

Walker County Court Plan

Preamble

9/22/2015

WHEREAS, the County Court at Law in Walker County seeks to ensure that indigent defendants continue to receive well qualified and knowledgeable representation by their appointed counsel; and

WHEREAS, the 77th Texas Legislature passed the Fair Defense Act effecting procedures and guidelines for the appointment of counsel for indigent defendants by amending the Texas Code of Criminal Procedure, Section 6, Article 26.04 to become effective January 1, 2002;

NOW BE IT RESOLVED that the Judge of the County Court at Law of Walker County, by formal action hereby adopts the following standards. Accordingly, the Judge of the Walker County Court at Law also ORDERS this plan be incorporated into the local rules of the Walker County Court at Law.

Prompt Magistration

9/22/2015

Arresting Officer Responsibilities

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.

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 misdemeanor punishable by incarceration.

Release of defendants arrested without warrant

A person arrested for a misdemeanor without a warrant and who is detained in jail must be released not later than the 24th hour after arrest, on a bond in an amount not to exceed \$5,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense.

If requested by the state, a magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest if a probable cause determination has not been made, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

Magistrate Duties

At the Magistrate's hearing, the magistrate should determine if accused can speak and understand English, or if the defendant is deaf. After making such determination, the magistrate shall, in an appropriate manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, do the following:

- (1) advise the accused of the accusation against him/her and any affidavit filed therewith;
- (2) admonish the accused of the right to retain counsel; the right to remain silent; the right to have an attorney present during any interview with peace officers or attorneys representing the state; the right to terminate an interview at any time; the right not to make a statement and that any statement made by the accused may be used against them; and the right to an examining trial.
- (3) Inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel.
- (4) Inquire as to whether accused is requesting that counsel be appointed.
- (5) Provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the accused at the time of the magistrate's hearing.

If the magistrate has reason to believe the accused is not mentally competent, the magistrate shall enter a request for counsel on behalf of the accused. Such a request will alert the appointing authority that counsel competent to represent mentally ill persons should be appointed.

In cases where the individual was arrested without an arrest warrant, bench warrant, capias, or other order of magistrate or judge, the magistrate shall determine if there is probable cause to believe the person committed the offense.

If probable cause has not been determined by a magistrate a person arrested for a misdemeanor must be released on bond, in an amount not to exceed \$5,000, not later than 24 hours after the person's arrest. If requested by the state, the magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

The magistrate shall set the amount of bail and any conditions of bond for the accused, if bail is allowed by law and has not been set by the court or magistrate issuing a warrant.

The magistrate shall record the following: (1) the date and time the accused was arrested and the date and time when he/she was brought before the magistrate; (2) whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel and (3) whether the accused requested appointment of counsel.

If the magistrate is not authorized to appoint counsel and if the accused requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the magistrate form and any other forms requesting appointment of counsel to the Walker County Court at Law. The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel.

If a request for counsel was not made at magistration, the magistrate will forward the magistrate form to the Walker County Court at Law to be put into the case file.

For persons arrested on out-of-county warrants, the magistrate will ask the defendant if they would like to request court appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the arrestee with the appropriate forms for requesting counsel. The magistrate will ensure assistance in completing the forms at the same time. The forms will be transmitted to the appointing authority in the county issuing the warrant within 24 hours of the request being made. Regarding the appointment of counsel, persons arrested in other counties on local warrants must be appointed counsel in the county that issued the warrant within 1 working day of receipt of the request in counties with a population of 250,000 or more and within 3 working days of receipt of the request in counties under 250,000. Persons arrested on out-of-county warrants must be appointed counsel in the county of arrest if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of arrest. [Art. 1.051(c-1), CCP].

Indigence Determination Standards

9/22/2015

Definitions, as used in this rule

“Indigent” means a person who is not financially able to employ counsel.

“Net household income” means all income of the accused and spousal income actually available to the accused. 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 accused has no income or lesser income.

“Household” means all individuals who are actually dependent on the accused for financial support.

"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.

Eligibility for Appointment

An accused is presumed indigent if at the time of requesting appointed counsel, the accused or accused's dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.

An accused is also considered indigent if the accused meets any one of the following three criteria below: the accused's net household income does not exceed 150% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register; the accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought; or the difference between the accused's monthly net household income and reasonable necessary expenses is less than \$500. Reasonably necessary expenses should include but are not limited to: rent or mortgage, food/groceries, car payment, car insurance, health insurance, medical bills, and utilities (water, electric, gas, phone).

An accused who does not meet any of the standards above shall nevertheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused's dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account: (1) the nature of the criminal charge(s); (2) anticipated complexity of the defense; (3) the estimated cost of obtaining competent private legal representation for the matter(s) charged; (4) the amount needed for the support of the accused and the accused's dependents; (5) accused's income; (6) source of income; (7) assets and property owned; (8) outstanding obligations; (9) necessary expenses; (10) the number and ages of dependents; and (11) spousal income that is available to the accused.

