

**Dallas District Court Indigent Defense Plan for the Judges of the
Criminal District Courts and the
District Courts giving preference to Criminal Cases**

Preamble

In this plan, the term “District Court Judges” refers to the Judges of the Criminal District Courts and the District Courts giving preference to criminal cases in Dallas County.

The following plan establishes practices for the appointment of attorneys for indigent defendants. It will cover the processes required to request representation, qualify a defendant, verify documentation, seek approval for court appointments, how to maintain status to receive court appointments, appointment of counsel, and how to submit vouchers for payment. This plan is intended to provide effective processes to any person seeking appointed counsel, any attorney seeking to be appointed to represent indigent defendants, and any staff who are involved in the appointment process.

The District Court Judges are committed to timely providing quality legal representation to indigent criminal defendants, to ensuring fair and neutral procedures for attorney selection, and to establishing minimum competency standards for court-appointed attorneys; while at the same time ensuring that public funds are wisely spent. In administering the Dallas County District Courts Felony Court-Appointment Plan (hereinafter the “Plan”), the District Court Judges seek to comply with applicable provisions of the Texas Code of Criminal Procedure as well as the Texas Code of Judicial Conduct. This Plan supersedes all other plans and guidelines promulgated by the District Court Judges in Dallas County.

The District Court Judges in Dallas County will administer the Plan in accordance with the rules set out herein.

The District Court Judges expect that attorneys appointed to represent indigent defendants will continuously adhere to the rules of the Plan.

The County shall submit to the Texas Indigent Defense Commission (TIDC), on a form prescribed by the TIDC, the number of appointments made to each attorney accepting appointments, and the information provided to the county by those attorneys under Article 26.04(j)(4), Code of Criminal Procedure. This is due no later than November 1st of each year.

Organizational Structure

The Criminal District Court Manager and staff, acting under the supervision of the Criminal District Court Judges, will serve as the Administrator of the Indigent Defense Software Program. The Judges, and their designees under the guidance of the Judges, will be responsible for making indigence determinations and appointment of counsel.

Section I

Prompt and Accurate Magistration Proceedings

1.0 Pursuant to Tex. Code Crim. Proc. Art. 15.17(a) each person arrested in Dallas County shall be brought before a magistrate without unnecessary delay, but no later than 48 hours after arrest for determining if the person is indigent for purposes of appointment of counsel.

1.1 Article 15.17 of the Texas Code of Criminal Procedure dictates that a magistrate shall comply with all of the following requirements:

- The magistrate shall inform in clear language the person arrested of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to an examining trial.
- The magistrate shall inform the person arrested of his right to request appointment of counsel if the person cannot afford counsel.

- The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel.
- If the arrested person does not speak and understand the English language or is deaf, the magistrate shall inform the person through the use of an interpreter consistent with Article 38.30 or Article 38.31 of the Code of Criminal Procedure.
- The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person.
- The magistrate without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, shall transmit, or cause to be transmitted, to the court or the court's designee authorized to appoint counsel, the forms and/or notification requesting appointment of counsel.
- The magistrate shall inform the arrested person that he is not required to make any statement and that any statement made by him may be used against him.
- The magistrate shall allow the arrested person reasonable time and opportunity to consult counsel, and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person to bail if allowed by law.
- A record shall be made of the magistrate informing the arrested person of the person's right to request appointment of counsel; the magistrate asking the person whether the person wants to request appointment of counsel; and whether the person requested appointment of counsel. The record may consist of written forms or electronic recordings.

Section II

Requests for Appointment of Counsel

2.0 If the accused requests an appointed lawyer during Magistration, pursuant to code of criminal procedure §26.04, the magistrate shall request the defendant to sign under oath a written statement substantially in the following form:

“On this day, I have been advised by the magistrate of my right to representation by counsel in connection with the charge(s) pending against me. I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me.” Tex. Crim. Proc. Code Ann. § 26.04 (West).

The magistrate shall provide to the Defendant the election of counsel form memorializing the statement referenced above and document a Defendant’s request for appointment of counsel at the time of the Article 15.17 arraignment on the form and in the Indigent Defense System. Completed election of counsel forms and/or the contents of that form, captured in the Indigent Defense System, may be returned to the magistrate who shall forward any request for appointment of counsel to the assigned court or the court’s designee, or to the out-of-county appointing authority via the Indigent Defense System, for those counties that are participating in the Indigent Defense System. If that system is not utilized, another verifiable means of notification should be used.

2.1 If a person is arrested on an out-of-county warrant, the magistrate shall ask if the person requests counsel be appointed to represent them on the pending charge, inform the person of the procedures for requesting counsel, and ensure that the person is provided reasonable assistance in completing the necessary forms for requesting counsel in the county that issued the warrant.

