

**DALLAS COUNTY INDIGENT DEFENSE PLAN
FOR THE APPOINTMENT OF COUNSEL IN FELONY CASES
REVISED JANUARY 2009**

**SECTION 1 APPLICATION FOR
PLACEMENT ON THE APPOINTMENT LIST WHEEL**

- 1.1 Attorneys requesting court appointments must submit an application on the approved application form to the district court judges. A majority of the judges - 9 criminal district judges - must screen applicants who meet the objective qualifications and approve those attorneys whom they consider competent to handle cases corresponding to an appropriate level.
- 1.2 The master list will be multi-level, with four trial levels: 1st degree and non-death penalty capital cases, 2nd degree, 3rd degree, and state jail. Under each level there will be a sub-level for multi-lingual lawyers.
- 1.3 Attorneys on the master list at a certain level may petition to advance to a higher level by submitting a new application. A majority of the district judges must vote to approve the change.
- 1.4 An attorney who does not receive sufficient votes to be placed on any level of the master list may re-apply in 90 days.
- 1.5 A separate list will be maintained for appeals and writ appointments. Attorneys must submit the appropriate application. A majority of the judges - 9 criminal district judges - must screen applicants who meet the objective qualifications and approve those attorneys whom they consider competent to handle appeals and writs.

**SECTION 2 MINIMUM
QUALIFICATIONS FOR APPOINTMENT**

- 2.1 Requirements for attorneys qualifying at each level of the wheel will increase as the possible consequences to the defendant become more serious. Minimum requirements are as follows:

State Jail - Licensed for 2 years and at least 6 points on the application form; Third Degree - Licensed for 3 years and at least 12 points on the application form; Second Degree - Licensed for 4 years and at least 18 points on the application form;

First Degree and Non-Death Penalty Capital Murder - Licensed for 5 years and at least 25 points on the application form.

- 2.2 Unusual or exceptional experience demonstrating substantial involvement in criminal law may be substituted for trial experience on the application form. If claiming this exception, the attorney must provide a detailed explanation of the attorney's experience as an attachment to the application.

SECTION 3 PLACEMENT ON THE APPOINTMENT LIST WHEEL

- 3.1 An attorney qualified for appointment to any felony level will automatically be qualified for all the levels below. Thus, a lawyer on the highest level will be on the felony levels below and his/her name will come up in rotation on each level independently of all other levels and will not result in a forfeiture of position on any other level.
- 3.2 Lawyers will be randomly, not alphabetically, listed on each level of the wheel. Names on the initial wheel will be shuffled. Thereafter, additional names will be randomly inserted at each level of the wheel.

SECTION 4 APPOINTMENT OF COUNSEL

- 4.1 The court or its designee must evaluate each request for a court appointed attorney to determine whether the defendant is indigent. The court or its designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the following factors: (a) the defendant's income; (b) the source of the defendant's income; (c) the assets and property owned by the defendant; (d) the defendant's outstanding obligations and necessary expenses; (e) the number and age of the defendant's dependents, and (f) income of the defendant's spouse that is available to the defendant. The defendant will fill out a form addressing the above factors and if the court or its designee finds the defendant is indigent the form will be filed in the court file.
- 4.2 When an eligible defendant requests appointment of counsel and submits the required documents, the request and any required documentation shall be transmitted to the court within 24 hours of the request for appointment of counsel being made.
- 4.3 Counsel shall be appointed for eligible defendants within one working day of the court's receipt of a request for appointed counsel.

- 4.4 A master list of qualified attorneys will be maintained on the county computer. Daily access to that list will be limited to appointing courts and their designees. Those accessing the list will not be able to preview the order of the attorneys as they appear on the list. The court or its designee may draw as many names from the list, in the order that they appear at the required level, as there are appointments to be made that day. The court shall appoint attorneys from among the next five names on the appointment list unless the court makes a finding of good cause on the record for appointing an attorney out of order.
- 4.5 A court or its designee may appoint from the master list or the Public Defender's Office.
- 4.6 An attorney cannot be appointed on a case at a level higher than that for which the attorney has been qualified by a vote of the judges.
- 4.7 When a defendant has two or more cases one attorney will be appointed to all cases and will be appointed from the level of the greater offense.
- 4.8 An attorney will be appointed only after a case is pre-assigned to a court.
- 4.9 Defendants who speak only a foreign language will be matched to an attorney qualified to speak that language if available. Those attorneys will also be on the non-multi-lingual part of each level of the wheel and their names will come up on both parts, but an appointment as a multi-lingual speaker from any level of the wheel will result in forfeiture of position for appointment on the other part at the same level.
- 4.10 When a defendant is subsequently charged with a higher grade of offense, the court may appoint new counsel from the list.
- 4.11 Felonies with enhancement paragraphs may, in the discretion of the court, be classified for purposes of appointment at the level of the underlying offense or at the level of the potential maximum punishment.
- 4.12 A judge, for good cause stated either on the record or by written notation placed in the court's file, may appoint an attorney out of order. The replaced attorney will remain at the top of that level of the list from which the appointment was made.

