

**STANDARDS and PROCEDURES RELATING to the
APPOINTMENT OF COUNSEL for INDIGENT DEFENDANT in
CORYELL COUNTY**

(Revised November 25, 2009)

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 Section 74.095, as an alternate plan under Article 26.04 code of Criminal Procedure effective June 30, 2003:

PART 1: INDIGENT DEFENSE

Rule 1. Applicability

1.01 The rules in this Part will govern criminal procedures in the County Court at Law and District Court in this County, notwithstanding any other local rule to the contrary.

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.

(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 taken into custody.

(d) If 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.
- 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 such defendant may not be mentally competent and 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 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(b) 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 as required by law or for the same period required for all official records of criminal court proceedings if no specific rule controls.

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 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. Requests for appointment of counsel shall be transmitted by telephone facsimile as soon as reasonably possible after the Article 15.17 hearing to the facsimile number maintained by the Court which will have jurisdiction over the offense charged, or, if both felony and misdemeanor offenses are charged, to the District Court. Within 24 hours the request shall be delivered to the appropriate court or such person as the court shall designate to appoint counsel, or if such time shall fall upon a Saturday, Sunday or legal holiday, to the Sheriff's Office of Coryell County to be delivered to the court on the first working day thereafter.

2.04 Prompt Appointment of Counsel: Counsel shall be appointed in the manner specified in Rule 4 below, as soon as reasonably 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.

2.05 Defendant not in Custody:

(a) Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

(b) When counsel is appointed for a defendant who is not in custody or the defendant is released from custody after appointment of counsel, the defendant shall be responsible for maintaining contact with the appointed attorney, informing the attorney and the court of any changes in address or telephone number given on the request for appointment of counsel.

2.06 Procedures for arraignment of defendants arrested on an out of county warrant or arrest in an adjacent county and arraigned pursuant to 15.17 (a) of the Code of Criminal Procedure

When a person is arrested on a warrant for an offense alleged to have occurred in another county or when such person is brought before a magistrate of Coryell County after having been arrested in an adjacent county pursuant to article 15.17 (a) of Code of Criminal Procedure, the magistrate shall arraign defendant as provided in article 15.17 and the Standards and Procedures relating to the appointment of counsel for indigent defendants in Coryell County and shall inform the defendant of his right to request appointment of counsel as provided therein. Thereafter, as provided in article 15.19 of the Code of Criminal Procedure, the magistrate will immediately notify the Sheriff of the County in which the offense is alleged to have been committed of the arrest and commitment of the defendant. The magistrate will, at the same time, notify such Sheriff of any request of appointment of counsel made by said defendant and shall fax to said Sheriff a copy of the arraignment form indicating the request for counsel. It is the obligation of the Sheriff of the county in which the offense is alleged to have been committed to provide assistance in completing any forms necessary to request appointment of counsel and shall provide those forms to the appropriate court or person designated to make appointments in that county in accordance with the Code of Criminal Procedure and the Plan for Appointment of Counsel adopted in that county.

2.07 Procedures relating to defendants arrest on a warrant alleging an offense committed in Coryell County but who are arrested in another count or state

Upon taking custody of a person arrested out of state or in another county into the county jail or other place of incarceration in Coryell County, the Sheriff of Coryell County or other person having custody of such defendant shall take the defendant before a magistrate as if he had been arrested in Coryell County. If informed that the defendant has previously been arraigned and has requested appointment of counsel, the Sheriff or other person having custody of said defendant shall insure that the defendant receives adequate assistance in completing the necessary forms for appointment of counsel and shall forward them to the appointing court or person designated to make appointments as provided by the Standards and Procedures Relating to the Appointment of Counsel for Indigent Defendants in Coryell County.

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) “Assets and resources” 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.

(c) “Household” means all individuals who are actually dependent on the defendant for financial support, or from which the defendant is entitled to 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 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) In determining whether a person requesting appointment of counsel is indigent, the Court shall consider the following factors:

- 1) The net household income of the defendant, the assets and resources available to the defendant as those terms are defined herein,
- 2) The outstanding financial obligations as they may occur during the time that counsel may reasonably be expected to represent the defendant, the reasonable and necessary expenses for the maintenance of the defendant's household and dependents, and the number, age, and exceptional financial needs, if any, of the dependents.
- 3) The nature of the offense or offenses with which the defendant is charged, the possible punishment for those offenses, the complexity and likely duration of the representation, the necessity for investigators and expert witnesses, the fees and retainers charged by competent counsel in Coryell and contiguous counties for defending such offenses, and the effort made by the defendant to retain counsel to represent him.
- 4) Whether the defendant is presently committed to a penal institution or a mental health facility, whether the defendant or his dependents are currently qualified for or receiving temporary assistance to needy families, supplemental security income, or public housing; and
- 5) If, taking all the above factors into consideration, the Court determines that the defendant is not able or cannot be reasonably expected to retain counsel to represent him, the Court shall appoint counsel for the defendant. In making this determination, the likelihood that a defendant may be required to liquidate assets, deplete savings accounts or retirement accounts available to the defendant, decrease or eliminate expenditures, or otherwise diminish his customary lifestyle, shall not necessitate a finding of indigence.