2.2 If a person arrested on an out-of-county warrant requests counsel, the magistrate shall, without unnecessary delay, but not later than 24 hours after the person requested the appointment of counsel, transmit, or cause to be transmitted, the necessary request forms and/or notification to a court or the courts’ designee authorized under Article 26.04 to appoint counsel in the county issuing the warrant. The magistrate shall forward the completed forms requesting appointment of counsel along with the financial information gathered from the arrestee to the county issuing the warrant.

2.3 Persons who have been released on bond and/or have not previously requested counsel may contact the Court Coordinator of the Court where the case is preassigned or the Criminal District Court Manager's Office personnel on the 5th Floor of the Frank Crowley Courts Building outside Auxiliary Court No. 6 Room A14. Either the Court Coordinator or the Court Manager staff will assist the requestor with processing the request for counsel pursuant to this plan.

Section III

Indigence Determination Standards

3.0 A defendant who requests a determination of indigence and appointment of counsel shall:

- (1) complete under oath a questionnaire concerning his/her financial resources;
- (2) respond under oath to an examination regarding his/her financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or
- (3) complete the questionnaire and respond to examination by the judge or magistrate.

3.1 The Magistrates, CSCD Pretrial Officers, Court Coordinators, or Court Manager's Office staff shall advise a Defendant who is requesting counsel in the following manner prior to gathering financial information utilized in the appointment process:

"If you will be asking the Court to appoint a lawyer to assist you with the charges pending against you, you will need to complete under oath a questionnaire concerning your financial resources. You may also be required to respond under oath to an examination by the Judge about your finances. The

information you provide must be truthful and you may be subject to penalty of perjury if you intentionally or knowingly provide false information. The information you provide may be shared with the Court, the District Attorney, other court staff, and possibly other agencies. If you refuse to provide the requested financial information or to complete this questionnaire under oath, your request for appointment of counsel will not be considered. You may submit a request for appointed counsel at any time.”

3.2 An arrestee or defendant shall truthfully provide answers to the financial questionnaire and to the questions posed by the Magistrates, Pretrial Officers, Court Coordinators, and Court Manager staff. The Pretrial Officers shall fill out the responses to each category of information that is part of the financial questionnaire and which is prompted by the system. Every category of information should be addressed with an arrestee. Additionally, Pretrial Officers are required to make an entry in the comment section of the electronic financial questionnaire for each category of the financial questionnaire. Moreover, any specific information which is necessary to be communicated to the Court or Court designee, who is processing the request for appointment, shall be included on the financial questionnaire or on the comment portion of the form by the Pretrial Officers. This will include any language preference of the arrestee, an email address, and a cell phone number, if applicable. All responses to the financial questionnaire will be recorded electronically on the financial questionnaire. The financial questionnaire will also become part of the Court file, but will remain confidential.

3.3 The arrestee or defendant will be assisted by the Magistrates and the CSCD Pretrial Officers in the Lew Sterrett jail or another location where an arrestee is being held in custody, and by the Court Coordinator or staff of the Court Manager’s office in the Frank Crowley Courts Building when making a request for counsel and providing the information requested on the Financial Questionnaire.

3.4 The court or its designee must evaluate each request for a court appointed attorney to determine whether the defendant is indigent. In determining whether a defendant is indigent, the court or court's designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. 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 (f) income of the defendant's spouse that is available to the defendant.

3.5 Definitions – Terms used to determine eligibility for an indigent's defense services shall have the following meanings:

“Income” shall include the total cash receipts, before taxes, from all resources, including money wages and the net receipts from non-farm or farm self-employment. Further, “income” shall include regular payments from a governmental income maintenance program, public or private pensions, annuities, and income from dividends, interest, rents, royalties or periodic receipts from estates or trusts, regular payments from Social Security, strike benefits from union funds, veteran's benefits, training stipends, alimony, child support and military family allotments, or other regular support from an absent family member or someone not living in the household, or foster care payments, benefits from a governmental income maintenance program (AFDC, SSI, unemployment compensation, or state or county general assistance or home relief), food or rent received in lieu of wages, money which is received from sale of real or personal property or received from tax refunds, gifts, one-time insurance payments or compensation for injury, non-cash benefits (food stamps, etc.).

“Equitable assets”: Equitable assets shall include, but are not limited to, cash, savings and checking accounts, stocks, bonds, certificates of deposit, and equity in real and personal property, as well as any interest in retirement accounts.

An “indigent” is any person with a household income at or below 150% of the Federal Poverty Level guidelines as established and revised periodically by the Federal Government, and who has available assets that do not exceed \$15,000, or a person who is currently eligible for and receiving Food Stamps, Medicaid, Public Housing, Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF).

