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Texas Indigent Defense Commission

RE: Texas Indigent Defense Commission (TIDC) Monitoring Reports

Commission,

The Board of District Judges and Board of Court-at-Law Judges have addressed the findings provided in the June 2019 reports that were the result of monitoring the fiscal and policy compliance of Fort Bend County's Indigent Defense System with the Fair Defense Act. The action plans to the findings are described below:

Fiscal Review

Finding One

Fort Bend County included some general court expenditures with the criminal indigent defense expenses in the FY 2018 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section §79.036 (e). These general court expenses are not eligible indigent defense expenditures and should not be included in the IDER.

Response: The amount of mental health costs included in the FY 2018 IDER that were not eligible amounted to \$77,925. To prevent this error in the future, the County will implement new procedures to identify and record mental health experts requested by and for the exclusive use of defense counsel in preparation of a defense.

Action Plan: Create an updated procedure document for County employees involved in processing indigent invoices. The document will outline steps to follow to identify and properly categorize indigent defense expenditures. Once completed the document will be distributed and training provided to ensure it is correctly implemented.

Contact Person(s): Robert E. Sturdivant

Completion Date: 10/1/2019

Finding Two

Four of the 84 attorney fee vouchers reviewed for FY2018 did not appear to be paid in accordance with the published fee schedule as required by CCP Article 26.05(b). The published fee schedule indicates an hourly rate of \$100 to \$200 will be paid for felony level cases.

Response: Based on past invoices the judge of the 240th disallowed some of the hours itemized on the voucher with no notation describing the exclusion. The judge of the 268th rounded invoices which caused the hourly rate to fall below the hourly rate range.

Action Plan: The redesign and standardization of attorney expense claim forms is currently in process and will address the best practices outlined in the recommendation. In addition, as part of the implementation of the new electronic document management system, a

workflow verification will be programmed to notify Judges when the total paid falls below the minimum hourly rate on the fee schedule. The fee schedules will be reviewed by 11/30/2019 for the felony and misdemeanor caseloads to ensure they are set properly with respect to the hourly rates approved by the Judiciary

Contact Person(s): Robert E. Sturdivant
Completion Date: 10/1/2020

Policy Review – Attorney of the Day TIDC Recommendation

In 2011, the statutory county courts used attorneys-of-the-day who would communicate with and advise defendants at misdemeanor dockets. The attorney-of-the-day assumed two roles: court administrator and legal counsel. As a court administrator, the attorney determined which defendants needed a re-set to hire counsel and informed defendants of the procedures for requesting counsel. As legal counsel, the attorney reviewed the prosecutor's file, advised the defendant, and handled pleas. Some defendants would receive legal advice from the attorney, but if the defendant did not accept the plea, the attorney would not continue with the case. Instead, a new attorney-of-the-day would be available at the next docket.

Under Article 26.04(j)(2) of the Code of Criminal Procedure, once counsel is appointed, he or she must represent the defendant until the case is disposed, unless permitted or ordered by the court to withdraw after a finding of good cause is entered on the record. Article 1.051(a) requires that, once appointed, attorneys be given sufficient time to adequately prepare for a proceeding. TIDC's initial review recommended that attorneys be given sufficient time to adequately prepare a case and continue to represent the client through case disposition.

In the responses to both the 2011 and 2016 monitoring reports, the statutory county courts stated the usage of the attorney-of-the-day would be included in the indigent defense plan. The statutory county courts also stated the attorney-of-the-day would only be used for administrative purposes, not for legal representation. In October 2017, the county courts added an addendum to its indigent defense plan which states the role of the attorney-of-the-day is "to assist with administrative functions during the dockets of the assigning court".

Courts must provide a method for defendants to request and obtain appointed counsel, and may do so by using an attorney-of-the-day as a court administrator (and can further assist defendants by providing written instructions from the judge, like those attached as Appendix). As a court administrator, expenses of the attorney-of-the-day are not to be reported on the annual Indigent Defense Expense Report and are not eligible for reimbursement by TIDC. If the attorney is also providing legal advice (such as negotiating and advising defendants on the consequences of pleas), then the court must allow for adequate time and space for the attorney to meet with clients and ensure that the attorney continues to represent defendants who do not plead guilty. If the attorney-of-the-day is used to represent defendants, this usage must be described in the indigent defense plan.

Response: The County Court-at-Law Judges confirmed on September 11, 2019 at the Board meeting that the Judges will comply with the administrative use of the attorneys-of-the-day.

Contact Person(s): Robert E. Sturdivant
Completion Date: 9/11/2019

Please let me know if you need any additional information to address the findings shown in the June 2019 reports to Fort Bend County

Thank you