

GRAYSON COUNTY COURTS AT LAW

Be it remembered that on this date, and pursuant to Art. 26.04 of the Texas Code of Criminal Procedure, the below-signed County Court at Law Judges for Grayson County hereby adopt, order, establish, and order published these countywide procedures, rules, and orders for timely and fairly appointing counsel for indigent defendants in the county arrested for or charged with a misdemeanor punishable by confinement.

1. DUTIES OF ARRESTING OFFICER AND MAGISTRATE

- a. The arresting officer and magistrate shall perform the duties set forth at Art. 15.17, Texas Code of Criminal Procedure, together with any other duties required by state or federal law.
- b. Any person arrested or taken into custody within this county shall be taken before a magistrate of this county without unnecessary delay, and not later than 48 hours after the person is arrested.
- c. The Justices of the Peace of Grayson County shall establish a plan to coordinate daily availability of a District or County Judge, Justice of the Peace or other magistrate authorized by law to provide magistrate warnings to arrested persons. Justice of the Peace, Precinct 1, shall be responsible for coordinating availability.
- d. The magistrate shall provide the warnings required by law, either in person or by closed circuit television or in any other manner authorized by law, and may use the Adult Magistrate Warning form to document said warnings.
- e. The magistrate shall inform the arrested person of the right to request appointment of counsel and of the procedures for requesting appointment of counsel.
- f. If the arrested person is indigent and requests the appointment of counsel, the magistrate shall, without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit or cause to be transmitted to the Chief Court Coordinator of Grayson County any forms or other information provided by the arrested person as may be necessary for appointment of counsel as set forth in this plan. The Chief Court Coordinator shall make available to the arrested person the forms necessary for the appointment of counsel as set forth in this plan, and shall ensure that the arrested person is provided reasonable assistance in completing said forms.

2. PROCEDURE AND FINANCIAL STANDARDS FOR DETERMINING INDIGENCY STATUS

- a. Consideration of Application by Court or Court's Designee. Persons appearing in court without counsel will be advised of the right to counsel and procedures for obtaining counsel.
 - i. Court or Court's Designee. Determination of indigency and appointment of counsel under this plan may be made by either County Court at Law Judge or by a person who may be designated by the Local Administrative County Court at Law Judge.
 - ii. Persons in Custody. After receiving notice from the magistrate that an arrested person has requested the appointment of counsel, the Court or Court's designee for the County Courts at Law shall review the Affidavit of Indigency and such other information bearing on the financial status of the defendant and make a determination of indigence status and appoint counsel not later than the end of the third working day after the date on which the Court or Court's designee receives the request, or, if later, within the time frame set forth in the Texas Code of Criminal Procedure.
 - iii. Persons Not in Custody. For persons out of custody, counsel will be appointed for persons determined to be indigent at defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.
 - iv. Pending Felony Charges. Determinations of indigence and appointment of counsel to represent persons who have been charged with or are subject to bond pertaining to an offense classified as a felony shall be handled pursuant to Rules, Orders and Procedures as may be adopted by the District Courts of this county.
- b. Criteria for Indigence.
 - i. Definitions.
 - 1. "Net household income" means all income of the defendant and spousal income actually available to the defendant. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the defendant has no income or lesser income.

2. “Household” means all individuals who are actually dependent on the defendant for financial support.
 3. “The cost of obtaining competent private legal representation” includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.
- ii. Financial Standards for Determining Indigence: The Court or the Court’s designee making court appointments of counsel for indigents shall consider the following standards for determining indigence and such other reasonable factors as the Court finds bearing on financial inability of a defendant to retain counsel:
1. Defendant’s income from any and all sources;
 2. Sources of the defendant’s income;
 3. Assets of the defendant;
 4. Property owned by the defendant, or in which the defendant has an interest;
 5. Outstanding obligations of the defendant;
 6. Necessary expenses of the defendant;
 7. The number and age of the defendant’s legal dependents;
 8. Spousal income available to the defendant; and
 9. Such other reasonable factors as determined by the judge.
 10. The Court or the Court’s designee shall not consider whether the defendant has posted bail, except to the extent that it reflects on the defendant’s financial circumstances.
- iii. Application Process. Persons who request a determination of indigency and appointment of counsel shall:
1. Complete under oath the Affidavit of Indigency concerning financial resources or such substantially similar Application as may be approved by the Court;
 2. Respond under oath to an examination regarding his financial resources by the judge responsible for determining whether the defendant is indigent; or
 3. Complete the Affidavit of Indigency and respond to examination by the judge.
- iv. Determination of Indigence. A defendant shall be considered indigent if the person falls within any of the following criteria, as established by evidence deemed competent and reliable by the court:

