

**LOCAL RULES OF MONTGOMERY COUNTY FOR THE  
TIMELY AND FAIR APPOINTMENT OF COUNSEL FOR  
INDIGENT DEFENDANTS IN MISDEMEANOR CASES IN  
THE COUNTY COURTS AT LAW**

**I.  
METHOD OF APPOINTMENTS**

**A. Public Appointment Lists**

The County Courts at Law in Montgomery County, Texas will maintain three Public Appointment Lists of attorneys qualified to represent indigent defendants as follows:

1. **Trial Category C** for all misdemeanors;
2. **Appellate Category C** for all misdemeanors;
3. **Writ Category** for post-conviction writs of habeas corpus

Attorneys who desire to represent indigent persons shall file with the Board of Judges (1) a sworn *Application To Be Placed On Public Appointment List For Montgomery County* to have his/her name approved on one or more of the Public Appointment Lists, attached hereto as Exhibit "A," and (2) an *Attorney Certification of Knowledge Of Local Rules For The Timely and Fair Appointment of Counsel for Indigent Defendants*, attached hereto as Exhibit "B."

From time to time, the County Court at Law Judges shall meet and approve such Applications of eligible attorneys for each list, and the Administrative County Court At Law Judge shall sign the *Order of Approval/ Disapproval* that is made a part of the *Application To Be Placed On Public Appointment List For Montgomery County*. A copy of each public appointment list shall be made available to the public upon request to the Appointment Designee.

**B. Appointment Designee**

The Board of Judges (BOJ) shall appoint one or more Appointment Designees (AD). The AD will be under the supervision of the Board of Judges. The Board of Judges shall determine the duties, responsibilities and compensation of the AD.

**C. Prompt Appearance Before a Magistrate**

The law enforcement officer making the arrest and any officer who later has custody of an accused person shall ensure that the person is taken before a magistrate

without unnecessary delay, but not later than 48 hours after the person is arrested, for proceedings under Article 15.17 of the Code of Criminal Procedure.

## **D. Appointment of Counsel**

1. At the Magistrate's Probable Cause hearing (which shall be within 48 hours of arrest), and at any time thereafter while charges are pending against the defendant, each defendant shall be provided the opportunity to request court appointed counsel, if indigent. When a Defendant requests appointed counsel, the magistrate or Judge may assist, or refer the defendant to the AD for assistance, in completing the *Attorney Request Form*, attached hereto as Exhibit "C," and the *Questionnaire Under Oath Concerning Financial Resources*, attached hereto as Exhibit "D." The magistrate, Judge or AD may question the defendant under oath regarding the defendant's financial resources in lieu of, or in addition to the *Questionnaire Under Oath Concerning Financial Resources*. The magistrate and the AD may be assisted by a representative of the Montgomery County Collections Department in the determination of indigence.

2. The magistrate shall, no later than 24 hours after the defendant requests appointment of counsel, transmit or cause to be transmitted to the AD or Judge the forms requesting the appointment of counsel. Upon a determination of indigence, and no later than the end of the first working day after the date on which the Judge or the AD receive the defendant's request for appointed counsel, the magistrate, Judge or AD shall appoint an attorney from the appropriate Public Appointment List using a system of rotation. The magistrate, Judge or the AD shall appoint the attorney from among the next five names on the Public Appointment List in the order in which the attorney's name appears on the List, unless the Court makes a finding of good cause on the record for appointing an attorney out of order.

3. Where the defendant has both felony and misdemeanor charges, the magistrate, Judge or the AD shall appoint one attorney for all charges from the List for the most serious offense. In the event a Defendant requests an attorney who is not qualified for the category of offense with which the Defendant is charged, the Defendant must sign and file *Defendant's Motion to Appoint Attorney on Higher Category Case*, attached hereto as Exhibit "I." The magistrate, Judge or the AD shall sign an *Order Appointing/ Denying Attorney*, attached hereto as Exhibit "E." The Defendant shall be required to sign a *Sworn Affidavit of Financial Inability to Hire Counsel*, attached hereto as Exhibit "J."

2. The magistrate, Judge or the AD shall notify the attorney of the appointment by the most expeditious means available, and provide counsel with a copy of the *Order Appointing Counsel* and the last known location of the Defendant. If the attorney does not accept the appointment, the attorney shall immediately advise the magistrate, Judge or the AD and the above rotation process shall be repeated.

