

THIRD AMENDED
STANDARDS AND PROCEDURES
RELATED TO
APPOINTMENT OF COUNSEL
FOR
INDIGENT DEFENDANTS
IN
BRAZORIA COUNTY, TEXAS

**AMENDED STANDARDS AND PROCEDURES
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INDIGENT DEFENDANTS IN BRAZORIA COUNTY**

To implement the Texas Fair Defense Act (FDA, Acts 2001, 7th Leg.), Local Rules of Administration were adopted under Texas Local Government Code §74.093, to be effective January 1, 2010. These Amended Local Rules amend the Local Rules which became effective on January 1, 2002 as supplemented on January 7, 2003 and as amended on November 18, 2008, January 1, 2011, January 1, 2014, and September 22, 2015.

RULE 1 **APPLICABILITY**

The rules in this Part will govern criminal procedures in all municipal, justice of the peace, county and district courts in this County, notwithstanding any other local rule to the contrary.

RULE 2 **PROCEDURES FOR TIMELY APPOINTMENT OF COUNSEL**

2.1 *Prompt Appearance Before a Magistrate*

(a) The magistrates of this county will inform supervisory personnel of all law enforcement agencies operating within the county that each time a person is arrested, Texas law requires the officer making the arrest and any officer who later has custody to ensure that the person is taken before a magistrate without unnecessary delay, and never more than 48 hours after arrest. [Art. 14.06(a), CCP] A person arrested for misdemeanor without a warrant must be released on bond in an amount no more than \$5,000 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time. (Art. 17.033, CCP]

(b) The judges of this county will work with the magistrates, prosecutors, and law enforcement agencies in the county to devise appropriate procedures for meeting the time standards set forth in Rule 2.01(a).

(c) Whenever an arrested person is first brought before a magistrate, the magistrate shall record the date and time that the person was first arrested and when the person was taken into custody.

(d) Each time a magistrate or a judge has reasonable cause to believe that a law enforcement officer has engaged in unnecessary delay in taking a defendant before a magistrate after arrest, the magistrate or judge will inform the law enforcement officer's supervisors. In the event of repeated incidents of unnecessary delay by a law enforcement agency or officer, the judges will initiate communications with the law enforcement agency regarding corrective measures to ensure compliance with Rule 2.01 (a) and with any procedures adopted pursuant to Rule 2.01(b).

2.2 Responsibilities of the Magistrate

(a) Whenever an arrested person is first brought before a magistrate, the magistrate shall immediately perform the duties described in Article 15.17 of the Code of Criminal Procedure {FORM 1}, including:

- (1) The magistrate shall specifically inform the person arrested of the person's right to request appointment of counsel if the person cannot afford counsel.
- (2) The magistrate shall specifically ask the person arrested whether the person wants to request appointment of counsel.
- (3) The magistrate shall specifically inform the person of the procedures for requesting appointment of counsel.
- (4) The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the time of the Article 15.17 hearing.
- (5) The magistrate shall ensure that the above information and assistance are provided in a manner and using terminology and language that the arrested person can understand.
- (6) If the arrested person does not speak and understand the English language or is deaf, the magistrate shall ensure that the information and assistance are provided with the assistance of an interpreter consistent with Articles 38.30 and 38.31 of the Code of Criminal Procedure.
- (7) If a magistrate has cause to believe that a person is not mentally competent to decide whether to request counsel, the magistrate will enter a request for counsel on the person's behalf. The magistrate shall record this request for counsel in a way that alerts the person making the appointment that counsel competent to represent mentally ill defendants should be appointed.
- (8) The magistrate shall inform the person that if he is a foreign national, he has the right to contact his national consulate.

(b) In each case in which an arrested person is taken before a magistrate for an Article 15.17 hearing, the magistrate will make an electronic or written record documenting:

- (1) that the magistrate informed the person of the person's right to request appointment of counsel;
- (2) that the magistrate asked the person whether the person wanted to request appointment of counsel; and
- (3) whether the person requested appointment of counsel.

(c) The record required under Rule 2.02 may be combined on the same form used to record the arrested person's request for appointment of counsel and to transmit that request to the person making the appointment.

(d) The records required under this Rule shall be maintained for the same period required for all official records of criminal court proceedings.

2.3 *Transmittal of Request for Appointed Counsel*

If the person arrested requires appointment of counsel and has completed the necessary forms, the magistrate shall transmit or cause to be transmitted to the appointing judge or person(s) designated by the Judges to appoint counsel the forms requesting appointment of counsel. The forms requesting appointment of counsel shall be transmitted without unnecessary delay and so that the person making the appointment receives the forms no later than twenty-four (24) hours after request is made.

2.4 *Prompt Appointment of Counsel*

(a) Counsel shall be appointed in the manner specified in Rule 4 below, as soon as possible, but not later than the end of the first (1st) working day after the date on which the appointing Judge or person(s) designated by the Judges to appoint counsel receives the defendant's request for counsel. "Working Day" means Monday through Friday, except for official state holidays. If not previously appointed, counsel must be appointed at defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first. [Art. 1.051(j), CCP; *Rothergery v. Gillespie County*.] The Court shall advise any unrepresented defendant of the right to counsel and the procedures for obtaining counsel as provided in Art. 1.051(f), CCP.

(b) For persons arrested on out-of-county warrants, the magistrate will ask the defendant if he/she would like to request 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 the arrest. [Art.1.051(c-1), CCP].

(c) If an indigent defendant is arrested in another county based on this county's warrant, counsel will be appointed within one (1) working day of this county's receipt of the request for counsel.

