



**TEXAS INDIGENT DEFENSE
COMMISSION**

Fiscal Monitoring Report

Motley County, Texas

FY 2015 Indigent Defense Expenses

Final Report

February 28, 2017

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EXECUTIVE SUMMARY

Motley County's fiscal monitoring desk review began on July 18, 2016. 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 grants.

The expenditure period of October 1, 2014 to September 30, 2015 (FY2015) was reviewed during the fiscal monitoring visit as well as documents to support the discretionary grant funding.

Summary of Findings

- The FY 2015 Indigent Defense Expense Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not supported by financial data provided.
- Civil case expenditures were included on the IDER.
- Attorney Fee Vouchers did not contain the itemization that is needed to comply with Article 26.05(c) of the Texas Code of Criminal Procedure.
- Attorney CLE hours are not maintained to verify attorney qualifications.

Objective

The objectives of this review were to:

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

Scope

The county's indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grants during FY2015. Records provided by the Motley County Treasurer's Office were reviewed.

Methodology

To accomplish the objectives, the fiscal monitor talked with the county treasurer, the county judge, and the district judge. The fiscal monitor reviewed:

- Eight of the nine paid attorney fee vouchers for verification;
- general ledger transactions provided by the Motley County Treasurer's Office;
- IDER and attorney fee schedule;
- public attorney appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts; and
- the county's local indigent defense plan

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Motley County was created in 1876 from Young and Bexar counties. The County was organized in February 5, 1891 and is named for Junius William Mottley, a signer of the Texas Declaration of Independence. The County serves an estimated population of 1,071. The County seat is Matador. Motley County is a political subdivision of the State of Texas. The County occupies an area of 990 square miles, of which .2 square miles is water. The neighboring counties are Hall, Cottle, Dickens, Floyd, Briscoe and King.

Commission Background

In January 2002, the 77th Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82nd Texas Legislature reorganized the Task Force as the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council, and is 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 the State of Texas. The Commission conducts these reviews based on the directive in Section 79.037(c) Texas Government Code, to “monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant...”, as well as Section 173.401(a), Texas Administrative Code, which provides that “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.”

Formula Grant

The County submitted the FY 2015 indigent defense on-line grant application to assist in the provision of indigent defense services. Motley County met the formula grant eligibility requirements and was awarded \$6,050 for FY 2015.

Discretionary Grant

Motley County did not apply for a discretionary grant for FY 2015; therefore no discretionary grant funds were reviewed.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Under Section §79.036(e) of the Texas Government Code, the county auditor or designated person shall prepare and send to the Commission in the form and manner prescribed by the Commission an analysis of the amount expended by the county for indigent defense in each court and in each case in which appointed counsel are paid.

Motley County prepared and submitted the FY 2015 Indigent Defense Expense Report (IDER) in accordance with Texas Government Code Section §79.036(e). However, errors were found in the reporting. Review of the general ledger and supporting attorney fee vouchers found that a total of nine vouchers representing eight district court cases and one county court case were paid to attorneys for representing indigent defendants in FY 2015. The attorney fees and case counts reported on the IDER for the District Court were under reported as only four cases were counted for that court. The attorney fees and case counts for the County Court were over reported since the remaining four district court cases were summed up for the dollar amount and recorded as one additional case in the county court. This was in addition to the one attorney fee voucher from the county court. Additionally, the IDER listed all of the cases at the felony level and did not allocate the county court case as a misdemeanor. A review of the attorney fee voucher included in the county plan showed that the voucher does not provide space for the attorney to report the level of offense.

Recommendation:

Appropriate county personnel should be trained to identify the various types of cases and appropriate courts to prepare the IDER properly.

The judges should review the attorney fee voucher included within the county's indigent defense plan and incorporate changes that would ensure the minimum information is provided for the auditor/treasurer to complete the required reporting of Texas Government Code Section §79.036(e).

County Response:

Motley County Action Plan

County/District Clerk shall be encouraged to attend courses to be trained to identify various types of cases and appropriate Courts to prepare IDER properly.

Judge shall reform the Attorney vouchers to incorporate changes that will ensure minimal information is provided for the Treasurer to complete required reporting as required by Gov. code 79.036 (e) .

Contact person(s): *County Judge Jim Meador*

Completion date: *ASAP*

Finding Two

The FY 2015 IDER submitted by Motley County under Texas Government Code Section 79.036(e) included the cost of attorney fees on civil cases with the criminal indigent defense attorney fees paid. Expenses associated with civil cases are ineligible and may not be included in the IDER. Three of the four cases mentioned in finding one as recorded as one case lump summed as a misdemeanor were for Child Protective Service (CPS) cases. This type of case is related to civil matters and should not be included on the criminal indigent defense expenditure report.

Motley County has overstated the county's criminal indigent defense expenditures due to the inclusion of civil case costs. Because the amounts reported are part of the basis for Formula Grant awards, the FY 2015 Formula Grant for Motley County was greater than would have been authorized if reported without the ineligible expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual found at the following website, <http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>

Recommendation:

Appropriate county personnel should be trained to identify the various types of cases and appropriate courts to prepare the IDER properly.

County Response:

Motley County Action Plan

County/District Clerk shall be required to attend courses to identify cases in appropriate courts to prepare IDER properly.

Contact person(s): *County Judge Jim Meador*

Completion date: *ASAP*

Finding Three

The county financial records indicated nine attorney fee vouchers were paid during FY 2015. Three of these vouchers were identified as payments for representation in CPS cases and are not under this review as those are for civil matters. One voucher was unavailable for review. Of the remaining five attorney fee vouchers reviewed, four did not meet the statutory requirements of the Code of Criminal Procedure (CCP) Article 26.05(c) because the vouchers did not include the amount requested to be paid by the attorney. CCP Article 26.05(c) reads in part "...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..." The fifth voucher did not contain the signature from the judge approving and authorizing the payment. However, it is noted that the amounts recorded and authorized by the judge(s) appear to be made in accordance with the fee schedule.

