



Austin Reeve Jackson

JUDGE, 114TH JUDICIAL DISTRICT COURT

100 N. Broadway Avenue, Room 212 Smith County Courthouse
Tyler, Texas 75702

5 February 2024

TIDC

209 W. 14th Street
Austin, TX 78701

Re: Response to October 2023 Monitoring Report

Members of the Commission:

On behalf of all the judges and other officials involved in coordinating and implementing our indigent defense plan, I want to thank you for the opportunity to provide you with our response to your October findings and let you know we appreciate your consideration of the same. After receiving your report we took some time to try and analyze your findings and take some steps that we hope will both help us to meet the goals you have set out for us moving forward as well as to improve the provision of indigent defense services in Smith County.

Regarding the two areas on which a response was requested, the first, Requirement Seven, relating to statutory data reporting, has the simplest solution. Here, the Commission had noted that some expenditures for competency evaluations were improperly included in the IDER. This was the result of good-faith efforts on the part of the courts and, primarily our contract defense attorneys, to streamline the acquisition of mental health assistance in indigent cases by reducing paperwork; namely, lawyers were being permitted to make informal, oral requests for such help at the earliest opportunity rather than, for example, meeting a client at a jail call, later returning to their office to type a motion, efile that motion, wait for it to arrive at the court and get a ruling, and then have the client put on a waiting list to see the mental health professional. While this system made things faster and easier for courts and counsel, it had the unintended consequence of leaving the auditor's office without all the paperwork they need for IDER purposes.

In response, the auditor's office has clarified that going forward, "only mental health evaluations that are sent with an *ex parte* motion or evaluations billed directly to the defense attorney will be reported. If either of these are present, we know that they were completed as part of the defense preparation which makes them an allowable expense."

At the same time, at least some of the courts will continue to look for creative ways to expedite the appointment of mental health experts while also creating the necessary documentation for IDER.

As to the second area, Requirement Four, discussing the prompt appointment of counsel, after discussing several potential solutions with various stakeholders we have begun the implementation of a couple of new procedures on a trial basis. Although there are slightly distinct circumstances surrounding the issue for felony and misdemeanor defendants, there is some overlap in our proposed solution.

As the Commission noted, and as our own investigation and anecdotal experience substantiates, much of the problem arises when incarcerated defendants are not appointed counsel within the 72-hour requirement. The reason for this appears to have several causes, two of the most common being (a) defendants who request an attorney while incarcerated but quickly make bond leading to a breakdown in communication between the defendant, the courts, and the jail staff who have been running paperwork between the two; and (b) defendants who request an attorney but whose paperwork languishes somewhere within the jail, the District or County Clerk's office, or the courts.

In response to these circumstances we are implementing some new procedures. First, regarding misdemeanor defendants, because all misdemeanor courts work off of the same appointment wheel and, therefore, it does not generally matter what attorney gets appointed to what case, we are now going to try having our Justices of the Peace appoint counsel at the time of magistration. Already, at this Article 15.17 hearing, the JPs are informing defendants of their right to counsel and often taking pauper's oaths requesting that lawyers be appointed. However, what happens to that paperwork after magistration is, at times, something of a mystery and, as noted, this is also when issues arise relating to defendants bonding out often hours after that hearing and well before any attorney is appointed and the defendant informed of that appointment. By having the JPs appoint counsel for misdemeanor defendants as soon as a lawyer is requested, we eliminate the need for the paperwork to travel (and potentially get misplaced) and also immediately inform the defendant as to who their lawyer is. As to how that appointment is documented, that question will be addressed below.

As to the appointment of counsel in felony cases, because we use a contract system, with individual courts having their own contract lawyers and there being additional concerns regarding not just how many cases those lawyers have but the nature of those cases and other considerations, it was not feasible to have attorneys appointed by the JPs at the Article 15.17 hearings. Thus a different solution was crafted for this issue which, again, arose most often when paperwork went missing between the jail, the District Clerk, and the courts.

These circumstances are similar to those inmates who do not request the appointment of counsel at the Article 15.17 hearing in both felony and misdemeanor cases but who later make a request through (sometimes random) jail staff. Both in such an instance as this, and in the case of felony requests made at magistration, where the paperwork was supposed to go and how it was to get there was sometimes unclear to the people tasked with handling the requests.

Our jail has now designated one person at the jail who will receive all of these requests for counsel, including those ruled upon by the JPs, in their office. Each morning bring that person will then bring, or have another deputy deliver, the appointment requests to the appropriate courts. Additionally, rather than rely on requests to be made to or then submitted by any jailer, requests for attorneys will now be delivered to inmates and returned to courts by the transport and classification officers who are trained and experienced in the process and who interact regularly with the individual courts.

While this process should not only result in the prompt appointment of counsel, limiting who receives and delivers the appointment requests should also address another issue raised by the Commission: defendants waiving counsel prior to a ruling on their request for an attorney. Here, the problem appears to occur as a result of courts not being aware a defendant has requested an attorney and the defendant not re-urging their request when before the court. For example, a common scenario was a defendant who did not request an attorney at magistration, sat in jail for a few weeks, later submitted a request for an attorney, but was then brought to court on a jail call soon after making the request but before the request actually made its way to a court. The defendant would then enter a time-served plea to get out of jail, never mention wanting an attorney, and shortly thereafter the request for an attorney made its way in the court's file so it appeared after the fact that it had been there all along.

By having the JPs appoint lawyers as soon as requested at the Article 15.17 hearing and by improving the delivery of appointment requests to both defendants and the courts, this issue should be greatly reduced, if not eliminated. Moreover, our presiding County Court at Law Judge is discussing this issue with all of our misdemeanor courts so they will be more aware of the problem as we begin to institute these changes.

What we have outlined here are just our initial plans. It is our hope that we will begin to simplify the process further and, by working with our IT department and District and County Clerks, make all of these records electronic, immediate, and immediately accessible to all of the various people involved in the process. We would appreciate any feedback and advice you have regarding our plans and should you have any further concerns, please do not hesitate to let me know.

Sincerely,

Austin Reeve Jackson
Local Administrative District Judge