1. Poverty Guidelines. The accused/defendant's net household income is at or below the most recently published Federal Poverty Guidelines, as determined by the U.S. Department of Health and Human Services and published annually in the Federal Register. See, <http://aspe.hhs.gov/poverty/index.shtml>.
 2. Governmental Assistance. The defendant or the defendant's dependents have been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.
 3. In Custody. The defendant is currently serving a sentence in a correctional institution, is currently held in custody and unable to post bail, is currently residing in a public mental health facility, or is the subject of a proceeding in which admission or commitment to such a mental health facility is sought.
 4. Other Factors. A defendant who does not meet any of the financial standards above shall nevertheless be determined indigent if the defendant is otherwise unable to retain private counsel without substantial hardship to the defendant or the defendant's dependents, taking into account the nature of the criminal charge(s), the anticipated complexity of the defense, the estimated cost of obtaining competent private legal representation for the matter charged, and the amount needed for the support of the defendant and the defendant's dependents.
- v. Partial Indigence. Pursuant to Art. 26.05 (g), if the Court finds that the defendant is employed, and has financial resources that enable him to offset in part the costs of the legal services provided, the court shall ORDER that the defendant pay during the pendency of the charges the amount that it finds the defendant is able to pay. Failure to make payments as required may result in the dismissal and discharge of the attorney appointed.
 - vi. Employment of Retained Counsel. A defendant that retains counsel following the appointment of counsel shall be required to repay the costs of the court-appointed legal services provided.

3. PROCEDURE FOR NOTIFICATION OF APPOINTMENT

- a. At the time the Court or Court's designee finds that the defendant is indigent and appoints an attorney, the Court Coordinator shall notify both the defendant and attorney, and may use the Notice of Appointment form attached as **Appendix 3** to provide said notice.

- b. If the defendant is in custody, a copy of the Notice of Appointment shall be delivered to the Grayson County Sheriff to be provided to the defendant. If the defendant is not in custody, the Notice of Appointment shall be mailed to the defendant's address of record.
- c. The appointed attorney shall ordinarily be notified of the appointment by fax, but any other method of notification deemed expedient by the Court may be used in appropriate circumstances. At the time of the appointment, the attorney shall be informed whether the defendant is or is not in the custody of the Grayson County Sheriff. The appointed attorney is required to contact the defendant and provide proof of such contact to the Court.

4. STANDARDS FOR APPOINTMENT OF COUNSEL

- a. Misdemeanor Appointment List. All attorneys meeting the qualifications for appointment and who have been approved by a majority of the County Court at Law Judges shall be placed on the Misdemeanor Appointment List. Application shall be made in writing on a form approved by the Local Administrative County Court at Law Judge.
- b. Allocation of Appointments.
 - i. Attorneys shall be appointed from the Misdemeanor Appointment List using a system of rotation. Attorneys shall be appointed 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.
 - ii. Appointment by rotation shall not be required in the following circumstances:
 - 1. An attorney previously appointed to represent an accused/defendant that has a pending misdemeanor case shall also be appointed on any subsequent misdemeanor case(s) that the defendant might have prior to the completion of the initial appointment.
 - 2. If an accused/defendant has a pending felony charge/case, then the Court or the Court's designee may appoint the attorney that is representing the accused/defendant on the felony charge/case.
 - 3. If the Court or the Court's designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the Court or the Court's designee shall make an

effort to appoint an attorney who is capable of communicating in a language understood by the defendant.