(d) If a defendant is arrested in this county based on another county's warrant, counsel will be appointed for the defendant if, on the eleventh day after the arrest, the defendant is still in this county's custody.

(e) 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 Brazoria County Indigent Defense Coordinator. The defendant may submit these forms to: Brazoria County Indigent Defense Coordinator, 111 E. Locust, Room 309, Angleton, TX 77515. The court will rule on all requests for counsel submitted in this manner.

RULE 3 PROCEDURES AND FINANCIAL STANDARDS FOR DETERMINING INDIGENCE STATUS

At the Magistrate's hearing each accused shall be provided an opportunity to request court appointed counsel, if indigent. Each requesting defendant shall complete a sworn Affidavit of Indigency form {FORM 2}. The Magistrate will insure that reasonable assistance is available in completing the necessary forms for requesting appointment of counsel.

The Indigent Defense Coordinator or her designee shall then review the information and follow the procedures for determining whether a defendant is indigent, as follows:

3.1 *Definitions as Used in This Rule*

(a) "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); overtime, severance pay, unemployment benefits, disability or workman's compensation benefits; 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, retirement benefits, or annuities; and income from dividends, interest, rents, royalties, capital gains, periodic receipts from estates or trusts, regular payments from Social Security, veteran's benefits, food, rent or household expenses received in lieu of wages or as a result of any agreement to share household expenses, tax refunds or compensation for injury. 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.

b) "Non-exempt assets and property," means cash in hand, stocks and bonds, accounts at financial institutions, and equity in real or personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.

(c) "Household." means all individuals who are actually dependent on the defendant for financial support.

(d) “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.

3.2 *Financial Standards for Determining Indigence*

The financial standards set forth below shall be used to determine whether a defendant is indigent and shall be applied equally to each defendant in the county. In determining whether a defendant is indigent, the Judge or Indigent Defense Coordinator or her designee may consider the defendant’s income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of defendant’s children, and spousal income that is available to the defendant.

(a) A defendant is considered indigent if:

(1) the defendant’s net household income does not exceed 125% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and

(2) the value of the non-exempt assets and property owned by the defendant:

(i) does not exceed \$2,500.00;

(ii) does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

(iii) does not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.

(b) A defendant is considered indigent if, at the time of requesting appointed counsel, 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.

(c) A defendant is considered indigent if the defendant:

(3) is currently serving a sentence in a correctional institution, 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, and does not have sufficient funds in his inmate trust account to hire counsel; and

(4) has no non-exempt assets or property in excess of the amounts specified in paragraph 2.

(d) 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.

3.3 *Appointing Counsel for Partially Indigent Defendants*

(a) A defendant determined to be partially indigent shall be eligible for appointment of counsel only upon payment to the county of an appointment fee of \$100 if charged with one or more misdemeanors or \$250 if charged with one or more felonies. If a defendant determined to be partially indigent pleads or is found guilty, the court may order the defendant to comply with a payment schedule to reimburse the county for all indigent defense costs in the case.

(b) A defendant shall be considered partially indigent if the defendant does not meet any of the standards for indigence set forth in paragraph 2 and:

(1) The defendant's net household income is greater than 125% but does not exceed 175% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and

(2) The value of the non-exempt assets and property owned by the defendant:

(i) Does not exceed \$2,500.00;

(ii) Does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

(iii) Does not exceed double the estimated cost of obtaining private legal representation on the offense(s) with which the defendant is charged.

3.4 *Factors Not to be Considered*

(a) A defendant's posting of bail or ability to post bail may not be considered in determining whether the defendant is indigent or partially indigent except to the extent it reflects the defendant's financial circumstances as measured by Section 3.02. Even when a defendant has posted bail, the defendant's financial circumstances are measured by the financial standards stated in this rule.

(b) Except where the Defendant is a juvenile, the resources available to friends or relatives of the defendant may not be considered in determining whether the defendant is indigent. Only the defendant's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

3.5 *Procedures for Determining Indigence*

(a) As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, the Magistrate shall provide each arrested person who wants to request appointment of counsel with an Affidavit of Indigency on which the arrested person will provide under oath the necessary information concerning the person's financial resources and will indicate that the person requests appointment of counsel. The Magistrate shall provide the arrested person reasonable assistance in completing the form.

(b) The form requesting appointment of counsel and containing the information concerning the arrested person's financial resources will be transmitted to the Indigent Defense Coordinator or her designee.

(c) The court designee or the appointing judge will determine whether the person meets the financial standards for indigence in Section 3.02 . The determination will be recorded on the form requesting appointment of counsel and the form will be filed with the other orders in the case.

(d) The arrested person may be required by the Indigent Defense Coordinator or her designee or the appointing judge to respond to examination regarding the person's financial resources. Any person receiving an appointment of counsel from the Master List shall be required, if requested by the Indigent Defense Coordinator or her designee from time to time during the pendency of the proceeding, to submit a current Affidavit of Indigency.

(e) A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigence or to impeach the direct testimony of the defendant regarding the defendant's indigence.

(f) A defendant determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the defendant's financial circumstances occurs.

(g) A defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court proceeding based on evidence of a material change in the defendant's financial circumstances. A defendant's status as indigent or not indigent also may be reviewed in a formal hearing at any stage of a court proceeding based on additional information regarding financial circumstances, subject to the presumption. If a defendant previously determined to be indigent subsequently is determined not to be indigent, the attorney shall be compensated by the county in accordance with these Rules for time reasonably expended on the case.

