

**SAMPLE LOCAL RULES
TO IMPLEMENT THE TEXAS FAIR DEFENSE ACT**

PREPARED BY:

THE EQUAL JUSTICE CENTER AND TEXAS APPLESEED

Preamble

These Sample Local Rules demonstrate a flexible, fair, and cost-efficient way for counties to meet the basic requirements of the Texas Fair Defense Act, which becomes effective January 1, 2002. They were prepared as a resource to counties, bringing to bear the collective experience of many researchers and practitioners. A wealth of authorities were consulted, including the State Bar of Texas *Standards for the Provision of Legal Services to the Poor in Criminal Matters*; the American Bar Association *Standards for Criminal Justice: Providing Defense Services*; state standards on indigent defense published last year in the United States Department of Justice *Compendium of Indigent Defense Standards*; selected indigent defense standards developed by counties in Texas; and definitions, procedures, and standards used in some federal districts.

Adopting these rules cannot, by itself, guarantee a well-functioning system of indigent defense. A well-functioning system depends on the commitment of all the stakeholders involved in the criminal justice system to provide predictable and fair procedures to all defendants in a cost-efficient manner. It should be noted that in order to prepare a comprehensive plan for your county, in addition to local rules of court governing indigent defense, county officials may need to make arrangements to coordinate the county's staffing and resources. On or before January 1, 2002, each county must send a report to the Office of Court Administration including both its formal local rules (such as these Sample Rules), plus all informal rules and forms that describe the procedures used in the county to provide indigent defense. Of course, each county should conduct its own legal review before proceeding with any plan.

We are committed to assisting counties as they implement the Fair Defense Act. Together, we can continue this vital project to improve indigent defense in Texas.

**SAMPLE LOCAL RULES
TO IMPLEMENT THE TEXAS FAIR DEFENSE ACT**

**STANDARDS AND PROCEDURES RELATED TO
APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS
IN _____ COUNTY**

To implement the Texas Fair Defense Act (FDA, Acts 2001, 77th Leg.), the following Local Rules of Administration are adopted under Texas Local Government Code § 74.093, effective January 1, 2002:

PART ___: INDIGENT DEFENSE

Rule 1. Applicability

1.01 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.¹

Rule 2. Procedures for Timely Appointment of Counsel

2.01 *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.

¹ **Commentary:** These sample rules assume that the misdemeanor courts and the felony courts have developed a unitary set of local rules. However, the FDA also permits the misdemeanor courts and felony courts in a county to each adopt separate rules. These sample rules readily can be used as a guide for such separate rules, using an alternative Rule 1.01 and separating out the provisions in these sample rules for the appropriate court level. An alternative Rule 1.01 for separate district court rules could read as follows: “The rules in this Part will govern procedures in felony cases in all municipal, justice of the peace, and district courts in this County, notwithstanding any other local rule to the contrary.” Separate rules for misdemeanor courts would be required.

(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.²

(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).

2.02 *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, 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.

² A standard form can be used to implement this provision.

(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.

(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 record³ 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.

³ A standard form can be used to implement this provision.

2.03 *Transmittal of Request for Appointed Counsel.* If the person arrested requests 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.⁴ 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 24 hours after the request is made.

[*Alternative Rule 2.04 for counties with a population of 250,000 or more*]

2.04 *Prompt Appointment of Counsel.* 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 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.

[*Alternative Rule 2.04 for counties with a population of less than 250,000*]

2.04 *Prompt Appointment of Counsel.* Counsel shall be appointed in the manner specified in Rule 4 below, as soon as possible, but not later than the end of the third 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.

⁴ **Commentary:** The judges in some counties currently designate a court administrator or a magistrate to appoint counsel in accordance with a rotation system and appointment lists established by the judges. The Fair Defense Act approves of this practice and permits a county's plan to specify that appointments be made by administrators or magistrates in accord with policies set by the judges. After the Fair Defense Act becomes effective, some counties may choose a system of specialized magistrates who appoint counsel from rotating public appointment lists approved by the judges. Most model indigent defense standards favor appointment by a rotation system overseen by a court administrator "to avoid patronage and its appearance, and to assure fair distribution of assignments among all whose names appear on the roster of eligible lawyers." *ABA Standards for Criminal Justice: Providing Defense Services*, Standard 5-2.3. *Rotation of Assignments and Revision of Roster*; *Compendium of Standards for Indigent Defense Systems*, U.S. Department of Justice, Vol. I, Part H. 4.