- c. Qualifications for Appointment. Attorneys must possess the following qualifications to be eligible for the Misdemeanor Appointment List:
- i. Attorneys must be licensed to practice law in the State of Texas.
 - ii. Attorneys must be members in good standing with the State Bar of Texas.
 - iii. Attorneys must devote at least thirty percent (30%) of their time practicing criminal law in the State of Texas or must be board certified by the Texas Board of Legal Specialization in criminal law.
 - iv. Attorneys appointed must not have been found by any court to have engaged in professional misconduct within the last three (3) years.
 - v. Attorneys must not have received a public reprimand or greater penalty within the last three (3) years.
 - vi. Attorneys must not have been convicted, given probation, deferred adjudication or fined for a felony level offense, or a crime involving moral turpitude.
 - vii. Attorneys must not be currently under indictment or charged with a felony or a criminal offense involving moral turpitude.
 - viii. Attorneys must complete at least ten (10) hours of CLE in criminal law each year. This requirement shall be waived for the initial application process. All attorneys must file with the Chief Court Coordinator a copy of their Continuing Legal Education annual report form (or a list of CLE completed if the attorney has been licensed less than one year) no later than December 30th of each year. Such report shall reflect a minimum of ten (10) hours in criminal law. An attorney is allowed a maximum of five (5) hours of self-study to count toward CLE requirements. Attorneys may carry over up to 10 hours in criminal law to the next reporting year. Those attorneys who fail to comply with the CLE provisions of the Plan will be removed on January 16th of each year unless good cause is shown not to do so.
 - ix. Attorneys must have an office in Grayson County with a physical address that can be given to defendants.
 - x. Attorneys must complete an application/affidavit and provide all relevant information to be considered for inclusion in this Plan.

- xi. Attorneys applying for inclusion in this Plan agree to be bound by and accept as a condition of appointment the schedule for Court-appointed attorneys fees set forth herein.
- xii. Attorneys are required to act with competence, commitment and dedication to the interest of the accused/defendant and with zeal in advocacy upon their behalf.
- xiii. Attorneys are under an independent and ethical duty to supplement their application/affidavit with information that may affect their eligibility for court appointments under this Plan.
- xiv. An attorney meeting all the qualifications under the Plan must be approved by a majority of the County Court at Law Judges.

d. Duties/Responsibilities of Attorneys to Accused/Defendant.

- i. Appointed attorneys shall 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.
- ii. Attorneys are appointed to represent an indigent defendant until the defendant is acquitted, appeals are exhausted, or the Court, after entering a finding of good cause on the record, relieves the attorney and/or replaces the attorney with other counsel.
- iii. Attorneys appointed are responsible to ascertain whether an indigent client has a pending felony or is subsequently charged with a felony offense to which another attorney has been appointed. If this occurs, it shall be the misdemeanor attorney's immediate responsibility to inform the Court and the felony appointed attorney so that a substitution may be effected. The withdrawing misdemeanor attorney shall immediately make arrangements for an orderly transfer of his/her files(s) and also must submit their bill for services to the appropriate Court.

5. PROCEDURES FOR REMOVAL OF ATTORNEYS FROM THE COURT-APPOINTED LIST

- a. Grounds for Removal. An attorney may be removed from the appointment list if the attorney:
 - i. Has twice or more failed to contact or interview clients in a timely manner as required by Article 26.04(j)(1), Code of Criminal Procedure;
 - ii. Has submitted a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure;

- iii. Fails to maintain compliance with each of the appointment list guidelines;
 - iv. Has been found by a court to have provided ineffective assistance of counsel;
 - v. Has violated a rule of professional responsibility;
 - vi. Has been convicted of or received a deferred adjudication for any offense, other than an offense punishable by a fine only;
 - vii. Is under indictment or being formally charged with an offense, other than an offense punishable by a fine only; or
 - viii. Has intentionally misrepresented statements on the application for the appointment list.
 - ix. An attorney may also be removed from the appointment list for other stated good cause.
- b. Referral. If a judge believes that an attorney has violated any of the provisions listed in the paragraph above, the judge may refer an attorney to the board of judges for removal from the appointment list. The referral must be in writing and shall clearly state the grounds that form the basis of the referral. No disciplinary action with respect to the attorney being retained or removed from the appointment list may be made without such a referral.
- c. Notification/Hearing. Upon receiving an attorney referral, the board of judges shall notify the attorney in writing of the referral and inform the attorney of the grounds that form the basis of the referral. The notice shall also inform the attorney of the time and place the board of judges will meet to discuss the referral and give the attorney an opportunity to respond to the referral in writing or in person or both.
- d. Action. After the board of judges meets and gives the attorney an opportunity to be heard, the board of judges shall determine whether the attorney should:
- 1. remain on the appointment list at the same level;
 - 2. move to an appointment list for indigent defendants charged with less serious offenses; or
 - 3. be removed from the appointment list altogether.
- e. Additional. The attorney may be removed from the appointment list or moved to an appointment list for indigent defendants charged with less serious offenses by a majority vote of the judges present. In addition, the majority of the judges may also vote to require the attorney to take other rehabilitative measures. Removals from any list may be probated. For removal or probated removals, the judges ordering the removal may require the completion of rehabilitative measures as a condition of probation or reapplication. An order of removal should state in the order the earliest date at which the attorney may apply for reinstatement. An attorney who was removed from an appointment list under “Grounds for Removal” number 6 or 7 shall be immediately reinstated upon providing proof that the charges were dismissed or that the attorney was

