrative District Court; Judge Stella Saxon, Chairman of the Juvenile Board; and Ms. Kristin Labus, Assistant County Auditor, for accommodating the fiscal monitor activities. Those 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.

Wilson County Response

The 81st and 218th District Courts and staff are appreciative of the assistance provided to us by the Indigent Defense Commission. The monitoring visit was helpful in bringing to our attention some improvements needed to our system. We are especially appreciative of the recognition by Commission staff that our system of five counties with two judges poses certain challenges that require a specialized delivery of Indigent Defense Services. We look forward to a continued good relationship.

Contact Person: Donna S. Rayes, Administrative Judge