3.6 A defendant is eligible for a felony court appointed lawyer and shall receive a felony court appointed attorney, if requested, authorized by the Court and made pursuant to the felony appointment wheel if:

a.) the defendant’s household income is at or below 150% of the Federal Poverty Level guidelines and his/her equitable assets do not exceed \$15,000;

or

b.) the defendant is currently eligible and receiving Food Stamps, Medicaid, Public Housing, Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF).

3.7 A defendant whose household income exceeds 150% of the Federal Poverty Level guidelines or whose asset threshold exceeds the threshold may still qualify for a court-appointed attorney if the court or its designee determines special circumstances exist. In determining whether special circumstances exist, the court or its designee may consider unusual, excessive, or extraordinary medical expenses, the age or physical infirmity of household members, or other expenses. The court or its designee may also consider the complexity of the case, the estimated cost of presenting a legal defense, the fees charged by lawyers in the community for providing defense services in similar cases, whether the defendant has retained counsel

in related legal matters (e.g., administrative license revocation, forfeiture, etc.), any efforts the defendant has made to retain an attorney, and any other factor impacting the ability of the defendant to retain private counsel.

3.8 As set forth in Texas Code of Criminal Procedure art. 26.04(p), a defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigency or non-indigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.

3.9 A defendant may be required to reimburse Dallas County in whole or in part, the cost of legal services provided as set forth in Texas Code of Criminal Procedure art. 26.05. If a defendant is placed on probation or deferred adjudication, the Court may impose as a condition of probation repayment of all or a portion of the county's cost for providing legal representation, if after a hearing, the Court determines that repayment does not impose a substantial financial hardship upon the defendant or dependents.

3.10 The guidelines established herein for the appointment of counsel also apply to the reimbursement of expenses incurred for the purposes of investigation or expert testimony, as approved by the Court.

3.11 Any person who is not defined as indigent in accordance with the Plan, but who has received court appointed counsel, shall be required to make payments for the reimbursement of the cost of legal services at the discretion of the Court.

Section IV

Minimum Attorney Qualifications

6.3.20

4.0 A critical review of the quality of representation actually provided by attorneys applying to be on the wheel is a factor in providing high quality representation to indigent defendants. In addition to the objective criteria outlined herein, the statutes of the State of Texas provide for a subjective review of the qualifications of the attorneys applying for inclusion on the wheel. While recognizing that there is a need for an open attorney appointment wheel, the District Court Judges have an obligation to closely monitor those seeking approval to be on the wheel.

The establishment of this system of qualifications does not confer a property interest in receiving felony court-appointments to any attorney.

4.1 A. General Objective Qualifications to Receive Appointments

In order to be considered to receive appointments and, once approved, to continue to receive appointments to represent indigent felony defendants in Dallas County, an attorney must:

- 1) be a member in good standing of the State Bar of Texas;
- 2) be familiar with the Texas Penal Code, the Texas Code of Criminal Procedure, Texas Rules of Evidence, Texas Rules of Appellate Procedure, Texas Disciplinary Rules of Professional Conduct, Texas case law;
- 3) consistently demonstrate commitment to providing effective assistance of counsel and quality representation to criminal defendants;
- 4) consistently demonstrate professionalism, proficiency, and reliability in representing criminal defendants, and in dealing with the courts and opposing counsel;
- 5) be of sound mind, as well as good moral and ethical character;
- 6) maintain a functioning e-mail address that is routinely monitored;
- 7) timely and promptly respond to telephone, e-mail, regular mail, or fax requests from each court;

- 8) maintain the capacity to access and review district attorney files on appointed cases that are available through the Dallas County District Attorney's Office electronic case filing system;
- 9) promptly notify the Court Manager's Office in writing of any changes to the information contained in any filed Application for Felony Court-Appointments;
- 10) promptly notify the Court Manager's Office in writing of any matter that may disqualify the attorney by law, regulation, rule, or this Plan from receiving appointments to represent indigent defendants;
- 11) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:
 - (A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;
 - (B) if the defendant wishes to pursue either or both remedies described by Paragraph (A), assist the defendant in requesting the prompt appointment of replacement counsel;
 - (C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal.
- 12) timely appear and represent each appointed client at each and every court date scheduled by the court.
- 13) make every reasonable effort to contact the defendant no later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed;
- 14) timely request discovery from the State pursuant to Texas Code of Criminal Procedure art. 39.14;
- 15) make every reasonable effort to timely review each and every disclosure made by the State pursuant to Texas Code of Criminal Procedure art. 39.14 or otherwise regarding any matter to which counsel is appointed;
- 16) promptly provide written notification of any court setting to each appointed client within three business days of receipt of such notice;

17) accept responsibility for all actions taken on each appointed case; and
18) meet any additional requirement(s) that may be later imposed by the District Court Judges hearing felony cases with notice to the attorneys as an addendum to this Plan.