## II. QUALIFICATIONS OF APPOINTED ATTORNEYS

All attorneys that request and are approved for appointment to each Public Appointment List shall maintain their principal law office Montgomery County, Texas. All attorneys must disclose the geographic location by city or town and physical address of their principal office. An attorney shall have only one principal office.

All attorneys shall reapply annually for approval to the Public Appointment List(s), and may reapply at any time for a category for which they previously had not applied. The application renewal date is July 1<sup>st</sup> of every year.

### **A. Trial Category C (Misdemeanor)**

1. A separate master list will be maintained of attorneys who request and are approved for appointment to all misdemeanor trial cases.
2. All attorneys who request appointments in this category must:
  - a. Be licensed to practice law in Texas;
  - b. Have completed at least 6 hours of Criminal Law CLE (during the prior 12 months and;
  - c. Have tried to verdict or appealed at least one Class “B” or higher misdemeanor jury trial as 1<sup>st</sup> or 2<sup>nd</sup> chair.

### **B. Appellate Category C (Misdemeanor)**

1. A separate master list will be maintained of attorneys who request and are approved for appointment to all misdemeanor appellate cases.
2. All attorneys who request appointments in this category must:
  - a. Be licensed to practice law in Texas and
  - b. Have tried to verdict as 1<sup>st</sup> or 2<sup>nd</sup> chair or appealed at least one Class “B” or higher misdemeanor jury trial, or otherwise establishes proficiency in misdemeanor appellate work.

## C. **Post-conviction Writ of Habeas Corpus Category**

A separate master list will be maintained of attorneys who request and are approved for appointment to post-conviction Writs of Habeas Corpus cases. All attorneys who request appointments in this category must meet the experience requirements established for the relevant appellate category.

## D. **Special Language Qualifications and Appointments**

1. Each attorney who speaks more than one language, or who signs, may voluntarily note this fact when requesting appointment to any Public Appointment List.
2. The magistrate or AD shall appoint an attorney that is capable of communicating in a language understood by the Defendant.

### III.

## DUTIES OF APPOINTED COUNSEL

A. **Prompt Contact with Client.** Appointed counsel shall make every reasonable effort to contact their client not later than the end of the first working day after the date on which the attorney is appointed, and shall interview the client as soon as practicable after the attorney is appointed. The Court may replace an attorney who violates this requirement.

B. **Maintain Office and support.** Appointed counsel shall maintain an office with a phone which is answered by a receptionist, an answering service, a voice recording device or other messaging system that is able to promptly notify the attorney of the existence of a call. Persons answering the phone must have the capability to promptly locate the attorney to notify the attorney of appointment and hearing settings. Appointed counsel shall maintain a FAX number and/or an e-mail address, to which faxes and e-mails can be received 24 hours a day, seven days a week.

C. **Maintain Contact Information with Courts.** All attorney contact methods, FAX numbers and e-mail addresses shall be included in the *Attorney Certification of Local Rules for the Timely and Fair Appointment of Counsel for Indigent Defendants*. The attorney shall designate in his certification the primary method by which he shall be contacted. An attorney's office number, fax number and e-mail address shall be the official numbers and address which will be utilized by Court personnel to notify counsel of their appointment and of hearing settings, unless a different primary number or address is designated in the certification. Any change in these numbers or address shall be given in writing as soon as practicable (but, in any event, no less than 10 days prior to the change) to the AD, or each County and District Court Judge, prior to the change.

D. **Comply with all Laws and Standards.** Appointed Counsel shall comply with all laws, rules, procedures and ethical provisions for providing reasonable assistance of counsel to their client. Appointed Counsel shall maintain a high standard of ethical conduct toward the Court and their client, and always be completely candid with both. Appointed Counsel shall timely inform their client of all matters relating to the preparation, trial and disposition of the case, offers of plea bargains, appellate and writ rights, deadlines and such other matters necessary to provide reasonable assistance of counsel.

C. **Duty of Continuous Representation.** Appointed Counsel shall represent a defendant until the charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the Court or replaced by other counsel after a finding of good cause is entered on the record.

