

# **RULES FOR THE APPEAL OF A TRIAL COURT'S DISAPPROVAL OF OR FAILURE TO ACT ON A REQUEST FOR PAYMENT OF COURT APPOINTED ATTORNEY'S FEE**

## **SECOND ADMINISTRATIVE JUDICIAL REGION OF TEXAS**

### **I. Duties of Attorney Seeking Review of Trial Court's Order**

An attorney who chooses to appeal the trial court's disapproval of or failure to act on a request for payment, shall file a motion with the Presiding Judge of the Second Administrative Judicial Region within twenty (20) days of the trial court's signing of an order disapproving the requested court appointed attorney's fee, or within eighty (80) days of the date the request for payment is submitted if the trial court fails to act on the request.

The appealing attorney shall set forth in his motion the following information:

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

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

1. A copy of the trial court's order disapproving the requested court appointed attorney's fee; or, if applicable, a statement that the trial court failed to act on a request for payment by the 60th day after the date the request for payment is submitted; and
2. A copy of the county's indigent fee schedule adopted pursuant to the Texas Fair Defense Act.

## **II. Procedure**

The appealing attorney shall file the original of the motion with the clerk of the court in which the case is pending, and shall file a copy of the motion with the Presiding Judge of the Second Administrative Judicial Region and with the trial court. The Presiding Judge of the Second Administrative Judicial Region shall abate any ruling on the motion for a period of not less than ten (10) days from the filing of the motion pending an opportunity for further review by the trial court.

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

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

If the trial court's action does not fully resolve the issue to the satisfaction of the appealing attorney, the attorney shall, within five (5) days of the signing of the trial court's payment order or revised payment order, file with the Presiding Judge of the Second Administrative Judicial Region and the trial court a notice stating that the matter remains contested. The attorney shall attach a copy of the trial court's payment order or revised payment order, if any, to said notice.

If the trial court did not enter a revised payment order, the trial court shall, within five (5) days of the filing of the notice of contest, file written findings that set forth in detail the reason(s) for disapproving the requested attorney's fee. The findings should substantially comply with the form attached as Appendix A.

If (1) the trial court failed to act on a request for payment by the 60th day after the date the request for payment is submitted and did not enter any payment order within the period provided following the filing of the motion by the appealing attorney, or (2) the Presiding Judge of the Second Administrative Judicial Region has not received notice of a resolution of the appeal prior to the expiration of twenty (20) days from the filing of the

motion, the Presiding Judge shall rule on the motion in accordance with the provisions of 26.05(c), Texas Code of Criminal Procedure. The Presiding Judge shall sign an order that substantially conforms to the form order attached as Appendix B.

**APPENDIX A**

NO. \_\_\_\_\_

THE STATE OF TEXAS	§	IN THE _____ COURT
VS.	§	OF
_____	§	_____ COUNTY, TEXAS
	§	
	§	

**Trial Court's Written Findings Regarding Requested Court Appointed Attorney's Fee**

On this \_\_\_\_\_ day of \_\_\_\_\_, the Court, after reviewing the above styled and numbered case, finds that the requested amount of payment by \_\_\_\_\_ in the amount of \$\_\_\_\_\_ is not reasonable and therefore is disapproved for the following reason(s).

- The Court finds that the requested fees exceed the Court's approved fee schedule.
  
- The Court finds that the attorney has failed to provide to the Court an itemized document setting forth billable attorney's hours and/or expenses.
  
- The Court finds that the attorney has submitted an hourly rate that exceeds the rate established by the fee schedule.
  
- The Court finds that the attorney has submitted an itemized statement that records unauthorized expenses, to-wit:  
\_\_\_\_\_  
\_\_\_\_\_
  
- The Court finds that the time and labor required, the lack of novelty and difficulty of the questions involved and the skill requisite to properly perform the legal services do not justify the requested fee.
  
- The Court finds that the requested payment exceeds the fee customarily charged in the locality for similar legal services.
  
- The Court finds that the nature and length of the professional relationship with the client does not justify the requested fee.

The Court finds that the requested payment of fees as submitted by the attorney is not supported for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Court finds that an attorney's fee in the amount of \$\_\_\_\_\_ should be paid to said attorney as fair and just compensation for the attorney's fee in the case.

**SIGNED** the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
**JUDGE PRESIDING**

APPENDIX B

NO. \_\_\_\_\_

THE STATE OF TEXAS § IN THE \_\_\_\_\_ COURT
VS. § OF
§
§
\_\_\_\_\_ COUNTY, TEXAS

Order on Motion to Review Trial Court's [ Disapproval of/Failure to Act] on Request for Court Appointed Attorney's Fee

On this day, came on for consideration the motion to review the [disapproval of the requested attorney's fee/failure of the trial court to act on a request for payment] filed by \_\_\_\_\_, court appointed counsel for the Defendant in the above-entitled and numbered cause. After considering the motion and other documents filed, the following order is rendered.

IT IS ORDERED that motion is GRANTED/DENIED.

If the motion is granted.

IT IS FURTHER ORDERED that \_\_\_\_\_ shall be paid a reasonable attorney's fee of \$\_\_\_\_\_.

If the motion is denied.

IT IS FURTHER ORDERED that the order for payment signed by the trial court on \_\_\_\_\_ is AFFIRMED.

Continue with the following.

The District Clerk of \_\_\_\_\_ County, Texas shall certify this order to the Commissioners Court of \_\_\_\_\_ County for its observance and, if applicable, furnish a copy of this order to the County Auditor.1

SIGNED on \_\_\_\_\_, 20\_\_\_\_\_.

PRESIDING JUDGE
Administrative Judicial Region

1 Not later than the 45th day after the date an application for payment of a fee is submitted, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county. Art. 26.05(c), Texas Code of Criminal Procedure.