Rule 3. Procedures and Financial Standards for Determining Whether a Defendant is Indigent

3.01 *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); net self employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the defendant has no income or lesser income.

(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.

3.02 *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.

(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;⁵ 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:

⁵ **Commentary:** The income levels in the following table represent 125% of the U.S. Department of Health and Human Services Poverty Guidelines for 2001 as published in 66 FR 10695 (Feb. 16, 2001).

Household size

	<u>Income</u>
1	\$11,188
2	14,513
3	18,288
4	22,063
5	25,838
6	29,613
7	33,388
8	37,163

For family units with more than eight members, add \$3,775 for each additional member in the family.

(1) is currently serving a sentence in a correctional institution, is currently held in custody, 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

(2) has no non-exempt assets or property in excess of the amounts specified in Rule 3.02(a)(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.

3.03 *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 \$200 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 Rule 3.02 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.

3.04 *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. Even when a defendant has posted bail, the defendant's financial circumstances are measured by the financial standards stated in this rule.

(b) 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.

3.05 *Procedures for Determining Indigence.*

(a) As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, [the person or agency designated in this rule by the judges] shall provide each arrested person who wants to request appointment of counsel with a form⁶ approved by the judges 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 person or agency designated in this rule by the judges] 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 appointing judge or person(s) designated by the judges to appoint counsel in accordance with Rules 2.03 and 4.05.

⁶ A standard form must be used to implement this provision.

(c) The appointing judge or person(s) designated by the judges to appoint counsel will determine whether the person meets the financial standards for indigence in Rule 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 magistrate, the appointing judge, or the judge presiding over the case to respond to examination regarding the person's financial resources.

(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.

3.06 *Payment by Defendant.* 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 on the record that the defendant is able to pay.

Rule 4. Selection and Appointment of Counsel

- 4.01 *Method of Appointment.* Attorneys shall be appointed to represent indigent defendants from public appointment lists 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.⁷
- 4.02 *Public Appointment Lists.* The judges hereby establish the following public appointment lists from which counsel for indigent defendants shall be appointed:
- (a) A Misdemeanor List consisting of attorneys eligible for appointment in Class A and B misdemeanors.
 - (b) A Third Degree Felony List consisting of attorneys eligible for appointment in Third degree felonies, state jail felonies, and motions to revoke probation.
 - (c) A Second Degree Felony List consisting of attorneys eligible for appointment in Second Degree felonies.
 - (d) A First Degree Felony List consisting of attorneys eligible for appointment in first degree felonies and 3(g) offenses.
 - (e) A Capital Felony List consisting of attorneys eligible for appointment in capital murder felonies.
 - (f) An Appellate List consisting of attorneys eligible for appointment to direct appeals and writs of *habeas corpus*.
 - (g) Appointment of counsel to represent a defendant in motion to adjudicate proceedings shall be from the list appropriate for the offense(s) charged.

⁷ While these Sample Local Rules demonstrate how a simple counsel rotation system may be implemented to satisfy the Fair Defense Act, the Act also allows any county to establish a regional or local public defender office. Experience in Texas, other states, and the federal courts has shown that public defender offices are often the most cost-effective means of providing adequate, quality representation to indigent defendants.

4.03 *Attorney Qualifications.* Twice a year, on or before [date] and [date], attorneys may apply⁸ to be included on one or more of the public appointment lists. To be eligible for placement on each list, attorneys must have met the following minimum qualifications.

(a) Misdemeanor List:

- (1) Currently Licensed and in good standing with the State Bar of Texas;
- (2) Practiced in the area of criminal law for at least one year;
- (3) Exhibited proficiency and commitment to providing quality representation to criminal defendants;
- (4) Exhibited professionalism and reliability when providing representation to criminal defendants;
- (5) Averaged 10 hours a year of continuing legal education courses relating to criminal law as recognized by the State Bar of Texas; and
- (6) Have tried to verdict at least two criminal jury trials as lead counsel or as second chair counsel.⁹

(b) Third Degree Felony List:

- (1) Have met the qualifications for placement on the Misdemeanor List;
- (2) Have practiced in the area of criminal law for at least two years; and

⁸ A standard application form or forms can be used in implementing this provision.

⁹ An attorney who does not have the requisite experience to be included on the misdemeanor list may gain it in various ways, including (a) serving as hired trial counsel; (b) volunteering to serve as second chair counsel in a trial by agreement with any lead counsel; (c) participating in a clinical program while in law school; (d) participating in a mentoring program sponsored by a bar association, court, or professional association; or (e) trying cases as a prosecutor.