Factors NOT to be considered in determining indigence: (1) the accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent and (2) the resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent.

Only the accused's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

Indigence Proceedings

The appointing authority can require the accused to respond to questions about the accused's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided. Information

gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than: (1) determining if accused is (or is not) indigent; or (2) impeaching direct testimony of accused regarding the accused's indigence. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in Sections 1 and 4 of these rules and contained in Code of Criminal Procedure article 1.051.

An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused's financial circumstances occurs. An accused's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the accused, the accused's attorney, or the attorney representing the state. The accused's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following: evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or additional information regarding the accused's financial circumstances that shows that the accused does not meet any of the standards for indigence contained in these rules.

If an accused previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.

If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

Minimum Attorney Qualifications

9/22/2015

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:

Misdemeanor Qualification Requirements

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

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

An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted

in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission.

An attorney shall complete a minimum of 6 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 6 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only.

An attorney must have a minimum 1 year experience in criminal law.

An attorney may not have been the recipient of any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States within the last 2 years.

An attorney must maintain an office capable of receiving email, fax, and telephone calls.

An attorney must have the ability to produce typed motions and orders.

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.

Misdemeanor 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 3 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 1 year.

Approval for Appointment Lists

An attorney must be approved by a majority of the Statutory County Court Judges hearing criminal cases.

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 Statutory County Court Judges hearing criminal cases.

Reinstatement to Appointment Lists

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. An attorney who was removed from the appointment list for not submitting the attorney's annual practice time report may be immediately reinstated upon submission of the report so long as the attorney otherwise meets the other qualifications under this Plan. 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.

Duties of Appointed Counsel

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

Make every reasonable effort to contact the defendant by the end of the first working day after the date on which the attorney is appointed.

Interview the defendant as soon as practicable after the attorney is appointed.

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.

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.

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.

Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement.

Be prepared to try the case to conclusion either with or without a jury.

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.

Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case.

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.

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.

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

11/5/2015

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, regardless of whether the defendant is arrested in this county or another county. 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.

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.

Appointment Authority

The appointing authority for misdemeanors is the Judge of the Walker County Court at Law.

Defendants Appearing Without Counsel

If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement the court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.

If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or waived or has waived the opportunity to retain private counsel.

The attorney representing the state may not initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant has been given a reasonable opportunity to retain counsel; or waives or has waived the opportunity to retain private counsel.

Requesting an Attorney Prior to Arraignment

If a defendant wishes to request counsel prior to the initial appearance, the forms required to request counsel may be obtained at the Texas Indigent Defense Commission's website at <http://tidc.tamu.edu/public.net/> or from the criminal court coordinator. The defendant may submit these forms to the criminal court coordinator. The court will rule on all requests for counsel submitted in this manner.

Waiver of the Right to Counsel

A defendant may voluntarily and intelligently waive the right to counsel. A waiver obtained in violation of this section is presumed invalid.

If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

"I have been advised this ____ day of _____, 20____, by the Walker County Court at Law of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)"

A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

Attorney Selection Process

9/22/2015

The appointing authority will identify which of the appointment lists, discussed in Section 3 (attorney qualifications), is most appropriate based on the accusations against the defendant and will appoint the attorney whose name is first on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include the defendant requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients' language, if one is available; the defendant has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case; or other good cause exists for varying from the list.

Once appointed, an attorney's name will be moved to the bottom of the appointment list. 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.

Judicial Removal from Case

The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the

following: (1) counsel's failure to appear at a court hearing; (2) counsel's failure to comply with the requirements imposed upon counsel by this plan; (3) current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules; (4) the appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties; (5) the defendant requests an attorney, other than trial counsel, for appeal; or (6) the defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

Appointment of Replacement Counsel

Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this Plan.

Fee and Expense Payment Process

9/22/2015

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 misdemeanor criminal cases in the county.

Payment Process

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

An appointed attorney shall fill out and submit a fee voucher to the court for services rendered within 30 days of disposition of the case.

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

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.

An attorney whose request for payment is disapproved or is not otherwise acted on by the 20th 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.

Payment of Expenses

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.

Procedure With Prior Court Approval of Expenses

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: (1) the type of investigation to be conducted or the type of expert to be retained; (2) 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 (3) an itemized list of anticipated expenses for each investigation and/or each expert.

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: (1) state the reasons for the denial in writing; (2) attach the denial to the confidential request; and (3) submit the request and denial as a sealed exhibit to the record.

Procedure Without Prior Court Approval of Expenses

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.

Plan Documents

Walker County Court Affidavit of Indigence.pdf (9/22/2015 1:01:21 PM) [view](#)

Walker County Court Attorney Application for Appointment.pdf (9/22/2015 1:00:05 PM) [view](#)

Walker County Court Attorney Fee Schedule.pdf (9/22/2015 1:01:07 PM) [view](#)

Walker County Court Attorney Fee Voucher.pdf (9/22/2015 12:59:39 PM) [view](#)