4.2 Attorneys requesting court appointments must submit to the Criminal District Court Manager's Office a complete accurate sworn application on the approved application form including all required attachments at least one week prior to the meeting when applications will be considered. A majority (9) of the District Court 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. When deemed appropriate by a majority of the District Court Judges, an attorney may be placed on the requested wheel for a probationary period of three months. Once the probationary period is up, the District Court Judges will meet and vote to determine if the attorney will be added to the requested wheels on a permanent basis. Failure to abide by these rules during the probationary period will automatically result in the denial of permanent status on the requested wheels.

4.3 The District Court Judges will receive applications four times per year. Applications will be considered at the January, April, July, and October meetings only. Only fully completed applications with all of the required documentation will be submitted for approval. If the application is incomplete or missing documentation, the attorney will be contacted and asked to supplement their application. Once a newly supplemented complete application is provided, that application will be considered at the next quarterly meeting when applications are typically set for consideration.

4.4 In order to qualify for placement on the master list of attorneys who are qualified on any felony wheel to receive felony appointments, an attorney must reside in Dallas County or have his or her principal office in Dallas County. An attorney's principal office is the commercial location where the attorney conducts the majority of his or her criminal law practice

that is the listed work address recorded with the State Bar of Texas and is published on the State Bar of Texas website and does not consist of a post office box address. This information is subject to verification.

4.5 To qualify for placement on the master list, an attorney may not be on the appointment list in more than one other county besides Dallas County.

4.6 The master list will be multi-level, with four trial levels:

- 1) 1st degree felony and non-death penalty capital cases;
- 2) 2nd degree felony cases;
- 3) 3rd degree felony cases; and
- 4) Felony state jail and probation revocation cases.

4.7 Attorneys on the master list at a certain level may petition to advance to a higher level by submitting a new application complete with all required documentation. A majority (9) of the District Court Judges must vote to approve the change.

4.8 An attorney who does not receive sufficient votes to be placed on any level of the master list may re-apply after six months.

4.9 Separate lists will be maintained for appeals and writ appointments. Attorneys must submit the appropriate application to be placed on the appeal appointment list and the writ appointment list. A majority, (9) of the District Court Judges, must screen applicants who meet the objective qualifications and approve those attorneys whom they consider competent to handle appeals and/or writs.

4.10 Requirements for attorneys qualifying at each level of the trial wheel will increase as the possible consequences to the defendant become more serious.

Minimum requirements for trial and probation revocations are as follows:

- State Jail and Probation Revocations: Licensed for two (2) years and at least six (6) points on the application form
- Third Degree: Licensed for three (3) years and at least twelve (12) points on the application form
- Second Degree: Licensed for four (4) years and at least eighteen (18) points on the application form
- First Degree and Non-Death Penalty Capital Cases: Licensed for five (5) years and at least twenty-five (25) points on the application form

Minimum requirements for the appellate wheel are as follows:

- a. The applicant must have authored a minimum of five (5) state court appellate briefs within the two-year period prior to the date of application;
- b. The applicant must have a minimum of eight (8) hours of CLE pertaining to Texas criminal law or Texas criminal appellate law each calendar year. The calendar year for reporting purposes begins on January 1st and ends on December 31st;
- c. The applicant must submit copies of two complete state court appellate briefs in criminal cases (excluding *Anders* briefs) authored by the applicant and submitted to an appellate court within the five-year period prior to the date of application; and
- d. The applicant must list five appellate court judges or justices with knowledge of the applicant's abilities.

- OR -

- a. The applicant must be board certified in Criminal Appellate Law, provide proof thereof, and submit one writing sample with the application.

4.11 Unusual or exceptional circumstances demonstrating substantial involvement in criminal law may be substituted for trial or appellate 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.

4.12 An attorney qualified for appointment to any felony wheel will automatically be qualified for all the levels below. Thus, an attorney on the highest level will be on the felony levels below and his or 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.

4.13 An attorney who is appointed from the wheel must either personally represent the client or withdraw. Cases will not be transferable or tradable. The only exceptions for a designated substitute attorney to appear for the appointed attorney will be for a docket appearance where previously approved by the trial court and with the approval of the defendant, and to consummate a previously negotiated case settlement with the approval of the trial court and the defendant. Note: A court appointed attorney cannot submit a request for reimbursement for any work not performed by the court appointed attorney.