(3) Have tried to verdict at least three criminal jury trials as lead counsel.

(c) Second Degree Felony List:

(1) Have met the qualifications for placement on the Misdemeanor List;

(2) Have practiced in the area of criminal law for at least four years; and

(3) Have tried to conclusion at least four criminal jury trials as lead counsel, including at least three felony trials.

(d) First Degree Felony List:

(1) Have met the qualifications for placement on the Misdemeanor List;

(2) Have practiced in the area of criminal law for at least five years; and

(3) Have tried to verdict at least eight criminal jury trials as lead counsel, including at least six felony trials.

(e) Capital Felony List:

(1) Have met the qualifications for placement on the Misdemeanor List;

(2) Have practiced in the area of criminal law for at least six years;

(3) Have tried to verdict at least ten criminal jury trials as lead counsel, including at least eight felony trials, of which at least six were trials in first or second degree felonies or capital felonies and at least two of which were homicide cases; and

(4) For appointment in capital felony cases where the death penalty is sought the attorney must, in addition, meet the qualifications set forth below in Rule 5.

(f) Appellate List:

(1) Have met the qualifications set forth in paragraphs (1) through (5) of the requirements for placement on the Misdemeanor List; and

(2) Have met at least one of the following criteria:

(i) be currently board certified in criminal law by the Texas Board of Legal Specialization;

(ii) have personally authored and filed at least 5 criminal appellate briefs or post-conviction writs of *habeas corpus*; or

(iii) have submitted an appellate writing sample approved by a majority of the judges.

4.04 *Approval of Attorneys by the Judges.*

(a) In addition to meeting the objective qualifications described in Rule 4.03, an attorney may be placed on one or more of the felony appointment lists only if a majority of the felony judges approves the attorney's placement on each such list. In addition to meeting the objective qualifications described in Rule 4.03, an attorney may be placed on the misdemeanor appointment list only if a majority of the misdemeanor judges approves the attorney's placement on the misdemeanor list.

(b) At least twice a year, following the submission of attorney applications for the public appointment lists, the felony judges in the county shall evaluate the new applicants for each felony appointment list and the attorneys already on the lists. The judges will approve, by majority vote, those attorneys:

(1) who meet the objective qualifications set forth in Rule 4.03 for placement on the list; and

(2) whom the judges consider to be actually competent to adequately handle cases associated with the list.

(c) At least twice a year, following the submission of attorney applications for the public appointment lists, the misdemeanor judges in the county shall evaluate the new applicants for the Misdemeanor List and the attorneys already on the Misdemeanor List. The judges will approve, by majority vote, those attorneys:

(1) who have met the objective qualifications set forth in Rule 4.03 for placement on the Misdemeanor List; and

(2) whom the judges consider to be actually competent to adequately handle misdemeanor cases.

(d) An attorney may be removed from one or more public appointment lists by a majority of the judges for the corresponding court level whenever the judges determine that the attorney no longer meets the objective qualifications for that list or is not fully competent to adequately handle the category of cases associated with that list. The judges may in their discretion remove an attorney from one or more lists, while continuing to approve the attorney for other lists.

4.05¹⁰ *Assignment of Attorneys.* The following method shall be used to assign attorneys from the appropriate public appointment list to represent individual defendants:

(a) At any given time, one district judge will serve as appointing judge for all defendants charged with felonies, and one county court at law judge will serve as appointing judge for all defendants charged with misdemeanors.

¹⁰ **Commentary:** These Sample Rules contemplate a system whereby appointments are made by a monthly rotating “appointing judge.” However, as noted in the footnote to Rule 2.03, the Fair Defense Act allows the judges in a county to delegate responsibility for making appointments to any person or office, such as a court administrator or a magistrate. In counties where the judges elect to designate an appointments administrator or magistrate to administer all appointments, Sample Rules 4.05(a), (b), and (d) would be inapplicable. (Where the magistrate is selected to make appointments, Rule 4.05(c)(i) also is inapplicable.)

(b) Each judge will serve as appointing judge for one calendar month on a rotating basis in alphabetical order of the judges' last names using separate lists of current district and county judges beginning January 2002.

(c) The current appointing judge will:

(1) receive all requests for appointment of counsel transmitted by the magistrate as provided in Rule 2;

(2) determine whether each defendant requesting appointed counsel is indigent, as provided in Rule 3;

(3) select and appoint the appropriate counsel to represent each indigent defendant as provided in this Rule; and

(4) cause all interested parties to be notified of the appointment as provided in Rule 6.