Review of the attorney fee voucher included in the county plan showed that the voucher does not provide space for the attorney to request a dollar amount to be paid. The voucher also does not provide space for the judge to provide written findings if he disapproves the amount the attorney requested.

Recommendation:

The judges should review the attorney fee voucher included within the county's indigent defense plan and incorporate changes that would ensure compliance with CCP Article 26.05(c).

The County should develop a process to confirm the judge has approved all vouchers.

County Response:

Motley County Action Plan

District Judge shall contact Texas Indigent Defense Commission to obtain their suggested vouchers and incorporate in to courts.

A red stamp will be utilized by the District/County Clerks to verify that an authorized signature has been obtained and the voucher is approved for payment.

Contact person(s): *District Judge Bill Smith*

Completion date: *ASAP*

Additional Reviewer Response: A model fee voucher can be found at the following link:
<http://www.tidc.texas.gov/media/16879/Model-Attorney-Fee-Voucher.doc>

Finding Four

Title 1, Texas Administrative Code (TAC) rule §174.1 provides that “an attorney who is otherwise eligible for appointment under Article 26.04, CCP may be appointed under this rule only if the attorney completes a minimum of six hours of continuing legal education (CLE) pertaining to criminal law during each 12-month reporting period.” Additionally, for appointment in juvenile cases, TAC rule §174.2 states that “an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period.” Alternatively, the rule provides an attorney is eligible if the attorney is board certified in criminal law or juvenile law, respectively.

The County could not document that attorney’s assigned criminal cases had met the CLE requirements to be eligible for appointment. The county may have made ineligible payments to these attorneys. (TAC rule §174.4 does allow for emergency appointment when no attorney meeting the CLE requirements is available)

Recommendation:

The county must implement a procedure to verify that all attorneys included on the current appointment list have met the current year’s CLE requirements.

County Response:

Motley County Action Plan

District Judge shall obtain from each appointed Criminal Defense Attorney a copy of annual verify report from the State Bar of Texas.

Contact person(s): *District Judge Bill Smith*

Completion date: *ASAP*

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

MOTLEY COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2013	2014	2015
Population Estimate	1,250	1,180	1,071
Juvenile Assigned Counsel	\$0.00	\$0.00	\$0.00
Capital Murder	\$0.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$0.00	\$7,360	\$3,110
Adult Misdemeanor Assigned Counsel	\$0.00	\$0.00	\$0.00
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$0.00	\$0.00	\$0.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$0.00	\$0.00	\$0.00
Expert Witness	\$0.00	\$0.00	\$0.00
Other Direct Litigation	\$0.00	\$0.00	\$0.00
Total Court Expenditures	\$0.00	\$7,360	\$0.00
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$2,107	\$2,432	\$1,000
Total Public Defender Expenditures	\$0.00	\$0.00	\$0.00
Total Court and Administrative Expenditures	\$2,107	\$9,792	\$4,110
Formula Grant Disbursement		\$2,107	\$6,050
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$1,000	\$0.00	\$0.00
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	0	3	6

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Motley County				
Year	2013	2014	2015	Texas 2015
Population (Non-Census years are estimates)	1,250	1,180	1,071	27,213,214
Felony Charges Added (from OCA report)	5	3	5	271,744
Felony Cases Paid	0	3	6	193,560
% Felony Charges Defended with Appointed Counsel	0%	100%	120%	71 %
Felony Trial Court-Attorney Fees	\$0.00	\$7,360	\$3,110	\$110,036,405
Total Felony Court Expenditures	\$0.00	\$7,360	\$3,110	\$126,091,674
Misdemeanor Charges Added (from OCA report)	6	6	1	503,299
Misdemeanor Cases Paid	6	3	0	222,408
% Misdemeanor Charges Defended with Appointed Counsel	100%	50%	0%	44 %
Misdemeanor Trial Court Attorney Fees	\$0.00	\$0.00	\$0.00	\$39,141,724
Total Misdemeanor Court Expenditures	\$0.00	\$0.00	\$0.00	\$40,061,131
Juvenile Charges Added (from OCA report)	0	0	0	31,813
Juvenile Cases Paid	0	0	0	41,068
Juvenile Attorney Fees	\$0.00	\$0.00	\$0.00	\$11,072,434
Total Juvenile Expenditures	\$0.00	\$0.00	\$0.00	\$11,747,908
Total Attorney Fees	\$0.00	\$9,792	\$4,110	\$165,942,108
Total ID Expenditures	\$2,107	\$9,792	\$4,110	\$238,029,838
Increase In Total Expenditures over Baseline	-.57%	99%	-17%	168%
Total ID Expenditures per Population	\$1.69	\$8.30	\$3.84	\$8.75
Commission Formula Grant Disbursement	\$5,215	\$2,107	\$6,050	\$23,931,689
Cost Recouped from Defendants	\$1,000	\$0.00	\$0.00	\$11,530,419

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

APPENDIX B – CRITERIA

Criteria

- Uniform Grant Management Standards
- Texas Government Code, Section 79.036. Indigent Defense Information
- Texas Government Code, Section 79.037. Technical Support; Grants
- Code of Criminal Procedures Art 26.04 Procedures for Appointing Counsel
- Code of Criminal Procedures Art 26.05 Compensation of Counsel Appointed to Defend
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.1
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.2
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter B Definitions
- FY2015 Indigent Defense Expenditure Report Manual found at:
<http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>

APPENDIX C – DISTRIBUTION LIST

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Motley County Judge
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Matador, TX 79244

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