4.14 Confirm receipt of Appointment - Any attorney notified of a trial appointment via the Indigent Defense System is required to confirm receipt of each case to which they are court appointed, by selecting the "confirm receipt" button in the Defense Portal, by 10:00 a.m., the morning of the next business day after the appointment is added to their appointment queue. If the attorney does not "confirm receipt", the attorney will not receive the appointment and his or her name will go back to the bottom of the list for future appointments. If an attorney fails to confirm receipt of more than 12 (twelve) appointments per calendar year, that attorney will be subject to removal pursuant to this section. An attorney who fails to confirm receipt 17 (seventeen) or more times in a calendar year will automatically be removed from all of the appointment wheels and, will have to re-apply

pursuant to this plan. If an attorney desires not to receive appointments, the attorney should place himself or herself on hold or remove themselves from rotation in the Indigent Defense System. Failure to confirm receipt shall not be used as a means to manage a docket or vacation schedule. This section does not apply to appellate appointments.

4.15 Conflict of Interest – If an attorney has a valid conflict of interest reason for not representing an indigent defendant, the attorney is required to formally withdraw from the case. In the event counsel is permitted to withdraw, the attorney will lose the appointment and will not be restored to his or her former place in the rotation.

4.16 Withdrawal or substitution – Once an attorney has been appointed to represent an indigent defendant that appointment shall continue until the case has been concluded by a trial, plea, verdict, dismissal or other final disposition is entered in the case. In other words, appointed counsel is to remain on the case until taken off by the Court or a final disposition is entered in the case. If the attorney wishes to remain on the case, after final disposition, to handle the appeal of the case, and they have been previously approved under this plan to handle appellate matters, the attorney must seek a new appointment from the Court for the appeal of the case. The appellate appointment is a new appointment and only those attorneys who are qualified under this plan to handle appellate matters will be compensated to handle appeals. All attorneys who seek appointments under this plan, hereby, agree to abide by these rules related to appointments.

Before withdrawing as counsel for the defendant after a trial or plea of guilty, if the defendant is not represented by other counsel, counsel shall advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal. If the defendant wishes to pursue a new trial or an appeal, counsel shall assist the defendant in requesting the prompt appointment of replacement counsel. If replacement counsel is not appointed promptly, counsel shall assist the defendant in filing a timely

motion for new trial or notice of appeal if the defendant desires to pursue one or both of those remedies.

An attorney wishing to withdraw from representation of an indigent defendant before final disposition, for any reason, shall file a formal motion to withdraw with the Court where the case is pending. In the event counsel is permitted to withdraw, new counsel shall be appointed according to this plan. A voucher is also required to be submitted simultaneously with the motion to withdraw.

4.17 Date of initial contact – All attorneys who receive court appointed cases will be required to make every reasonable effort to make initial contact with the Defendant within 24 hours of the attorney's receipt of notice of the appointment and shall personally interview the defendant within ten (10) business days of the receipt of the notice of appointment, provided the defendant is incarcerated in a local detention facility. This personal interview can take place via video conference. All attorneys will also be required to document on the appointment screen in the Defense Portal the date on which they made initial contact with their client in every court appointed case. The voucher process cannot be initiated in the Defense Portal unless the date of initial contact is recorded into the system. All initial contact information provided by court appointed counsel is subject to verification.

4.18 If an attorney is not qualified under this plan to receive appellate appointments, an attorney may remain on the case, but the attorney will not be compensated by the Court unless they have been previously approved to receive appellate appointments under this plan. By accepting appointments under this plan, an attorney agrees to be bound by this provision relating to the handling of appeals. If the attorney formally withdraws from the case once a final disposition is achieved the motion to withdraw must include a statement regarding the status of the case, whether a notice of appeal has been filed, whether new counsel has been requested or appointed, and whether all of the appellate requirements have been met.

4.19 All attorneys on the master list must keep their contact information current in the Indigent Defense System as well as 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.

4.20 To remain eligible for appointment an attorney must:

- a. Complete a minimum of eight (8) hours of CLE pertaining to criminal law during each twelve (12) month reporting period; or
- b. Attend all sessions of either the State Bar Advanced Criminal Law Course or the TCDLA Advanced Criminal Law Short Course once every two (2) years; or
- c. Be currently certified in criminal law or appellate criminal law by the Texas Board of Legal Specialization and provide proof thereof; or
- d. Complete the applicable judicial continuing education hours.

4.21 Qualifying CLE 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.

4.22 Self-study hours, juvenile law, and general ethics courses may not be included in meeting the CLE requirements. A determination of whether the CLE hours will be counted toward the requirement will be made by Court Staff, under the guidance of the judiciary.