#### IV. REMOVAL FROM PUBLIC APPOINTMENT LISTS

A. **Cause for Removal.** An attorney may be removed from all Public Appointment Lists and any active case he/she has been assigned for the following reasons:

1. Suspension or removal of a lawyer's law license;
2. Conviction for any felony, or misdemeanor involving a crime of moral turpitude;
3. Indictment for a felony or a filing of an information against the attorney involving a crime of moral turpitude;
4. Intentional material misrepresentation by the attorney on the application for appointment.
5. Failure to fulfill his/her duties required by law, Canons of Ethics, Local Rules, these Rules or any conduct deemed inappropriate by a panel of judges.

B. **Procedure for Removal.** Removal from the Public Appointment Lists pursuant to IV (A) or IV (B) shall be conducted as follows:

1. **Complaint Filed.** The Director of the Office of Indigent Defense (OID) or any Judicial Officer of Montgomery County, Texas who presides over a court that maintains a public appointment list may file a complaint against any attorney requesting disciplinary action with the Office of

Indigent Defense. The complaint shall be in writing, and shall specify the details of the conduct in question. The complaint may include affidavits or exhibits supporting the allegation of misconduct.

2. **Notice to Counsel.** Upon receipt of the complaint, the Director of the OID shall immediately forward a copy of said complaint to the attorney in question.

3. **Response May be Filed by Counsel.** The attorney shall have ten (10) business days from receipt of the complaint to file a response with the OID. The response shall be in writing and may contain any affidavits or exhibits to support the response.

4. **Panel to Review Complaint/Response.** The Director of the Office for Indigent Defense shall convene a panel of judges to review the complaint and the response, if any. The panel shall consist of three presiding judges selected at random to preside over the removal hearing. The judge filing the request shall not be a member of the panel. The panel shall meet in closed session and review all the documents, exhibits and affidavits filed with the Office For Indigent Defense.

5. **Determination by Panel of Action.** The panel shall make a determination whether disciplinary action should be taken. Disciplinary action may consist of a private or public reprimand, temporary removal from all or some of the public appointment lists for up to one year, or permanent removal from public appointment lists.

6. **No Right of Appeal.** The panel of judges has been granted the authority to act on behalf of the Board of Judges and the Juvenile Board. The decision of the panel is final with no right of review or appeal.

## V.

### APPOINTMENT BY LITIGATION PHASES

#### A. In the Trial Court

Appointments made in accordance with the procedures outlined above shall be effective for all litigation in the trial court through and including a ruling on a Motion for New Trial, unless relieved by the Court at an earlier date. The Court shall advise the indigent defendant of all appellate rights on the record immediately after sentencing.

#### B. In the Court of Appeals

1. If requested by the defendant-appellant, counsel shall be appointed by the trial judge for a direct appeal to the Court of Appeals no later than the next working day

after sentencing.

2. Unless the defendant specifically requests the appointment of trial counsel on appeal, the Court shall appoint an attorney other than the trial defense counsel on appeal.

3. Appellate counsel shall be appointed from the Public Appointment Lists using the rotation procedure set out above.

### **C. In the Court of Criminal Appeals**

If appellate counsel is requested on direct appeal, that appointment shall be effective through and including the filing of a Petition For Discretionary Review or Response to a Petition For Discretionary Review and subsequent proceedings through a final decision by the Court of Criminal Appeals.

### **D. In the United States Supreme Court**

In a death penalty case, the appointment shall be effective through and including the filing of a Petition for Writ of Certiorari.

In non-death penalty cases, upon application from appellate counsel, the trial court has discretion to appoint counsel to file a Petition for Writ of Certiorari.

### **E. Writs of Habeas Corpus**

The procedures outlined above for appointment of appellate counsel shall apply to writs of habeas corpus.

The Court shall appoint a lawyer, other than the lawyer(s) that represented the Defendant at trial or on appeal, to represent the applicant in a writ of habeas corpus.

An appointment in a writ of habeas corpus shall be effective through and including a decision by the Court of Criminal Appeals.