3.03 Appointing Counsel for Partially Indigent Defendants:

A defendant who is determined by the Court to be indigent for purposes of appointing counsel, but who is further determined by the Court to have sufficient income or resources to pay the cost of legal services, may be required to pay a reasonable amount toward such cost in a lump sum or on a periodic basis consistent with his income and resources. Such periodic payments may be enforced as set out in article 3.06 below. Cash bonds or cash deposits made by the defendant as a condition of bond may be used to pay such costs upon the disposition of the case by conviction, deferred adjudication, acquittal, or dismissal.

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, except to the extent that it reflects the defendant's financial circumstances measured by the criteria set forth above,

(b) The resources available to friends or relatives not legally responsible for the support of the defendant may not be considered in determining whether the defendant is indigent. The income, assets and resources of a parent of a defendant who is under 18 years of age or claimed as a dependent for Federal income tax purposes may be considered and a parent may be required to appear before the court and make the same financial disclosures as a defendant.

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 arresting law enforcement agency, County Jail, or magistrate shall provide each arrested person who wants to request appointment of counsel with a form 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 arresting agency, County Jail or 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 persons financial resources will be transmitted to the

appointing judge or person(s) designated by the judges to appoint counsel in accordance with Rule 2.03.

(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. Appointment of counsel constitutes a finding of indigence.

(d) The arrested person may be required by the magistrate, the appointing judge, the person designated by the judge to appoint counsel, or the judge presiding over the case to respond to examination regarding the person's financial resources in addition to providing required information by affidavit.

(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. This subsection does not prohibit prosecution of the defendant under chapter 37 of the Penal Code.

(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 maybe 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 appointed 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 these rules may order the defendant to pay the county that portion of the costs of legal services that it finds that the defendant is able to pay.

Upon disposition of the defendant's case the Court may assess the costs of legal services paid by the county as a judgment in the event of conviction or deferred adjudication and may order such costs paid as a condition of any probation granted in the case. In the event of dismissal or acquittal the Court may order such costs be paid by the defendant in a lump sum or in installments to the clerk of the court. Failure by a defendant to pay such costs in a reasonable manner consistent with the defendant's financial resources may be punished by contempt or *capias pro fine* in the discretion of the Court.

Rule 4. Selection and Appointment of Counsel

4.01 Method of Appointment: Attorneys shall be appointed to represent indigent defendants from an appointment list maintained by the District Court and the County Court at Law, hereinafter referred to as the Judges, using a system of rotation as further specified in this rule.

4.02 Public Appointment Lists: The judge of each court shall create a list of attorneys qualified in his or her court, which shall be combined into a unified list for the use of the Courts, those persons who may be designated by the judge to appoint counsel, and the magistrates of Coryell County as set out in these rules.

The Judge of each court may, in the Judge's discretion, create a list of more than one tier of attorneys subject to appointment. Such list may distinguish between qualified attorneys residing in and/or maintaining an office in Coryell County as described in 4.04 (a) of this plan and attorneys who reside in or maintain office in counties other than Coryell County. The Judge may show preference in appointment of counsel to those counsel who reside in or maintain offices in Coryell County. In any event, all attorneys appointed under this plan shall meet the requirements set out herein.

4.03 Attorney Qualifications: At least twice a year, on or before January 1st and July 1st, or more frequently as the Court may allow, attorneys may apply to be included on the appointment list. To be eligible for placement on the list attorneys must have met the following minimum qualifications to represent a defendant in the stated level of offense.

(a) Misdemeanor List qualified for class A and B misdemeanor representation:

- 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 which may

include participation as an intern in a legal education program or practicing under supervision prior to licensing;

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 6 hours a year of continuing legal education course relating to criminal law as recognized by the State Bar of Texas; and

(b) Third Degree Felony List, qualified for State Jail and Third degree felony representation.

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

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

(c) First Degree Felony List qualified for First and Second degree Felony representation.

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

3) Have tried to conclusion at least four criminal jury trials as lead or second chair counsel,
including at least two felony trials.