4.23 CLE hours for option 4.20 (a) above must be completed during the reporting period for which credit is being requested.

4.24 The CLE reporting period shall be from January 1st to December 31st of each year.

4.25 Each attorney on the master list must annually submit the Annual Attorney Recertification form approved by the district courts judges. The form must include, 1) proof that the attorney resides in Dallas County or has his or her principal office in Dallas County; 2) a list of all other counties in which the attorney is currently on a felony appointment list; and 3) any other information required by the Recertification form. The Annual Attorney Recertification must be sworn to by the attorney and must be submitted via the Defense Portal or provided to the Court Manager's Office in person or by email by January 10th of each year.

4.26 In addition, proof of completed CLE hours must be submitted in the Defense Portal by January 10th of each year, or the next business day following this date if this date happens to fall on a holiday or weekend.

4.27 An attorney who fails to annually meet the qualifications for placement on the master list, fails to submit CLE hours in the Defense Portal, fails to provide proof of board certification, or fails to submit a sworn Annual Attorney Recertification form each January will be automatically removed from the master list.

4.28 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) of the District Court Judges.

4.29 Any District Court 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.

4.30 Upon motion of one District Court Judge, after being seconded by another District Court Judge, an attorney may be requested to appear before the District Court Judges during a regularly scheduled judges meeting and provided with an opportunity to explain his/her handling of a case or cases or for any failure to abide by these rules. The attorney is not entitled to

representation of counsel at the meeting. Failure to appear without good cause will be considered against the attorney. An attorney who appears before the District Court Judges is subject to questioning by the District Court Judges.

4.31 If an attorney's presence is required, notice of the specific allegation of misconduct or issue must be sent to the investigated attorney in writing no less than two (2) weeks prior to a requested appearance before the District Court Judges. After providing an opportunity to be heard to the attorney, a majority (9) of the District Court Judges will determine whether good cause exists for removal or sanction.

4.32 The Indigent Defense Administrator shall regularly review reports outlining any noncompliance by court appointed attorneys. This includes attorneys who do not appear for an initial setting, who fail to confirm receipt of an appointment in the Indigent Defense System, who habitually fail to reset cases, or who habitually fail to abide by these rules. This list will be taken into consideration periodically and anytime when an attorney's qualifications are under review by the District Court Judges. Any acts of noncompliance identified by these reports will be addressed by the Judges and may subject an attorney to removal proceedings. Moreover, failure to reset cases may be grounds for appointing new counsel on an individual, case-by-case, basis.

4.33 Sanctions may consist of any of the following:

- a. Written reprimand signed by the Presiding Judge;
- b. Demotion to a lower level of the appointment wheel;
- c. Temporary suspension from the appointment wheel;
- d. Removal from the appointment wheel;
- e. Requiring additional CLE hours; or
- f. Working with a mentor.

4.34 An attorney shall be automatically removed from the master list for the 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 placement on the master list; 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 State Bar CLE requirements.

4.35 An attorney may be removed from the master list by a majority (9) vote of the District Court Judges for the following reasons:

- a. Failing to perform the attorney's duty owed the defendant;
- b. Failing to maintain compliance with each of the relevant appointment guidelines and these rules;
- c. A finding by a court that the attorney provided ineffective assistance of counsel;
- d. Intentional misrepresentation on the application for court appointments, a request for compensation, or the annual recertification; or
- e. Any other good cause at the discretion of the District Court Judges.

4.36 An attorney may be temporarily removed from the master 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;
- b. Failing to comply with the CLE requirements outlined in Section 3.16 of this plan; or
- c. At the attorney's request.

4.37 An attorney who has been removed from the master list due to suspension by the State Bar for failure to comply with CLE requirements or failure to pay dues or fees shall be reinstated to the felony master list at the attorney's previous level upon providing proof of reinstatement from the State Bar.

4.38 An attorney who has been removed from the master list for failure to comply with the CLE requirements outlined in this plan shall be reinstated to the master list at the attorney's previous level upon providing proof of completion of the required CLE.

4.39 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.

4.40 An attorney who has been removed from the master list for any reason listed above and who is not reinstated within one year (12 months) of removal must reapply for placement on the master list.

4.41 An attorney who has been removed from the master list by a majority (9) vote of the District Court Judges for any reason or who has been automatically removed from the felony master list for a reason, may reapply for placement on the master list after one year (12 months) from the date of removal. An attorney who has been demoted to a lower level may reapply for a higher level after one year (12 months) from the date of demotion.