(d) 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.

(e) 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 on 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 attorney regardless of whether the attorney's name is among the first five names on the appropriate list.

(f) Whenever a lawyer is appointed out of order under Rule 4.04(e), 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.

(g) 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.

(h) 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 in Rule 4.04(e) and (f).

Rule 5. Selection and Appointment of Counsel in Death Penalty Cases

5.01 Whenever a capital felony case is filed, the presiding judge in the district court in which the case is filed shall appoint two attorneys at the time the initial appointment is made, unless and until the state gives notice in writing that the state will not seek the death penalty.

5.02 *Qualifications of Lead Counsel.* To be assigned as lead counsel in a death penalty case an attorney must:

(a) Be on the list of attorneys approved by the local selection committee of the administrative judicial region for appointment in death penalty cases as provided in Article 26.052 of the Code of Criminal Procedure;

(b) Have met the qualifications for placement on the Capital Felony List in this county as set forth in Rule 4.02(e), whether or not the attorney has ever applied for placement on that list;

- (c) Have tried to verdict at least 15 felony jury trials as lead counsel;
- (d) Have tried to verdict two death penalty cases as first or second chair defense counsel; and
- (e) Be approved for appointment in the case by a majority of the felony judges in the county.

5.03 *Qualifications of Second Chair Counsel.* To be assigned as second chair counsel in a death penalty case an attorney must:

- (a) Be on the list of attorneys approved by the local selection committee of the administrative judicial region for appointment in death penalty cases as provided in Article 26.052 of the Code of Criminal Procedure;
- (b) Have met the qualifications for placement on the Capital Felony List in this county as set forth in Rule 4.02(e), whether or not the attorney has ever applied for placement on that list; and
- (c) Be approved for appointment in the case by a majority of the felony judges in the county.

Rule 6. Notice of Appointment, Determination, and Contact with the Defendant

6.01 *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 or she 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.

6.02 *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 or she will cause all information in the notice of appointment 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.¹¹

6.03 *Attorney Acceptance of Appointment and Contact with the Defendant.* The appointed attorney is required to provide the court, within 72 hours of receiving notice of appointment, 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 appointment¹²:

(a) The appointed attorney shall deliver the acknowledgment and confirmation on a form¹³ approved by the judges 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.

Rule 7. Replacement of Appointed Counsel

7.01 *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.

¹¹ A standard form can be used in implementing this provision.

¹² A standard form can be used in implementing this provision.

¹³ A standard form must be used in implementing this provision.

7.02 *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.

7.03 *Defendant Request.* The judge presiding over the trial court proceedings in a criminal case will 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.

7.04 *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 Rules 4, 5, and 6.

Rule 8. Attorney Fee Schedule and Compensation of Appointed Attorneys

8.01 *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:

(a) Appointed attorneys shall be paid \$90¹⁴ per hour for all documented¹⁵ out-of-court and in-court time¹⁶ that is actually spent on the case that reasonable professionals would agree was objectively necessary for a qualified criminal defense attorney in the community to represent the client; and

(b) For good cause or exceptional circumstances, an appointed attorney may request payment at an hourly rate above the rates specified in subsections (a) and (b) of this Rule, subject to review and approval by the judge presiding over the case as specified in Rule 8.02.

8.02 *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:

¹⁴ County circumstances vary widely, and more or less compensation will be appropriate in particular counties based on factors in that county such as and the prevailing rates in the local legal community. The basis for using the sample number of \$90 an hour is that it is the approved rate to reimburse private appointed counsel at the trial level in the federal courts, effective May 1, 2002. For capital cases or particularly demanding felony cases, higher rates may be appropriate to attract counsel with the necessary experience and qualifications to provide effective representation.

¹⁵ A standard form or voucher must be used in implementing this provision.

¹⁶ We have used an hourly rate and we have not distinguished between in-court and out-of-court expenses consistent with the State Bar of Texas, *Standards for the Provision of Legal Services to the Poor in Criminal Matters*, Standard 6.1 (2001) and the National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems*, Standard 4.7.2 (1989). When determining what rates to pay appointed counsel, all counties must meet the minimum requirements as set forth in the Act:

Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for appointed counsel to itemize the types of services performed.

(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 26.052(f) - (h) of the Code of Criminal Procedure.

These Local Rules of Administration were approved by a majority of the judges trying criminal cases in _____ County at a meeting held on _____, 2001, after proper notice, and will be reported as provided in Section 71.0351 of the Government Code.

Attest: _____
Administrative District Judge for _____ County