

**DALLAS COUNTY PROCEDURES FOR APPOINTMENT
OF COUNSEL IN DEATH PENALTY CASES
AS AMENDED MAY 2007**

PURPOSE

The judges of the Criminal District Courts and the District Courts giving preference to criminal cases of Dallas County, in compliance with Article 26.052 of the Code of Criminal Procedure, establish the procedures for the appointment and payment of counsel to represent indigent defendants in death penalty cases. This statute sets forth the practices and procedures to be followed by the district courts trying capital cases in Dallas County. The purpose of the procedures set forth below is to further codify and publish the statutory requirements so that members of the bar and the public may be more fully informed about the operation of the criminal justice system and the procedures followed in Dallas County in death penalty cases. To that end, a copy of these procedures shall be filed with the Dallas County District Clerk and Indigent Defense Task Force in Austin for publication.

ATTORNEY QUALIFICATIONS

As required by Article 26.052 of the Code of Criminal Procedure, the Courts adopt the standards and procedures for appointment of counsel in capital cases promulgated by the local selection committee for the First Administrative Judicial Region. The local selection committee is appointed by the Presiding Judge of the First Administrative Judicial Region and is comprised of not less than four members, including the Presiding Judge of the First Administrative Judicial Region, at least one district court judge, a representative from the local bar association, and at least one practitioner who is board certified by the State Bar of Texas in criminal law. [Art. 26.052 (c)]. The standards and procedures for the First Administrative Judicial Region are attached to this plan and are hereby incorporated by reference as if fully set forth in this plan.

In addition to the continuing legal education requirements for first chair or lead attorney set forth in the standards promulgated by the local selection committee for the First Administrative Judicial Region, in order to be qualified for appointment as first chair or lead attorney in a death penalty case in Dallas County, the attorney must have completed a minimum of at least four additional hours of continuing legal education or other training related to criminal defense in death penalty cases over the previous two year period, bringing the minimum amount of such training to sixteen hours over the previous two year period.

APPOINTMENT OF COUNSEL

The presiding judge of the district court in which a capital case is filed shall appoint two attorneys, at least one of which is from the list of qualified attorneys approved by the local selection committee, to represent an indigent defendant. Attorneys shall be appointed as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty. [Art. 26.052(e)].

In appointing an attorney from the approved list the Court should consider the attorney's schedule or availability, the complexities of the case, the individualized needs of the defendant, and such other relevant factors as the Court deems appropriate.

In lieu of appointing counsel from the list of attorneys approved by the local selection committee, members of the Public Defender's Office may be appointed in accordance with guidelines established by the Dallas County Public Defender's Office. [Art. 26.052 (b)].

The judges shall ensure that appointments are reasonably and impartially allocated.

FEE SCHEDULE

The following fees shall be paid to appointed counsel in capital cases where the death penalty is sought:

\$500.00 per half day of voir dire
\$1000.00 for each full day of voir dire
\$1500.00 for each day in trial

The judge of the court may approve additional time at a rate of \$150.00 per hour for all other reasonable and necessary documented legal activity. Work on capital appeals and capital writs will also be compensated at a rate of \$125.00 per hour for all reasonable and necessary documented legal activity. To be compensated for time not accounted for in the flat daily rates, an attorney must submit a separate hourly billing statement. The billing statement must reflect the date an itemized legal activity occurred and each itemized activity must be rounded to the nearest tenth of an hour. The billing statement must be signed by the attorney. The signature of the attorney is an attestation as to the billing statement's accuracy.

The courts shall approve reasonable and necessary expenses for investigators and expert witness fees.

Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses. The request for expenses must state: (1) the type of investigation to be conducted; (2) specific facts that suggest the investigation will result in admissible evidence; and (3) an itemized list of anticipated expenses for each investigation. [Art. 26.052 (f)].

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. [Art. 26.052(g)].

Counsel may incur expenses without prior approval of the Court. On presentation of a claim for reimbursement, the Court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. [Art. 26.052(h)].

Advance payment of expenses anticipated, or reimbursement of expenses incurred for purpose of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by the appointed counsel and approved by the Court. [Art. 26.052 (l)].

RECOMMENDATIONS


The Judges of the Criminal District Courts and the District Courts giving preference to criminal cases of Dallas County recommend that all attorneys appointed pursuant to these procedures for appointment of counsel in death penalty cases read and follow the Guidelines and Standards for Texas Capital Counsel promulgated by the Standing Committee on Legal Services to the Poor in Criminal Matters which were adopted by the State Bar Board of Directors on April 21, 2006.

FUTURE AMENDMENTS

This plan shall be automatically amended without further action of the judges to conform to any amendments to the standards promulgated by the First Administrative Judicial Region.

The foregoing amended plan was adopted by a unanimous vote of the judges of the Criminal District Courts and the judges of the District Courts giving preference to criminal cases of Dallas County, Texas, on May 3, 2007. The fee schedule contained herein is to be effective immediately.

SIGNED this the 4 day of May, 2007.



**JOHN CREUZOT, PRESIDING JUDGE
CRIMINAL DISTRICT COURTS
DALLAS COUNTY, TEXAS**