SECTION 5 DUTIES OF APPOINTED COUNSEL

- 5.1 A lawyer who is appointed from the wheel must either personally represent the client or withdraw. Cases will not be transferable or tradable.

- 5.2 Any attorney called for an appointment who does not respond to the notifying court by 9:45 a.m. the following morning, will be removed from that appointment and his/her name will go back on the bottom of the list for appointments in the future. Repeated failures to respond may be grounds for removal from the master list.
- 5.3 A lawyer who withdraws from a case will lose the appointment and will not be restored to his/her former place in the rotation.
- 5.4 All attorneys on the master list must notify the Court Manager for the Criminal District Courts of any change of address or contact information. Failure to maintain accurate contact information with the Court Manager's Office may result in automatic removal from the appointment list.

SECTION 6 MAINTAINING ELIGIBILITY FOR APPOINTMENT

- 6.1 To remain eligible for appointment an attorney must:
- (i) complete a minimum of twelve hours of continuing legal education pertaining to criminal law during each 12 month reporting period; or (ii) attend all sessions of either the State Bar Advanced Criminal Law Course or the TCDLA Advanced Criminal Law Short Course once every two years; or (iii) be currently certified in criminal law by the Texas Board of Legal Specialization.
- 6.2 Continuing legal education may include teaching at an accredited CLE activity, or other CLE activities accredited under Section 4 Article XII, of the State Bar Rules, which may include online courses and credit for teaching or publishing criminal law materials.
- 6.3 Self-study hours may not be included in meeting the required CLE hours.
- 6.4 CLE hours completed during any reporting period in excess of the minimum required hours may be applied to the following reporting period's requirement. CLE hours may only be carried over for one year.
- 6.5 The reporting period shall be from January 1st to December 31st of each year. Each attorney must provide proof that the attorney has met the CLE requirements during the reporting period by reporting their CLE hours each January on the form approved by the judges of the criminal district courts and the district courts giving preference to criminal cases. The CLE compliance report must be sworn to by the attorney.

6.6 The CLE compliance report form shall be turned in to the Criminal District Court Manager during the month of January following each reporting period and must be received by the Criminal District Court Manager no later than January 31st of each year.

SECTION 7 REMOVAL FROM LIST AND REINSTATEMENT

- 7.1 An attorney who fails to comply with the CLE requirements or fails to submit a sworn CLE compliance form each January will be automatically removed from the master list.
- 7.2 An attorney may be removed from the master list or moved to a lower level of the wheel for reasons other than failure to comply with the CLE requirements by a majority vote (9 judges) of the district judges.
- 7.3 Any judge, for good cause, may raise an issue regarding representation by an attorney or attorney misconduct at a monthly judges meeting. Specific and timely allegations must form the basis of the complaint.
- 7.4 Upon motion of one district judge, after being seconded by another district judge, an attorney may be summoned before the district judges during a regularly scheduled judges meeting to explain his/her handling of a case or cases. The attorney is not entitled to the representation of counsel at the meeting. Failure to appear without good cause will be considered against the attorney. An attorney who appears before the judges is subject to questioning by the Judges.
- 7.5 If an attorney's presence is required, notice of the specific allegations of misconduct or issue must be sent to the investigated attorney in writing no less than two weeks prior to a requested appearance before the judges. A majority (9 judges) of the district judges will determine whether good cause exists for removal or sanctions.
- 7.6 Sanctions may consist of any of the following:
- a. written reprimand signed by the Presiding Judge;
 - b. demotion to a lower level of the wheel;
 - c. temporary suspension from the appointment wheel;
 - d. removal from the appointment wheel; or
 - e. obtaining additional CLE hours or working with a mentor.
- 7.7 An attorney shall automatically be removed from the felony appointment list for following reasons:
- a. conviction or deferred adjudication for any felony offense;

- b. conviction or deferred adjudication for any crime of moral turpitude;
- c. being under indictment or formally charged with a felony or crime of moral turpitude;
- d. failure to meet the general qualifications for appointment; or
- e. any suspension from the practice of law by the State Bar except for administrative suspensions for failure to pay fees or dues and failure to comply with CLE requirements. (See section 7.9 below regarding temporary suspensions).

