

Grayson County District Courts Plan

Preamble

Be it recommended that on this date, the below-signed District Judges for Grayson County hereby adopt, order, establish, and order published these countywide procedures, rules, and orders for the timely and fair appointment of counsel for indigent accused persons in Grayson County, Texas. This is the Grayson County plan to conform with the requirements of Senate Bill 7 passed by the Texas Legislature.

Prompt Magistration

Arresting Officer Responsibilities

A. The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested.

B. Unless arrested pursuant to an arrest warrant, bench warrant, capias, or other order of a magistrate or judge, necessary forms establishing probable cause must be completed and filed at the time an arrestee is booked into jail for any felony or misdemeanor punishable by incarceration.

Magistrate Duties

A. 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.

B. 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 attached.

C. It shall be the duty and responsibility of the magistrate before whom the adult person arrested is taken to inform said person, in clear language, as follows:

- i. Admonish the accused of the magistrate and Miranda warnings as provided by law;
- ii. Inform of indigent representation rights;
- iii. Make record of the magistrate warnings and right to court-appointed counsel for indigent, accused persons;
- iv. Notify of right to counsel and right to court-appointed counsel if indigent;
- v. Inquire as to whether the defendant is requesting court-appointed counsel.
- vi. must transmit or cause to be transmitted to the appointing authority an accused's request for counsel within 24 hours

Indigence Determination Standards

A. 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's net household income does not exceed 125% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published 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. 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 who retains counsel following the appointment of counsel shall be required to repay the costs of the court-appointed legal services provided.

Minimum Attorney Qualifications

A. The Judges hearing criminal cases shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists. To be eligible for an appointment list, an attorney must meet the following minimum requirements:

i. State Jail and Third Degree Felony Case Qualification Requirements

1. All attorneys on the appointment list must ensure all information on their application is correct;

2. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;

3. An attorney shall complete a minimum of **10** hours of CLE in the area of criminal law and procedure each year. All attorneys on the appointment list must file a certificate with the court administration office each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in criminal law. Continuing legal education activity completed with-in a one year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year. Continuing legal education activity completed during

any reporting period in excess of the minimum of **10** hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;

4. An attorney must maintain an office capable of receiving email, fax, and telephone calls;
5. An attorney must have the ability to produce typed motions and orders;
6. An attorney shall notify the court administration office promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.

ii. First and Second Degree Felony Case Qualification Requirements

1. An attorney must meet the general requirements for State Jail and Third Degree Felony appointments.
2. An attorney must have a minimum two (2) years experience in criminal law;

iii. Capital Case Qualification Requirements

1. Lead trial counsel must be on the list of attorneys approved by the local selection committee of this Administrative Judicial Region for appointment as lead counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
2. Second chair counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as lead trial counsel or second chair counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
3. Appellate counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as appellate counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.

iv. Appeal Qualification Requirements - An attorney must meet at least one of the following criteria:

1. Be currently board certified in criminal law by the Texas Board of Legal Specialization; or
2. Have personally authored and filed at least three criminal appellate briefs or post-conviction writs of habeas corpus; or
3. Have submitted an appellate writing sample approved by a majority of the judges; or
4. Have worked as a briefing clerk of an appellate court for a period of at least one year.

B. Approval for Appointment Lists- An attorney must be approved for each list by a majority of the District Court Judges hearing criminal cases.

C. Removal from Appointment List - The judges will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges.

i. Grounds for Removal- An attorney may be removed from the appointment list if the attorney:

1. 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;
2. has submitted a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure;
3. fails to maintain compliance with each of the appointment list guidelines;
4. has been found by a court to have provided ineffective assistance of counsel
5. has violated a rule of professional responsibility;
6. has been convicted of or received a deferred adjudication for any an offense, other than an offense punishable by a fine only;
7. is under indictment or being formally charged with an offense, other than an offense punishable by a fine only; or
8. has intentionally misrepresented statements on the application for the appointment list.
9. an attorney may also be removed from the appointment list for another stated good cause.

D. Reinstatement to Appointment Lists-

i. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan.

ii. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

E. Duties of Appointed Counsel - Appointed Counsel shall:

i. Notify the court within 72 hours of the receipt of appointment;

ii. Make every reasonable effort to:

1. Contact the defendant by the end of the first working day after the date on which the attorney is appointed; and
2. Interview the defendant as soon as practicable after the attorney is appointed;

iii. Represent the defendant until:

1. Charges are dismissed;
2. The defendant is acquitted;
3. Appeals are exhausted; or
4. The attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.

iv. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available

- to the defendant;
- v. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
 - vi. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
 - vii. Be prepared to try the case to conclusion either with or without a jury
 - viii. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
 - ix. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case; and
 - x. Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case; and
 - xi. Perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics.
 - xii. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

Prompt Appointment of Counsel

A. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the third working day after the date on which the appointing authority receives the defendant's request for court appointed counsel. Working day means Monday through Friday, excluding official state holidays. Counsel must be appointed whether or not a case has been filed in the trial court.

B. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

Attorney Selection Process

A. Felony Appointment List. All attorneys meeting the qualifications for appointment and who have been approved by a majority of the District Judges shall be placed on the Felony Appointment List. Application shall be made in writing on a form approved by the Local Administrative District Judge.

B. Allocation of Appointments.

- i. Attorneys shall be appointed from the Felony 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 case shall also be appointed on any subsequent case(s) that defendant might have prior to the completion of the initial appointment.

2. 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.

Fee and Expense Payment Process

A. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the judges hearing criminal cases in the county.

B. Payment Process: No payment of attorney's fees will be made other than in accordance with the rules set forth below.

i. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered no later than 60 days after the disposition of the case, the completion on the assignment or discharge of the attorney.

ii. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.

1. If a judge disapproves a request for compensation, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.

2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.

C. Payment of Expenses:

i. 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.

ii. Procedure with Prior Court Approval:

1. Appointed Counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state the below, as applicable:

- a. The type of investigation to be conducted or the type of expert to be retained;
- b. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
- c. An itemized list of anticipated expenses for each investigation and/or each expert.

2. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- a. State the reasons for the denial in writing;
- b. Attach the denial to the confidential request; and
- c. Submit the request and denial as a sealed exhibit to the record.

iii. Procedure without Prior Court Approval: Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.