(h) If a defendant was employed at the time of his arrest and there is a reasonable probability that the defendant can be employed in a same or similar position, or if the defendant was intentionally unemployed or under-employed, the Indigent Defense

Coordinator or her designee may consider the income the defendant made, or reasonably can make, in determining indigency.

3.6 *Payment by Defendant*

As provided in Texas Code of criminal Procedure, Article 26.05, a court that finds that a criminal defendant has financial resources to offset, in part or in whole, the costs of legal services provided under this Part, may order the defendant to pay the county that portion of the costs of legal services, provided that it finds that the defendant is able to pay. If a defendant is placed on probation or deferred adjudication, the court, as a condition of probation, may require repayment of all or a portion of the county's cost for providing legal representation if it does not impose a substantial financial hardship on the defendant or his legal dependents.

Upon a determination of indigency, the Indigent Defense Coordinator or her designee or the Judge presiding over the case shall sign the form indicating the accused is indigent and shall immediately appoint an attorney pursuant to the approved attorney appointment list plan.

3.7 *Terminology*

In these Rules, the singular includes the plural and the masculine includes the feminine as the situation requires.

RULE 4 **SELECTION AND APPOINTMENT OF COUNSEL**

4.1 *Method of Appointment*

Attorneys shall be appointed to represent indigent defendants from a Master List using a system of rotation as described in Article 26.04(a) of the Code of Criminal Procedure and as further specified in this rule.

4.2 *Public Appointment Lists*

The Criminal Courts Committee has established the Master List from which counsel for indigent defendants shall be appointed.

4.3 *Qualifications for Attorneys to Receive Court Appointments in Criminal and Juvenile Delinquency Cases*

(a) *Basic Requirements for All Attorneys:*

- A member in good standing of the State Bar of Texas;
- A member in good standing of the Brazoria County Bar Association; provided however that if an attorney who is on the Master List fails to timely pay dues for the coming year, the attorney will not receive further appointments until the dues

are paid, and if they are not paid within 3 months the attorney will be removed.

- A person of good moral character, and;
- (a) Complete a minimum of ten (10) hours of certified C.L.E. credits annually in criminal law. No self-study hours will be counted. Continuing legal education activity completed within a one-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirement for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum ten (10) hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one year only. Completion of the required ten (10) hours will be certified to the Indigent Defense Coordinator's office on or before the 1st day of each December by filing a sworn annual certification form with the Indigent Defense Coordinator's office {FORM 4}; or (b) is currently certified in criminal law by the Texas Board of Legal Specialization; or (c) is over seventy (70) years of age, exempt from CLE Requirements by the State Bar of Texas, and has been approved to handle First Degree Felonies under the Brazoria County Indigent Defense Plan for at least six (6) consecutive years immediately prior to the start of the year the attorney is applying for.
- 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 outline form to the Texas Indigent Defense Commission.

(b) *Capital Murder Where Death Penalty Is Sought by State:*

1st Chair

- Be on the approved list of attorneys qualified for capital murder appointment as maintained by the 2nd Administrative Judicial Region of the State of Texas.

2nd Chair

- Have at least five (5) years' experience in criminal litigation and tried to verdict as lead counsel at least eight (8) felony cases before a jury within the past five (5) years for offenses punishable as 1st or 2nd degree felonies, or;
- Be on the approved list of attorneys qualified for capital murder appointment as 2nd Chair as maintained by the 2nd Administrative Judicial Region of the State of Texas.
- Have trial experience in use of and challenges to mental health and forensic expert witnesses.

(c) *Capital Murder Where Death Penalty Is Not Sought by State of Texas:*

- Board certified in criminal law, or;
- Have at least five (5) years' experience in criminal litigation and tried to verdict as lead counsel at least eight (8) felony cases, excluding State Jail felonies, within the last five (5) years.
- Have trial experience in use of and challenges to mental health and forensic expert witnesses.

(d) *First Degree Felonies:*

- Board certified in criminal law, who are therefore qualified to handle all 1st degree felonies and any lesser offenses for purposes of this plan, or;
- Have at least four (4) years prior experience in criminal litigation, and;
- Tried to conclusion at least four (4) felony jury trials as lead counsel within the last ten (10) years.

(e) *Second Degree Felonies:*

- Have at least three (3) years' experience in criminal litigation, and;
- Prior experience in two (2) or more felony jury trials as lead counsel within the past ten (10) years, or
- Active participation as a second chair in two (2) or more trials in a Brazoria County District Court for a Second Degree or higher felony within the last ten (10) years. Prior approval before the trial commences is required from a Brazoria County Judge who is presiding over the District Court trial, and;
- Either be on the Master List for Third Degree and State Jail Felonies, or meet the qualification for Third Degree and State Jail Felonies and be placed on that list contemporaneously with the application for appointment to the Master List for Second Degree Felonies.

If any attorney uses active participation in two (2) or more Brazoria County District Court trials to qualify, it will be the responsibility of the attorney to promptly obtain written verification from the Judge that the attorney had actively participated in the trial, and this written verification shall be filed with the application.

(f) *Third Degree Felonies and State Jail Felonies:*

- Have at least one (1) year prior experience in criminal litigation, and;
- Prior experience as lead counsel in at least three (3) criminal jury trials, excluding Class C misdemeanors, within the last five (5) years.

(g) *Misdemeanors:*

- Meet basic requirements for all attorneys;
- Be familiar with the docket call procedures for all County Courts at Law; and,
- To have tried, as lead counsel, a felony trial; actively second chaired two (2) felony trials; or had two (2) prior misdemeanor trials as lead counsel, exclusive of Class C Misdemeanors.