7.8 An attorney may be removed from the felony appointment list for the following reasons:

- a. failing to perform the attorney's duty owed the defendant;
- b. failing to maintain compliance with each of the felony appointment guidelines;
- c. finding by a court that the attorney provided ineffective assistance of counsel;
- d. intentional misrepresentation on the application for court appointments or on the request for compensation or the annual re-certification; or
- e. any other good cause at the discretion of the judges of the criminal district courts and district courts trying criminal cases.

7.9 An attorney shall be temporarily removed from the appointment list for the following reasons:

- a. any suspension from the practice of law by the State Bar for failure to comply with CLE requirements or failure to pay dues or fees.

The attorney will be placed back on the appointment list upon providing proof of reinstatement from the State Bar.

7.10 The court coordinators for the district courts shall keep a list of attorneys who do not appear for an initial appointment or who habitually fail to reset cases. This list will be taken into consideration should an attorney's qualifications be under review by the district judges. Failure to reset cases may be grounds for appointing new counsel on an individual, case by case, basis.

7.11 An attorney who has been removed from the master list by a majority vote of the judges for reasons other than failure to comply with the CLE requirements may reapply after one year (12 months). An attorney who has been demoted may reapply after one year (12 months).

7.12 An attorney who has been automatically removed from the list for failure to comply with the CLE requirements will be reinstated to the master list at the

attorney's previous level upon providing proof of completion of the required CLE.

- 7.13 An attorney who has been removed from the master list at the attorney's request may be reinstated to the master list upon request and proof that the CLE requirements have been met.

SECTION 8 COMPENSATION

- 8.1 Appointed attorneys shall be compensated in accordance with the fee schedule approved by the judges of the criminal district courts and the district courts giving preference to criminal cases.
- 8.2 Attorneys must submit documentation on the approved forms as required by the fee schedule. Failure to submit proper documentation may result in a delay in receiving payment or in a failure to receive full payment.
- 8.3 When an attorney has been appointed and the defendant subsequently retains counsel, the appointed attorney shall be compensated for any work performed prior to the substitution of retained counsel.
- 8.4 The county auditor will not pay any attorney who is not on the approved list at the time of appointment.

SECTION 9 APPLICABILITY

- 9.1 The wheel system set forth in this plan is not applicable to appeals, writs, or probation violations.
- 9.2 Attorneys appointed to handle probation revocations must be on the master list for court appointments in the felony courts.
- 9.3 Attorneys appointed to appeals or writs must be on the appellate list for appeal appointments, or the writ list for writ appointments. Attorneys desiring to be on the appeal or writ list must submit the approved application form and be approved by a majority of the judges.
- 9.4 This plan does not apply to death penalty cases.
- 9.5 A court may appoint any available, qualified attorney to advise a witness when the law requires representation.

**SECTION 10 DUTIES OF
ARRESTING AGENCY**

- 10.1 Each person arrested in Dallas County shall be brought before a magistrate within 48 hours of arrest.
- 10.2 Every Dallas County arresting agency shall comply with the requirements of the Order of the judges of the criminal district courts and district courts giving preference to criminal cases regarding detention of persons without charges filed. Any person who has not had charges filed within the time periods required by said Order shall be released in accordance with said Order.

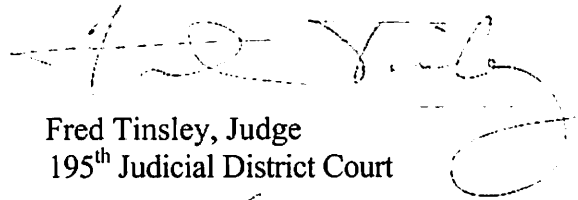
**SECTION 11
AMENDMENT OF PLAN**

- 11.1 Amendments to this Plan and the Fee Schedule require a two-thirds vote of the judges of the criminal district courts and the district courts giving preference to criminal cases of Dallas County.

Adopted by the judges of the criminal district courts and the district courts giving preference w criminal cases of Dallas County, Texas, January, 2009.