(d) 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 five years;

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

4) in capital felony cases where the death penalty is sought the attorney must, in addition, meet the following qualifications:

(i) exhibit proficiency and commitment to providing quality representation in death penalty cases;

(ii) have trial experience in the use of and challenges to mental health or forensic expert witnesses and investigating and presenting mitigating evidence at the penalty phase of a death penalty case and;

(iii) participated in training and continuing legal education relating to death penalty representation; and,

(iv) meet all requirements of and be approved by the committee established by the administrative Judge pursuant to Article 26.052 of The Code of Criminal Procedure.

(e) Appellate List:

1) Have met the qualifications set forth in 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.

(iv) have worked as a briefing clerk of an appellate court having criminal jurisdiction for a period of one year or more.

(f) During the first year of the plan attorneys who otherwise meet the requirements set forth above but who do not have the required number of hours of continuing legal education or number or type of trials previously tried, may be appointed as provided in these rules when the appointing judge determines that such appointment is necessary to provide a sufficient number of appointed counsel, that such appointment will provide adequate, competent representation of the defendant, and the attorney to be appointed presents to the court a realistic and attainable plan to be in compliance with the standards herein within one year from the date of the attorney's application for appointment. Failure by the attorney to pursue the plan presented or to qualify within the one year period will result in the attorney being removed from the list of appointed counsel.

4.04 Additional Qualifications and Requirements of Appointed Counsel

Attorneys applying for consideration of appointment to represent indigent defendants will meet the following additional requirements:

(a) Court appointed counsel on the approved list must maintain an office with a phone which is answered by a receptionist or answering service from 8:00 a. m. to 12:00 p. m. and from 1:00 p. m. to 5:00 p. m. Monday through Friday (except for Coryell County holidays as set out in the official Coryell County calendar approved by the Coryell County Commissioner's Court) and which receptionist or answering service can promptly locate the attorney and notify said attorney of appointment or hearing setting. Court appointed counsel on the approved list must maintain a telephone facsimile number to which faxes may be received 24 hours a day, seven days a week. Attorneys shall also provide to the Court Coordinator of each court their home telephone number, cellular telephone number and e-mail address. These numbers shall be included on the "Affidavit of Licensed Attorney Residing or Practicing Law in Coryell County, Texas" and shall be the official numbers, which will be utilized by the court to inform counsel of appointment or court hearing. Any change in these notification numbers must be given in writing to each Court prior to or within 24 hours after the change.

(b) Court appointed counsel shall comply with all laws, rules procedures, and ethical provisions for providing reasonable assistance of counsel to their client.

(c) Court appointed counsel shall maintain a high standard of ethical conduct and always be completely candid with the trial court.

(d) Court appointed counsel shall timely inform their client of matter relating to the preparation, trial, and disposition of the case; appellate and writ rights, deadlines, and procedures for proper processing, and such other matters as necessary to provide reasonable assistance of counsel.

(e) Court appointed counsel shall represent a defendant until the defendant is acquitted, appeals are exhausted, or the court, after entering a finding of good cause on the record, relieves the attorney and /or replaces the attorney with other counsel.

4.05 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 the appointment lists only if each judge approves the attorney's placement on each such list.

(b) At least twice a year, but at any time the Judge deems it to be appropriate, following the submission of attorney applications for the public appointment lists, the judge of each court shall evaluate the new applicants for appointment and the attorneys already on the lists. The judge may approve those attorneys:

- 1) who meet the objective qualifications set forth in Rule 4.03 for placement on the list; and
- 2) whom the judge considers to be actually competent to adequately handle cases associated with the list.

(c) Any judge may delegate any of the responsibilities for appointment of counsel described in these rules to a magistrate or to an indigent defense administrator who has been designated by the judge and is a county employee hired to address administrative matters associated with indigent. The Court Coordinator of each court may serve in this capacity.

(d) The appointing judge or person delegated to make the appointment will appoint the lawyer whose name appears next in order on the 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) the person making the appointment finds good cause for appointing any qualified, willing attorney regardless of whether the attorney's name is among the first five names on the list.
- 4) Whenever a lawyer is appointed out of order, 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.
- 5) The person making the appointment may give preference to attorneys residing in and/or maintaining offices in Coryell County as set forth in 4.02 above. In making the determination whether to appoint Coryell County counsel or out of county counsel the court may consider the nature of the offense, the existence of co-defendants, conflicts of interest, current pending charges against the defendant in other counties, the place of residence of the defendant and difficulties in transportation of the defendant, and any other good cause determined by the court.

(e) 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.

(f) At the conclusion of all proceedings in the trial court, including post-trial motions, if an indigent defendant wishes to file at 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 these rules.