acquitted, unless other grounds for removal exist against the attorney that would prohibit reinstatement. The decision of the board of judges is final and may not be appealed.

6. COMPENSATION OF COUNSEL APPOINTED UNDER THIS PLAN TO REPRESENT PERSONS CHARGED ONLY WITH MISDEMEANOR OFFENSES

- a. Fixed Rate Compensation. Attorneys appointed to represent eligible persons charged or being held by Grayson County only on misdemeanor offenses shall be compensated according to the following fee schedule adopted as provided under Article 26.05(b) of the Code of Criminal Procedure:

DISPOSITION	FEE
BY JURY OR NON-JURY TRIAL	\$400 PER HALF-DAY \$750 PER DAY
AGREED PLEA OR DISMISSAL OF CHARGES PRIOR TO JURY SELECTION	\$300
AGREED PLEA ON JAIL CHAIN DOCKET, REQUIRING ONLY ONE CLIENT CONSULTATION AND ONE COURT APPEARANCE	\$175
PREPARING AND FILING BRIEF ON APPEAL	\$1,200 PER APPELLATE BRIEF FILED
PRETRIAL HABEAS CORPUS OR BOND MOTIONS	\$100
REPRESENTATION OF PERSONS CHARGED WITH MULTIPLE MISDEMEANOR OFFENSES	UP TO AN ADDITIONAL \$100
REPRESENTATION OF PERSONS UNABLE TO SPEAK AND UNDERSTAND THE ENGLISH LANGUAGE	UP TO AN ADDITIONAL \$100

- b. Compensation Above Fixed Rate. Judges may approve payment ABOVE the fixed rate amounts in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel. At the time such circumstances become apparent, the attorney must advise the court, in writing, of the circumstances. Such information shall be provided to the presiding judge *ex parte* and *in camera*. At the time the attorney submits application for payment, the attorney must attach a detailed explanation of services performed including the date performed, the time spent on each activity, and a designation of in court or out of court time.
- c. Application for Payment. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior

approval shall be paid according to the procedures set forth below. Whenever possible, prior court approval should be obtained before expenses are incurred.

- i. Fee Voucher. All requests for payment shall be made using the auditor's approved Attorney Fee Voucher form or such substantially similar voucher as may be approved by the Court. Unless the voucher is submitted to the Court at the plea hearing, the voucher shall be submitted to the Grayson County Clerk's office located at the Justice Center.
- ii. Fixed Rate Compensation. If possible, the attorney should present the Court with a completed Attorney Fee Voucher form upon disposition of the case. In no event shall payment be requested more than 20 days after disposition of the case. Requests for payment submitted more than 20 days after disposition of the case WILL NOT BE APPROVED, except for good cause shown in highly unusual situations.
- iii. Compensation Above Fixed Rate. At the time the attorney submits application for payment, the attorney must attach a detailed explanation of services performed including the date performed, the time spent on each activity, and a designation of in court or out of court time. When a case is disposed of by agreed plea, the attorney will be compensated at the fixed rate, unless at the time of the plea the attorney applies to the Court for payment for compensation above the fixed rate and presents all necessary documentation.
- iv. Partial Payments. Except for good cause shown, no partial payment or advance payment will be made on cases. However, payment for the trial court disposition may be made pending appeal. Payment for services performed on appeal would then be made at the conclusion of all appeals.
- v. Appeals. Application for payment for preparing and filing briefs on appeal shall be submitted at the conclusion of all appeals. The application for payment shall be submitted to the presiding trial court judge. A copy of each brief prepared shall be submitted with the application for payment.