4.42 Each attorney is required to place themselves on hold or out of rotation when they plan to take vacation or for any reason they are not able to receive appointments and comply with the dictates of code of criminal procedure article 26.04 and this plan. If an attorney is, for some reason, unable to place themselves on hold or out of rotation in the system, a representative for the attorney may notify the Court Manager for the District Courts that the attorney is unable to accept appointments and may make a request that the attorney be placed on hold by the Court Manager. The hold shall be

removed upon receipt of notification by the attorney to the Court Manager for the Criminal District Courts that the attorney is able to accept appointments and upon proof that the attorney meets the CLE requirements set forth in this plan. An attorney who is on hold or out of rotation for any period exceeding one year must reapply for placement on the master list.

4.43 An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice that was dedicated to work based on appointments accepted in Dallas County for adult criminal cases and juvenile delinquency cases for the prior twelve (12) months beginning on October 1st and ending on September 30th. The report must be submitted through the online form to the Texas Indigent Defense Commission.

Section V

Prompt Appointment of Counsel

5.1 When a defendant requests appointment of trial counsel and submits the required documents as addressed in this plan, the request and any required documentation shall be transmitted to the Court within 24 hours of the request for appointment of counsel being made.

5.2 Counsel shall be appointed for eligible defendants within one working day of the Court's receipt of a request for appointed counsel.

5.3 Counsel shall be appointed for eligible defendants who are not in custody at the defendant's first court appearance, or when adversarial proceedings are initiated, whichever comes first.

5.4 In any adversarial judicial proceeding that may result in punishment by confinement, the Court shall not direct or encourage the defendant to communicate with the attorney for the State until the Court advises the defendant of the right to counsel and the procedures for requesting

appointment of counsel, and the defendant has been given a reasonable opportunity to request appointed counsel.

5.5 Requests for appointment of counsel from persons arrested in a county other than Dallas County on a felony Dallas County warrant shall be forwarded to the Criminal District Court Manager's Office personnel who shall then forward the request to the assigned court for a ruling on the request. The ruling and, if appropriate, the appointment of counsel, shall be made within one working day of receipt of the request for appointment of counsel. If the request is received by a county that participates in the Indigent Defense System, that system should be used to give notice of the request for counsel. If that system is not utilized, another verifiable means of notification should be used.

5.6 If a person who has been arrested on an out-of-county felony warrant is entitled to and requests appointment of counsel, and the person has not been transferred, or released into the custody of the county issuing the warrant before the 11th day after the date of arrest, or released pursuant to article 15.21 by a magistrate in the county where the person is held, and if counsel has not otherwise been appointed for the defendant in the arresting county, the Court or the Courts' designee authorized under article 26.04 of the Code of Criminal Procedure to appoint counsel for indigent defendants in the arresting county immediately shall appoint counsel to represent the defendant in any matter under Chapter 11 of the Code of Criminal Procedure or bond matters under Chapter 17 of the Code of Criminal Procedure, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county. If counsel is appointed for the defendant in the arresting county as required by this subsection, the arresting county may seek from the county that issued the warrant reimbursement for the actual costs paid by the arresting county for the appointed counsel. If the person is not released by the magistrate or transferred to the arresting county, the magistrate shall advise the Courts via an email to indigentdefense@dallascounty.org that the person is still detained in the arresting county and whether counsel has been appointed by

the county that issued the warrant. Upon receipt of this notice, the Courts' designee shall appoint counsel as indicated above.

5.7 If a defendant wishes to request counsel prior to the initial appearance, the forms required to request counsel may be obtained at the Texas Indigent Defense Commission's website or from the Criminal District Court Manager's Office personnel on the 5th Floor of the Frank Crowley Courts Building outside Auxiliary Court No. 6 Room A14. The defendant may submit these forms to the Coordinator of the Court where charges are pending or to Criminal District Court Manager's Office personnel on the 5th Floor of the Frank Crowley Courts Building outside Auxiliary Court No. 6 Room A14. The court or its designee will determine eligibility on all requests for counsel submitted in this manner.

Section IV

Attorney Selection Process

6.0 A master list of qualified attorneys will be maintained by the Criminal District Court Manager's Office.

6.1 Attorney appointments will be made based upon the electronic Attorney Assignment system adopted by the County. The computer rotation shall not be varied absent good cause, recorded and properly documented. The appointing authority, however, has the authority to appoint qualified counsel, other than by computer rotation, in the event that the defendant is currently represented by said counsel on another criminal case currently pending in Dallas County. Any attorney who is skipped for the reasons stated above will remain at the top of that level of the list from which the appointment was made. Any appointments other than by the adopted electronic Attorney Assignment system shall be properly documented.

6.2 A court or its designee may appoint from the electronic Attorney Assignment System or appoint the Public Defender's Office in accordance with the law.