4.06 Removal of Attorney from Appointment Lists: An attorney may be removed from the list of appointed attorneys when in the opinion of the appointing Judge and in his

opinion the attorney no longer provides representation in a competent and professional manner. Such action shall be in the discretion of the Judge and may be based upon the following actions by the attorney:

(a) Intentionally or repeatedly failing to make every reasonable effort to contact the defendant not later than the end of the first working day following the date of appointment and notification of the attorney as provided herein.

(b) Failure to maintain appropriate contact with the defendant so that his case is adequately investigated and prepared for trial.

(c) Failure to timely appear before the Court for settings in appointed or retained criminal or civil cases.

(d) Sanction by a trial or appellate court of the State of Texas , or The State Bar of Texas or any other disciplinary body for failure to comply with the Rules of Professional Conduct, a violation of the rules of criminal or civil procedure subject to sanction, or failure to adhere to the Texas Lawyer's Creed.

An attorney may be removed from the appointment list by the judge whenever the judge determines 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 not qualified for a category of offenses, while continuing to approve the attorney for other offenses.

4.07 Unavailability of Attorney: An attorney on the list of qualified attorneys shall keep each court informed of any situation in which it is anticipated that the attorney's office will be closed, the attorney will be absent from his office for such a time that he cannot contact a defendant whom he is appointed to represent within the time limits established in these rules, or any situation in which the attorney anticipates that he will not be able to adequately represent a defendant as required by these rules. Such notice shall be in writing or by telephone facsimile to the Court Coordinator of the court.

4.08 Appointment of counsel:

(a) When the Court has received a request for appointment of counsel as provided by these rules and has determined that the defendant is indigent, the Court will determine the classification of the offense charged and any circumstances of the offense or the defendant relevant to appointment of counsel and will appoint counsel as provided in

the rules. Such appointment may be by telephone or other electronic means.

(b) In the event that the judge of the court having jurisdiction of the offense is not available and not expected to be available within the time provided by these rules for appointment of counsel, the judge of the other court will appoint counsel making an effort to appoint counsel next in order on the list of the absent judge.

(c) In the event that both judges are unavailable and not expected to be available within the time provided for the appointment of counsel, the magistrate holding the Article 15.17 hearing or other persons designated by the judge shall appoint counsel as provided in the rules from and next in order on that judges' list.

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

5.01 Whenever a capital felony case is filed, the District Judge 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) Meet the qualifications set out in rule 4.03 above.
- (b) Be on the list of attorneys approved by the local selection committee of the administrative judicial region for appointment as lead counsel in death penalty cases as provided in Article 26.052 of the Code of Criminal Procedure;

5.03 Qualifications of Second Chair Counsel:

To be assigned as second chair counsel in a death penalty case an attorney must:

- (a) Meet the qualifications set out in rule 4.03 above.
- (b) Be on the list of attorneys approved by the local selection committee of the administrative judicial region for appointment as lead or second

chair counsel in death penalty cases as provided in Article 26.052 of the Code of Criminal Procedure

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

6.01 Notice of Determination that the Defendant is Not Indigent: If the Judge or 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 a copy of the form to be given to the person, and cause a the form 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 Judge or person making the appointment finds that a person who requests counsel is indigent, he or she will cause notice of the appointment to be issued to the appointed counsel and to the indigent person, and to be filed with the orders in the ease. 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.

6.03 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 appointment.

(a) The appointed attorney shall deliver the acknowledgment and confirmation on a form approved by the judges to the appointing judge, person designated by the judges to appoint counsel, or Court Coordinator.

(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.

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 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 these rules.

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:

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:

- (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 the 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 trial judge or 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 of the Code of Criminal Procedure.

8.03 Payment of Investigators and Expert Witnesses: 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.

Procedure with prior Court approval:

Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state, as applicable:

- (1) the type of investigation to be conducted or the type of expert to be retained;

- (2) specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
- (3) an itemized list of anticipated expenses for each investigation or each expert.

The Court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the Court denies in whole or in part the request for expenses, the Court shall:

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

Procedure without prior Court approval:

Appointed counsel may incur investigative or expert expense 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. Expenses for investigators or expert witnesses will not be deemed reasonable and necessary if incurred without prior approval of the Court unless Counsel can show that such expenses were immediately necessary to incur and that the Court could not be contacted to request approval of such expenses prior to their being incurred, and in no event shall exceed \$200.

These Local Rules of Administration were approved by the Judge of the 52nd District Court and the Judge of the County Court at law of Coryell County on November 25, 2009.

JUDGE TRENT D. FARRELL
52ND DISTRICT COURT

JUDGE SUSAN STEPHENS
COUNTY COURT AT LAW