(h) *Appellate Appointments:*

Capital Murder - Death Penalty

- On the approved list of attorneys qualified for capital murder appellate appointments as maintained by the 2nd Administrative Judicial Region of the State of Texas.

Capital Murder - No Death Penalty

- Board certified in criminal law, or;
- Have personally authored at least five (5) criminal appellate briefs within the last seven (7) years.

First and Second Degree Felonies

- At least three (3) years' experience in criminal litigation or appellate practice and at least two (2) appellate briefs filed in criminal cases within the last five (5) years.

Third Degree Felonies and State Jail Felonies

- At least two (2) years prior experience in criminal litigation and at least one (1) brief filed in a criminal or juvenile case within the last five (5) years, or;
- Otherwise deemed qualified by a majority vote of the Criminal Courts Committee.

Misdemeanors

- Two (2) years prior experience in criminal litigation and at least one (1) brief filed in a criminal or juvenile case; or
- To have tried, as lead counsel, a felony trial; actively second chaired two (2) felony trials; or had two (2) prior misdemeanor trials as lead counsel, exclusive of Class C Misdemeanors; or
- Otherwise deemed qualified by a majority vote of Judges handling criminal cases.

4.4 Requirements for Consideration of Appointment by Criminal Courts Committee

Only attorneys who make application will be considered for appointment on felony and misdemeanor cases. By submitting an application the attorney represents that he is, and at all times will remain, in compliance with all provisions of Rule 4.05.

Notices are to be prominently posted outside all criminal courtrooms in the Brazoria County Courthouse informing interested attorneys to pick up an application form {FORM 3} for copying from the Indigent Defense Coordinator's office or the Law Library or they can obtain a copy from the Brazoria County website (www.brazoria-county.com).

Only those attorneys who have completed the application form {FORM 2} and returned the completed application form to the Indigent Defense Coordinator's office no later than December 1 of each year, shall be considered for appointment to represent indigent defendants beginning January 1 of the following year.

Before an attorney will be considered for appointment, the attorney must have attended an orientation meeting to be conducted by the Criminal Courts Committee. At least two (2) orientation meetings will be held each year.

Any attorney who, during a calendar year, desires to participate as an appointed attorney for indigent defendants and who did not complete an application prior to December 1 of the prior calendar year may secure an application from the Indigent Defense Coordinator's office and complete and return that application to the Indigent Defense Coordinator's office. Once that application is received, it shall be brought before the Criminal Courts Committee at their next regularly scheduled Appointments Meeting for consideration. If the application is approved by a majority vote of Judges, then that attorney's name will be added to the approved appointed list to handle those cases for which the attorney has qualified and been approved to handle by the Criminal Courts Committee. An attorney approved to handle a particular level is deemed to be approved for all lower levels.

Appointments Meetings shall be held in June and December of each calendar year.

Any attorney who is currently on the approved list for appointment of counsel for indigent

defendants and who feels that by experience and education he has become qualified to receive appointment for higher grade offenses which he was previously not approved to handle, may make application to the Criminal Courts Committee for a reevaluation of their qualifications and standing on the list. The application for reevaluation shall be considered at the next regularly scheduled meeting of the Criminal Courts Committee.

Nothing herein shall limit the discretion of a judge to appoint counsel in any case, except as provided by law.

4.5 Responsibilities of Court Appointed Attorneys

Court appointed attorneys on the Master List must:

(a) Make every reasonable effort to contact the indigent defendant not later than the end of the first working day after notification of appointment is received and to interview the defendant as soon as practicable, and except for good cause shown to the Judge presiding over the case, the interview must be within fifteen (15) days of the date of the appointment. The failure of an attorney to comply with this requirement shall be grounds for the judge to deny, or significantly reduce, any compensation claimed by the attorney for services rendered.

(b) Maintain a phone which is either the attorney's personal cellular telephone with voicemail or answered by a receptionist or answering service from 8:00 a.m. until 12:00 noon and from 1:00 p.m. until 5:00 p.m., Monday through Friday (except for Brazoria County official holidays as designated by the Brazoria County Commissioner's Court) and which receptionist or answering service can promptly locate the attorney and notify said attorney of the appointment or hearing setting.

(c) Maintain a FAX number or e-mail address to which faxes or e-mail may be received twenty-four (24) hours a day, seven days a week. Any change in their notification numbers or e-mail address must be given in writing to the Indigent Defense Coordinator's office for Brazoria County within twenty-four (24) hours of any change.

(d) Represent a defendant until the defendant is either acquitted, the case dismissed, enters into a plea bargain agreement and final judgment is entered, or; if convicted by a Court or Judge, until appeals are exhausted or waived, or; the Court, after entering a finding of good cause on the record, relieves the attorney or replaces the attorney with other counsel.

(e) (1) Maintain primary residence in Brazoria County, Texas; (2) maintain principal legal office in Brazoria County, Texas; or be a full-time employee, associate, or partner of a partnership that has, as its sole purpose, the practice of law, or be a member of a Professional Corporation that satisfies the requirements of (e)(1) or (e)(2); or (3) have been a qualified member in good standing Brazoria County Indigent Defense Plan Master List for the four (4) consecutive years prior to the year for which the attorney is applying, wherein such attorney will be "grandfathered" into this revised Plan without the requirement of satisfying either (e)(1) or (e)(2) herein.