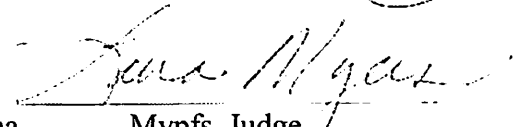


Robert Burns, Judge
Criminal Diswftct Court




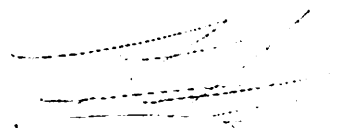
Fred Tinsley, Judge
195th Judicial District Court

tdams, Judge
riminal District Court No. 2

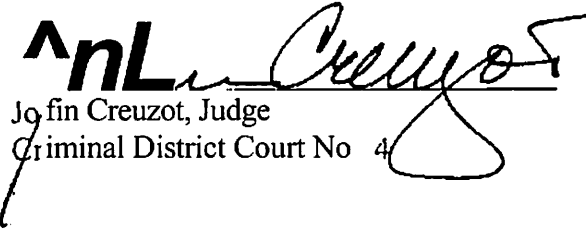


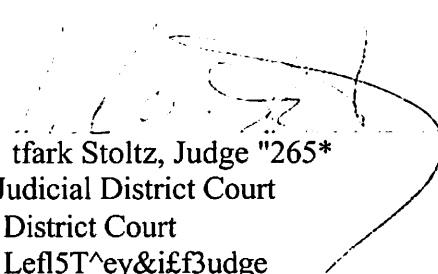
Lana Mypfs, Judge


Gracie Lewis, Judge
Criminal District Court No. 3



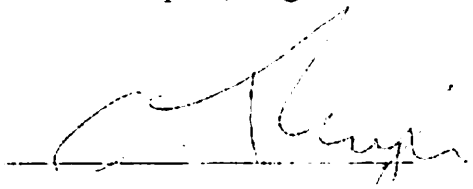
203rd Judicial


Jo fin Creuzot, Judge
riminal District Court No. 4

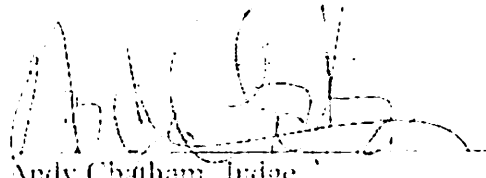


tfark Stoltz, Judge "265*
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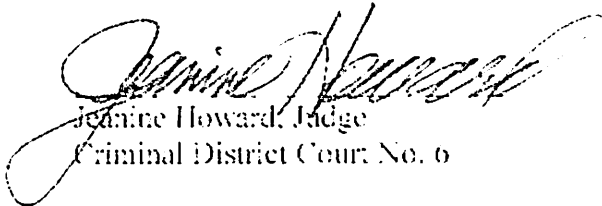
Carter Thompson, Judge



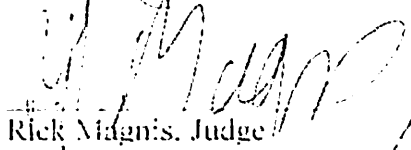
Criminal District Court No/5



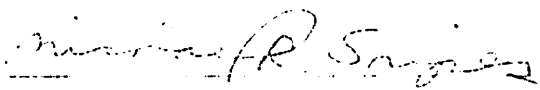
Andy Chatham, Judge
282nd Judicial District Court



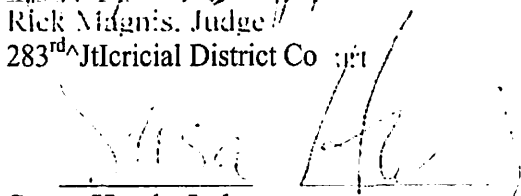
Jeanine Howard, Judge
Criminal District Court No. 6



Rick Magnis, Judge
283rd Judicial District Court



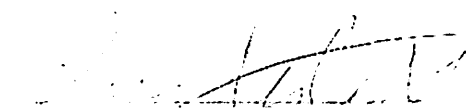
Mike Snipes, Judge Criminal
District Court No. 7



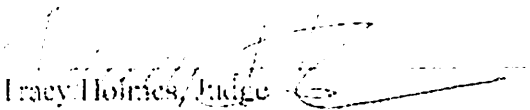
Susan Hawk, Judge
291st Judicial District Court



Ernest White, Judge
194th Judicial District Court



Larry Mitchell/Judge 292nd
Judicial District Court



Tracy Holmes, Judge
363rd Judicial District Court