7. RULES FOR THE APPEAL OF A TRIAL COURT'S DISAPPROVAL OF REQUESTED COURT-APPOINTED ATTORNEY'S FEE

- a. Duties of Attorney Seeking Review of Trial Court's Order. An attorney who chooses to appeal the trial court's disapproval of the requested attorney's fees shall file a motion with the Presiding Judge of the Administrative Judicial Region within twenty (20) days of the trial court's signing of an order disapproving the requested court appointed attorney's fee. The appealing attorney shall set forth in his motion the following information:

- i. The cause number, style and caption of the case;
- ii. The type and classification of the offense;
- iii. The date that the attorney was appointed;
- iv. The date on which the case was disposed;
- v. Whether the case was disposed of by dismissal, a plea, a bench trial, or a jury trial;
- vi. the date and the length of each court appearance within the nearest one-tenth of an hour, if the attorney is requesting to be compensated based upon an hourly fee;
- vii. The date of each office conference or jail conference and the time spent within the nearest one-tenth of an hour;
- viii. A copy of any itemization submitted to the trial court for the purpose of payment including a statement of each date a service was rendered, the type of service rendered, the time expended in the rendering of said service, the expenses incurred, and a statement explaining any attached vendor's invoice or expert's services invoice;
- ix. Any factors that required unusual effort on the attorney's part to overcome in the representation of the defendant including but not limited to; need for an interpreter, uncharged crimes and Penal Code Sec. 12.45 issues, multiple defendants, etc.
- x. The date that the fee order the subject of the motion was signed;
- xi. A detailed statement by the attorney explaining how the trial court's order disapproving the requested court appointed attorney's fee deviated from the county's approved fee schedule adopted under the Texas Fair Defense Act.

The appealing attorney shall attach the following documents to the motion:

- i. A copy of the trial court's order disapproving the requested court appointed attorney's fee, if any; and
 - ii. A copy of the county's attorney fee schedule adopted pursuant to the Texas Fair Defense Act.
- b. Procedure. The appealing attorney shall file the original of the motion with the clerk of the court in which the case is pending, and shall file a certified copy of the motion with the Presiding Judge of the Administrative Judicial Region and with the trial court. The Presiding Judge of the Administrative Judicial Region shall abate any ruling on the motion for a period of not less than ten (10) days from the filing of the motion pending an opportunity for further review by the trial court.

After receiving the motion, the trial court may enter a revised payment order within the ten (10) day period following the filing of the motion. The trial court shall file a copy of the revised payment order with the Presiding Judge of the Administrative Judicial Region.

If a revised payment order is entered resolving the dispute to the satisfaction of the appealing attorney, the attorney shall file with the Presiding Judge a notice withdrawing the appeal. The motion will then be deemed moot and no further action will be taken by the Presiding Judge of the Administrative Judicial Region.

If the trial court's revised payment order does not fully resolve the issue to the satisfaction of the appealing attorney, the attorney shall, within five (5) days of the signing of the trial court's revised payment order, file with the Presiding Judge of the Administrative Judicial Region and the trial court a notice stating that the matter remains subject to contest. The attorney shall attach a copy of the trial court's revised payment order to said notice. The trial court shall, within five (5) days of the filing of the notice of contest, file written findings that set forth in detail the reason(s) for disapproving the requested attorney's fee. The findings should substantially comply with the form attached as **Appendix 5**.

If the Presiding Judge of the Administrative Judicial Region has not received notice of a resolution of the appeal prior to the expiration of ten (10) days from the filing of the motion, the Presiding Judge shall rule on the motion in accordance with the provisions of 26.05(c), Texas Cod of Criminal Procedure. The Presiding Judge shall sign an order that substantially conforms to the form order attached as **Appendix 6**.

8. LOCAL ADMINISTRATIVE JUDGE'S REPORTING COMPLIANCE

This Plan was adopted by unanimous vote of the below-signed judges and is effective beginning November 1, 2007.

SIGNED AND ORDERED this the 30th day of October, 2007.

James Corley Henderson
Judge, Grayson County Court at Law No. 1
Local Administrative Judge

Carol Siebman
Judge, Grayson County Court at Law No. 2