- (f) [Intentionally Omitted]
- (g) Annually file with the Indigent Defense Coordinator's office by December 1st of each year an accurate copy of his State Bar of Texas Minimum Continuing Legal Education Annual Verification Report and a sworn "Annual Certification of Attorney" that he is in compliance with the general and specific qualifications required under this Plan {FORM 4}.
- (h) Promptly notify the Indigent Defense Coordinator's office in writing of any matter that may disqualify the attorney by law, regulation, rule or under this Plan from receiving appointments to represent indigent defendants.
- (i) Timely appear and represent each appointed client at each and every court date scheduled by the court. The only exceptions for a designated substitute attorney to appear for the appointed attorney will be for a docket appearance where previously approved by the trial court and with the approval of the defendant, and to consummate a previously negotiated case settlement with the approval of the trial court and the defendant.
- (j) Submit only a properly documented and accurate "Attorney Fee Voucher, Brazoria County" on an appointed case {FORM 5}.
- (k) Zealously represent my client but always within the bounds of the law and legal ethics of Texas
- (l) Not serve as surety on any bond for any defendant he is appointed to represent. This also prohibits any member of any law firm the attorney is a member of, or a partner in, or any agent of the attorney serving as surety for any defendant the attorney is appointed to represent.
- (m) Not accept any payment, or receive anything of value, from, or on behalf of any defendant the attorney is appointed to represent without first notifying the Court in writing and being granted the right by docket entry to receive the payment or item of value.
- (n) 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 outline form to the Texas Indigent Defense Commission.

4.6 *Criminal Courts Committee*

The Criminal Courts Committee is composed of the Judges of the 23rd, 149th, 239th, 300th and 412th District Courts and the Judges of County Court at Law numbers 1, 2, 3 and 4. The local Administrative District Court Judge of Brazoria County shall preside at all Committee meetings

and hearings, unless the Presiding Judge is absent in which case the local Administrative County Court Judge shall preside, and announce any Committee decisions. The Committee may periodically adopt policies, procedures and guidelines to implement the plan and guarantee effective representation to all indigent felony offenders. If any new District Court or County Court at Law handling criminal cases shall be created by due process of law then the Judge of the newly created court shall be an automatic member of the Criminal Courts Committee.

The Criminal Courts Committee shall meet at least once every four (4) months. The presence of a majority of the then sitting Judges constitutes a quorum, and no vote on any matter may be taken if less than a majority of Judges are in attendance at a duly posted meeting. No motion or matter may be passed nor change implemented without a majority vote of the quorum in attendance at any duly posted meeting, except that any amendment to the Brazoria County Plan must be approved by two-thirds (2/3) or more of the Judges who are members of the Criminal Courts Committee. No proxies are permitted.

4.7 *Compilation of Master List*

Attorney placement on the Master List will be initially determined by a majority vote of the Criminal Courts Committee. The Judges shall meet to consider, vote and compile the Master List after December 1, but before the following January 1, of each calendar year. In addition to complying with all of the objective qualifications in Sections 4.04 and 4.05, an attorney may be placed on the Master List only if a majority of the Judges approve the attorney's placement on the Master List.

The vote of a majority of the Judges is required for an attorney to be included on the Master List.

If one or more Judges vote "Abstain" then the application shall be deemed approved if a majority of the Judges who did not "Abstain" vote "Approved" on the application.

After the Master List has been compiled, attorneys shall report in writing any material changes in their information and qualifications to the Indigent Defense Coordinator's office within fifteen (15) days of the change, occurrence or event, except that a change in Fax numbers or e-mail addresses must be reported within twenty-four (24) hours.

Any new applications shall be governed by the procedures set out in Rule 4.04.

4.8 *Judicial Economy*

If an attorney is previously appointed to represent an indigent defendant on a pending, unresolved case, the attorney shall be responsible to determine whether the defendant has other indicted or unindicted charges. If other charges exist, the attorney will handle those charges if he is qualified for those charges. The appointing Court will appoint the same attorney previously appointed to represent that same indigent defendant instead of appointing from the attorneys next up on the Master List. However, if the other charge or charges against the indigent defendant are of a higher grade or level and the previously appointed attorney is not qualified to handle the higher level of offense charged, then new qualified counsel shall be appointed from the Master List as set out herein to represent the indigent defendant on all charges pending against the

defendant.

If an indigent defendant is placed either on regular probation or deferred adjudication and a motion is filed to either revoke or adjudicate the defendant, and if the defendant is still indigent and desires to have counsel appointed, the appointed attorney representing the defendant on the original charge shall be appointed on the revocation or motion to adjudicate.

By making application to be placed on the Master List, an attorney agrees, and the Criminal Courts Committee shall require the attorney, to handle all charges which either are pending, or which are filed after the date of the appointment against the same defendant, provided the attorney is qualified to handle the cases. The cases will be handled by the first attorney appointed that is qualified to handle all matters, otherwise it will be handled by the attorney representing the defendant for the most serious offense. For example, if an attorney is appointed to handle a 1st Degree Felony, and a defendant currently has pending, or subsequently has filed, a misdemeanor, the first appointed attorney shall represent the defendant on all cases provided he is qualified, otherwise the attorney appointed to represent the defendant on the 1st Degree Felony shall be required to represent the defendant on all cases. If the attorney refuses to represent the defendant on all cases, the attorney's name will be removed from the Master List.