## **VI. COMPENSATION OF COUNSEL FOR MISDEMEANOR CASES**

Appointed counsel shall be compensated for all time reasonably necessary to adequately represent the defendant on either an hourly rate basis or flat fee basis as provided below:

### **1. Flat Fee Schedule.**

Unless paid in accordance with the Hourly Fee Schedule described below, appointed counsel shall be paid a Flat Fee Rate as follows:

- |    |                                                                                              |                 |
|----|----------------------------------------------------------------------------------------------|-----------------|
| a. | obtaining jail release                                                                       | \$ 50           |
| b. | Plea/Dismissal                                                                               | \$350           |
| c. | Plea/Dismissal for additional cases<br>(each additional case)                                | \$ 50           |
| d. | Evidentiary hearing                                                                          | \$100           |
| e. | Jail docket appearance (case not disposed)                                                   | \$ 50           |
| f. | Trial preparation<br>(paid only if case is disposed by trial, or upon showing of good cause) | \$500           |
| g. | Bench trial                                                                                  | \$275 ea. ½ day |
| h. | Jury Trial                                                                                   | \$325 ea. ½ day |
| i. | Appeal                                                                                       | \$1500          |

## **2. Hourly Rate**

In the event that payment pursuant to the Flat Fee Schedule will not fairly compensate Appointed Counsel, due to unusual legal or factual complexities involved in the representation of Appointed Counsel's client, then in said event, Appointed Counsel shall be compensated in accordance with the following Hourly Rate Fee Schedule:

- |    |                            |                    |
|----|----------------------------|--------------------|
| a. | Out-of-Court               | \$25/hr - \$75/hr. |
| b. | Non-trial Court appearance | \$50               |
| c. | Trial                      | \$60 -\$90/hr      |

Hourly rates shall be paid for performing the appropriate statutory service according to the criteria defined in TEX CODE CRIM PROC. ART. 26.05(a).

In order to receive payment pursuant to the Hourly Rate Schedule, Appointed Counsel must certify in writing that the case was either factually or legally, unusually complex. Appointed counsel must further specify in writing the specific and principled reasons that the case was unusually complex.

## **3. Written Request for Payment.**

All fee payment requests must be submitted on either a *Request for Payment for Services Rendered as Court Appointed Counsel (Set Rates)* or on a *Request for Payment for Services Rendered as Court Appointed Counsel (Hourly Rate)*, in the form attached as Exhibits "K" and "L", respectively.

## **4. Payment Approved by Court.**

All requests shall be submitted to the Judge presiding over the proceedings. The judge shall either approve the amount requested or enter written findings

stating the amount the judge approves and each reason for approving an amount different from the requested amount.

**5. Appeal of Order to Pay.**

Any disapproved fee payment request may be appealed by the appointed counsel to the Presiding Judge of the Second Administrative Judicial Region, as provided by the Fair Defense Act.

**6. Expenses**

Compensation for reasonable and necessary expenses shall be submitted in the applicable *Request for Payment for Services* voucher. All investigation and expert witness expenses require prior court approval. Procedures consistent with Articles 26.052(f), (g), and (h) of the Code of Criminal Procedure will be adopted for payment of expenses incurred with and without prior court approval, as provided in the Fair Defense Act.

**VII.  
RETENTION OF RULES**

These Rules shall be filed and maintained in the Office of Court Administration, the office of the Administrative District Judge, the office of the Administrative County Court at Law Judge, and the offices of the District and County Clerk.

**Adoption**

Adopted the 26th day of November, of the year 2001.

Amended the 4<sup>th</sup> day of October, of the year 2002.

Amended the 15<sup>th</sup> day of November, of the year 2002.

Amended the 31<sup>st</sup> day of October, of the year 2003.

Amended the 27<sup>th</sup> day of August, of the year 2004.

Amended the 14<sup>th</sup> day of October, of the year 2004.

Amended the 19<sup>th</sup> day of November, of the year 2004.

Adopted the 7<sup>th</sup> day of October of the year 2005.

Adopted the 9<sup>th</sup> day of February of the year 2007.

Adopted the 11<sup>th</sup> day of May of the year 2007.

Adopted the 5<sup>th</sup> day of October of the year 2007.

Adopted the 6th day of November of the year 2009 and to be effective on December 1, 2009.

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Judge Dennis Watson  
County Court at Law Number One

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Judge Jerry Winfree  
County Court at Law Number Two

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Judge Patrice McDonald  
County Court at Law Number Three

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Judge Mary Ann Turner  
County Court at Law Number Four

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Judge Keith Stewart  
County Court at Law Number Five