4.9 *Indigent Defense Coordinator*

The duties of the Indigent Defense Coordinator shall include:

- (a) Maintain and update the list of qualified attorneys, and investigate and track attorney qualifications;
- (b) Coordinate Magistrate hearing procedures during weekends and official County holidays;
- (c) Maintain the rotation schedule of appointed attorneys;
- (d) Notify the Local Administrative District Court Judge and Local Administrative County Court at Law Judge of any non-compliance with the policies and standards of the Task Force on Indigent Defense;
- (e) Assist in the County Reporting Plan and the obtaining of Technical Report Grants from the State of Texas;
- (f) Perform all other duties designated by the Criminal Courts Committee;
- (g) Receive and forward to the Criminal Courts Committee complaints toward court appointed attorneys;
- (h) Screen all applicants requesting court appointed attorneys;
- (i) Jail visits to meet with inmates who desire to have court appointed attorneys;

- (j) Coordinate appointments between felony and misdemeanor courts; and
- (k) Perform such others tasks as the Criminal Courts Committee may assign.

4.10 *Assignment of Attorneys*

The following method shall be used to assign attorneys from the appropriate public appointment list to represent individual defendants:

- (a) The Indigent Defense Coordinator or her designee is delegated the responsibility for making appointments for all defendants charged with felonies provided that a judge has the discretion to make appointments in any case. Each county court at law judge will serve as appointing judge for all defendants charged with misdemeanors in their respective court, as well as juvenile cases, and may delegate this responsibility to a designee.
- (b) The appointing judge or delegated person will:
 - (1) Receive all requests for appointment of counsel transmitted by the magistrate as provided in Rule 2;
 - (2) Select and appoint the appropriate counsel to represent each indigent defendant as provided in this Rule; and
 - (3) Cause all interested parties to be notified of the appointment as provided in Rule 6.
- (c) Any appointing judge may delegate any of the responsibilities described in this Rule to a magistrate or to an indigent defense administrator who has been designated by the judges and is a county employee hired to address administrative matters associated with indigent defense (this shall include the Court Administrator, the Indigent Defense Coordinator or her designee, deputy county clerks, and court coordinators).
- (d) The appointing judge or person delegated to make the appointment will appoint the lawyer whose name appears next in order on the public appointment list that corresponds to the most serious offense as currently charged, unless:
 - (1) The defendant requesting appointed counsel does not understand English, in which case the person making the appointment will appoint the lawyer who both appears next in order in the list and can communicate with the defendant in the defendant's language;
 - (2) The person making the appointment exercises discretionary authority to appoint one of the attorneys whose name is among the next five names in order on the appropriate list; or

(3) In unusual circumstances, the person making the appointment enters a written finding of good cause on the record for appointing any qualified, willing attorneys regardless of whether the attorney's name is among the first five names on the appropriate list.

(e) Whenever a lawyer is appointed out of order under Rule 4.10(d), the lawyer who is appointed out of order will move to the last place in order on that list, and any lawyer who was not appointed will remain at the top of the list until appointed or removed from the list.

(f) Each attorney appointed under this Rule to represent the defendant in the trial court is appointed to represent the defendant through trial and post-trial proceedings in the trial court.

(g) At the conclusion of all proceedings in the trial court, including post-trial motions, if an indigent defendant wishes to file an appeal, the appointing judge or person(s) designated by the judges to appoint counsel will appoint the lawyer whose name appears next in order on the Appellate List subject to the same rotation requirements as those is Rule 4.10(a).

RULE 5 REMOVAL OF ATTORNEYS FROM THE MASTER LIST

5.1 *Annual Review*

The Criminal Courts Committee will conduct an annual performance review of all attorneys on the Master List on or before March 1st of each year or as needed. The performance review may include, but is not limited to: initial contact and communication with client; maintenance of communication tools (current fax, phone and mailing address) allowing both the Court and Court Administrator or Verification Officer to contact the attorney; knowledge and application of the law; proper trial procedures; ability of the attorney to effectively represent the indigent defendant in the court room before a Judge or jury; whether the attorney regularly or routinely presents claim vouchers to the Courts for work done in the representation of indigent defendants where the amounts claimed are in excess of the usual and normal fees claimed by attorneys on the Master List of similar ability and experience for representation of indigent defendants charged with the same level or type of offense and performing the same type of legal procedures and representation, and; keeping scheduled court appearances. A majority of the judges who hear cases at the level to which the attorney is assigned shall determine if the attorney will remain on the Master List at the same level, remain on the Master List at a lower level, or be removed from the Master List.

5.2 *Removal and Reinstatement*

The judges hearing criminal cases in Brazoria County recognize the obligation to closely monitor those attorneys approved to be on the Master List and to carefully consider the removal of attorneys from the Master List who provide substandard representation to their clients. An attorney may be removed, or be allowed to remain on the Master List subject to complying with conditions as may be imposed by the Committee, at any meeting of the Criminal Court Committee.

(a) Grounds for Removal

An attorney shall be removed from the Master List and from any case to which the attorney has been appointed for any of the following:

- (1) the attorney is convicted or receives deferred adjudication for any felony, including controlled substance offenses;
- (2) the attorney is convicted or receives deferred adjudication for any crime of moral turpitude;
- (3) the attorney is under indictment, information, criminal complaint or other formal charge for a felony or crime of moral turpitude;
- (4) the attorney intentionally misrepresents any information on an Application for Indigent Representation, on any Attorney Fee Voucher, or on any Annual Certification of Attorney; or on the Annual Certification to The Texas Indigent Defense Commission required in Section 4.5 (n).
- (5) the attorney fails to meet any of the Basic Requirements;
- (6) the attorney is sanctioned by the State Bar of Texas;
- (7) the attorney fails to file with the Indigent Defense Coordinator's office the Annual Certification of Attorney; or
- (8) for good cause at the discretion of a majority vote of the Criminal Courts Committee.

(b) Reinstatement to the Master List

An attorney who was removed from the Master List for the alleged commission of a felony or crime of moral turpitude may be immediately reinstated by the Criminal Courts Committee upon providing proof that the charges were dismissed or that the attorney was acquitted so long as the attorney otherwise meets the qualifications under the Plan. In addition to dismissal of the case, the attorney shall provide written proof that all conditions antecedent to the dismissal or acquittal have been completed before reinstatement will occur.

An attorney who was removed from the Master List for non-completion of MCLE may be immediately reinstated by the Criminal Courts Committee upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the qualifications under the Plan.

An attorney who has been removed from the Master List for any other reason and who

wishes to be reinstated must apply through the original application process. The attorney may reapply after the expiration of one year's removal, unless the district judges hearing criminal cases have removed the attorney for a longer period.

In addition to the other requirements for application, the attorney shall include a written description of all measures taken by the attorney to correct the problem(s) for which the attorney was removed from the felony Master List.

(c) Voluntary Removal from Master List

A qualified attorney may at any time request, in writing, a period of temporary voluntary removal from the Master List. At the end of any period of less than one year, upon written request, the attorney will be returned to the Master List if he or she otherwise remains qualified. If the period of voluntary removal exceeds one year, the attorney must reapply for appointments through the original application process. All requests are to be made to the Indigent Defense Coordinator's office.

RULE 6 NOTICE OF APPOINTMENT, DETERMINATION, AND CONTACT WITH DEFENDANT

6.1 *Notice of Determination that the Defendant Is Not Indigent*

If the person making the appointment determines that a person who requests appointment of counsel is not indigent under the standards and procedures described in Rule 3, he will enter that finding on the person's counsel request form, cause it to be returned to the person, and cause a copy to be filed with the other orders in the case.

6.2 *Notice of Determination that the Defendant Is Indigent and Appointment of Counsel*

If the person making the appointment finds that a person who requests counsel is indigent, he will cause all information in the Notice of Appointment and Confirmation {FORM 6} to be issued to the appointed counsel and to the indigent person, and to be filed with the orders in the case. Appointed counsel will be notified by at least one of the following methods: telephone, facsimile, electronic mail, in person, or other immediate means of communication.

6.3 *Attorney Acceptance of Appointment and Contact with Defendant*

The appointed attorney is required to provide the court with an acknowledgment of the appointment and a confirmation that the attorney has made the reasonable effort required under Article 26.04(j)(1) to contact the defendant by the end of the first working day after the date of the appointment and has personally interviewed the defendant within fifteen (15) days after receiving the Notice of Appointment and Confirmation:

- (a) The appointed attorney shall deliver the acknowledgment and confirmation on a form approved by the judges {FORM 6} to the appointing judge or person(s) designated by the judges to appoint counsel.

(b) The acknowledgment and confirmation shall be delivered by hand or by facsimile or by such other means as the judges may approve.

(c) The attorney shall confirm that by the end of the first working day after the date of appointment, the attorney initiated contact with the defendant by regular mail, facsimile, telephone, or in-person contact.

(d) In addition to the above duties, the appointed attorney shall have the further duty to interview the defendant as soon as practicable after the attorney is appointed, but, except for good cause shown to the judge presiding over the case, the interview must be within fifteen (15) days of the appointment.

(e) The confirmation must be filed before the attorney's fee voucher will be approved. The failure to file the confirmation or comply with the obligations of the attorney to contact and interview the defendant as above provided will be grounds for the Judge presiding over the case to deny, or substantially reduce, the attorney's claim for fees for services rendered.

RULE 7 REPLACEMENT OF APPOINTED COUNSEL

7.1 *Attorney Request*

A lawyer may be relieved from an appointment upon satisfying the judge that the lawyer has good cause for being relieved and that the client will not be prejudiced.

7.2 *Judicial Determination*

The judge presiding over a criminal case may replace appointed counsel after entering written findings in the record showing good cause for the replacement and no prejudice to the defendant, including, without limitation:

(a) Current information about the defendant and charges indicates that counsel of different qualifications is appropriate for the defendant under these rules; or

(b) Replacement of appointed counsel in a death penalty case is required under Article 26.052(e) of the Code of Criminal Procedure.

7.3 *Defendant Request*

The judge presiding over the trial court proceedings in a criminal case may replace appointed counsel at the defendant's request if:

(a) The defendant requests an attorney other than trial defense counsel for appeal or post-conviction *habeas corpus* proceedings; or

(b) The defendant shows good cause for replacing appointed counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

7.4 *Appointing Replacement Counsel*

Whenever appointed counsel is replaced under this Rule, replacement counsel immediately shall be selected and appointed in accordance with the procedures described in Rule 4.

RULE 8 ATTORNEY FEE SCHEDULE AND COMPENSATION OF APPOINTED ATTORNEYS

8.1 *Fee Schedule*

The county will pay appointed counsel for all time reasonably necessary for adequate representation of the defendant, as approved by a judge, according to the following fee schedule adopted as provided under Article 26.05(b) of the Code of Criminal Procedure:

ATTORNEY FEE SCHEDULE

**Brazoria County Courts Trying Criminal Cases
(Excludes Death Capital Cases)
Effective January 1, 2014**

INDIVIDUAL CASE APPOINTMENTS

Attorney must receive prior court approval to be considered for appointment on criminal cases by making application through the Brazoria County Indigent Defense Plan.

The level of offense charged controls the level of appointment and payment.

The “Presumptive Maximum**” applies to all cases unless indicated otherwise. “Presumptive Maximum” includes all non-trial hours on plea cases. In the event an attorney presents a voucher for more than the presumptive maximum, said attorney will be responsible for providing an explanation to the Court to which the voucher is presented before same will be approved.

<u>Rate</u>	<u>Total</u>
(Presumptive Maximum**)	
<u>NON-TRIAL PLEA AGREEMENT CASES</u>	
First Degree	\$50-125/hr \$750/plea
Second Degree	\$50-125/hr \$750/plea
Third Degree/SJF/MRP/MTAG	\$50-125/hr \$750/plea
Misdemeanor Class A or B	\$50-125/hr \$375/plea
Juvenile Plea	*same fees as corresponding misdemeanor or felony case level
<u>TRIAL</u>	
First Degree	\$600/day
Second Degree	\$500/day
Third Degree/SJF/MRP/MTAG	\$400/day

**Misdemeanor Class A or B
Juvenile Trial**

**\$375/day
*same fees as corresponding
misdemeanor or felony case level***

NON-TRIAL HOURS

(Pretrial Hearings, Motions to Suppress, PSI Hearings, Bond/Writ Hearings, Discovery Motions, Witness interviews, Research/Investigation, Trial Preparation, etc.)

First Degree	\$50-125/hr	\$600/day
Second Degree	\$50- 95/hr	\$500/day
Third Degree/SJF/MRP/MTAG	\$50- 95/hr	\$400/day
Misdemeanor	\$50- 95/hr	\$375/day
Juvenile	*same fees as corresponding misdemeanor or felony case level*	
Juvenile Detention Hearing	\$125/case	
Juvenile Certification/Transfer Hearing	Maximum \$375/day/court) *same fees as corresponding misdemeanor or felony case level*	

ATTORNEY-FOR-THE-DAY

In those courts where an attorney has been designated as the “attorney-for-the-day,” said Attorney shall be compensated at the rate of: \$125.00/hours

INVESTIGATION/EXPERT FEES

(Must request court approval prior to hiring expert or investigator; must detail expenses and hours on voucher submitted to Court.)

Investigator	\$40/hr	\$500/case*
Expert	None	\$650/case*

Each Court may consider approving additional fees on a case-by-case basis depending on the nature of the case and expertise involved.

COSTS

- **Copies** – must utilize electronic copy policy through Brazoria County District or County Clerk’s Offices (e.g. email, zip-drive, CD) for all pleadings, documents filed with Court/Clerk, etc.
- **Service Fees** – must utilize Sheriff’s Office service, Constable service or local law enforcement service. Private Process Service available only with prior Court approval and after unsuccessful attempts through local law enforcement.
- **Travel** – NO TRAVEL WILL BE PAID UNLESS PRIOR COURT APPROVAL RECEIVED. Travel hours, idle hours and waiting time will not be compensated unless prior approval received from Court. Only time actively engaged in case will be compensated.

Travel time outside Brazoria and contiguous counties, if approved by Court, will be at standard hourly rate. *(THIS DOES NOT INCLUDE TRAVEL FROM YOUR OFFICE TO THE COURTHOUSE and MILEAGE IS NOT REIMBURSED IF TIME IS SUBMITTED)*

AIRLINE - actual cost (14-day advance ticket rate) RECEIPT REQUIRED.

POST-CONVICTION PROCEEDINGS – NON-CAPITAL

Appeal, Preparation of Motion for New Trial	\$75-95/hr	\$3000/case
Appeal, New Brief after PDR	\$75-95/hr	\$1750/case
DNA Motion	\$75-95/hr	\$ 500/case
11.07 Writ of Habeas Corpus	\$75-95/hr	\$1750/case

8.2 *Judicial Determination of Attorney Compensation*

The judge presiding over the case for which the appointed attorney seeks compensation will use the following procedures to review and approve the appropriate compensation:

- (a) The appointed counsel must submit to the presiding judge a form approved by the judges for itemizing the services performed.
- (b) The presiding judge hearing a motion under this Rule will either approve the amount requested or enter written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.
- (c) An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region, as provided under Article 26.05(c) of the Code of Criminal Procedure.
- (d) The county will reimburse appointed attorneys for investigation and expert witness expenses incurred on behalf of an indigent client as provided under Articles 26.05(d) and 26.05(f) - (h) of the Code of Criminal Procedure.
- (e) Counsel appointed in a non-capital case shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior court approval shall be reimbursed, according to the procedures set forth below. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.

(1) Procedure With Prior Court Approval

Appointed counsel may file with the trial court a pre-trial *ex parte* confidential request for advance payment or investigative and expert expenses. The request for expenses must state, as applicable (i) the type of investigation to be conducted or the type of expert to be retained; (ii) 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 (iii) an itemized list of anticipated expenses for each investigation 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 state the reasons for the denial in writing, attach the denial to the confidential request, and submit the request and denial as a sealed exhibit to the record.

(2) 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.

Articles 26.05(d), 26.052(f), (g) and (h), Code of Criminal Procedure

THESE AMENDED STANDARDS AND PROCEDURES RELATED TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS were APPROVED by a majority of the Judges trying criminal cases in Brazoria County, Texas at a meeting held on the 6th day of June, 2012, after proper notice, and will be reported as provided in Section 71.0351 of the Government Code.

ATTEST: _____
Administrative District Judge for Brazoria County

ATTEST: _____
Administrative County Court at Law Judge for
Brazoria County