6.3 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.

6.4 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.

6.5 An attorney will be appointed only after notification of the request for counsel is provided to the Court or Court staff as indicated by this plan.

6.6 Defendants who speak a foreign language will be matched to an attorney qualified to speak that language, if available. Attorneys must seek to be qualified by the District Courts to receive foreign language appointments. Attorneys who receive foreign language appointments will receive appointments for both the foreign language appointments and non-foreign language appointments. When an attorney is selected for appointment, based on a foreign language requirement or otherwise, that attorney will move to the bottom of the rotation for the wheel where the appointment originated.

6.7 When a defendant is subsequently charged with a higher grade of offense, counsel must promptly notify the Court if the new charge consists of any case for which he or she is no longer qualified. This includes any change of offense level after appointment. The court may appoint new counsel from the list or may appoint qualified counsel to assist with the representation.

6.8 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.

6.9 The electronic Attorney Assignment system set forth in this plan applies to indigent defendants in the county who are arrested for, charged with, or taking appeal from a felony conviction as well as trials and probation revocations, but is not applicable to writs.

6.10 Attorneys appointed to handle probation revocations must meet the qualifications set forth for court appointments to state jail felony cases. When appointing counsel to a probation revocation the court may continue the attorney who was counsel for the defendant at the defendant's trial or plea on the case, or may appoint new counsel using the trial appointment wheel or the public defender's office.

6.11 Attorneys appointed to writs must be on the list of attorneys approved for writ appointments. Attorneys desiring to be on the writ list must submit a complete accurate verified application with the proper attachments on the form provided by the District Court Judges and be approved by a majority of the judges.

6.12 This plan does not apply to death penalty cases.

6.13 A court may appoint any available, qualified attorney to advise a witness when the law requires representation.

Section VII

Fee and Expense Payment Process

7.0 Appointed attorneys shall be compensated in accordance with the fee schedule approved by the District Court Judges. All requests for payment will be required to be submitted via the Defense Portal beginning on the date that the system goes live and for each appointment that is initiated in the system. The voucher shall be submitted to the Court on the date that the case is finally disposed. Any voucher submitted more than 30 days after final disposition will not be paid.

7.1 Attorneys must submit a complete accurate sworn voucher in the Defense Portal with the proper documentation, including the date of initial contact with the Defendant, the date of the disposition of the case, the method of disposition, on the correct voucher type as indicated by the system, at the conclusion of each court appointment to be reimbursed for work on court appointed cases. Submitting a voucher is the only means to close a case in the system. Submitting a voucher and having it accepted for payment will cause the appointment to be updated as no longer active in the Defense Portal and in the Indigent Defense System. Submission via an electronic voucher applies to all court appointed attorneys, including Public Defender appointments. Public Defenders will have separate voucher types set up for their use in the system. Each Public Defender who receives a court appointment will be required to submit a complete accurate sworn "Public Defender" voucher in the system, at the conclusion of each court appointment. Failure to completely and accurately fill out the electronic voucher and to submit any requested documentation may result in a delay in receiving payment, a failure to receive full payment, or any other remedies available under this plan. Repeated failure to adhere to these requirements related to vouchers may result in automatic removal from the court appointment wheels.

7.2 Partial payments - Attorneys may request partial payment on ongoing cases. Attorneys must submit a complete accurate sworn voucher in the Defense Portal system with the proper documentation, as indicated above, but the date of the disposition of the case is not required. Attorneys must select the partial payment reason in the system to submit a request for partial payment. The Judge must approve the partial payment request.

7.3 When an attorney has been appointed and the defendant subsequently retains counsel, the appointed attorney may be compensated for any work performed prior to the substitution of retained counsel. An electronic voucher, as described above, will be required to be submitted in this circumstance as well.

7.4 The county auditor will not pay any attorney who is not on the approved list to receive court appointments at the time of appointment.

7.5 If the Judge approves the requested amount of payment, the judge shall make, by computer entry in the Indigent Defense System, an indication that the voucher should be paid as submitted. If a Judge disapproves of the requested amount, the Judge shall indicate so by computer entry in the Indigent Defense System, and either return the voucher to the court appointed counsel for additional information or enter findings stating the amount of payment the judge approves and the reason for approving an amount different from the requested amount. If an attorney is not satisfied with the amount of compensation approved by the judge, the attorney may appeal the judge's decision by filing a motion with the Presiding Judge of the First Administrative Judicial Region.

7.6 Expenses incurred without prior court approval shall be reimbursed if the Court finds that the expenses are reasonably necessary and reasonably incurred pursuant to Code of Criminal Procedure article 26.05. An attorney should obtain prior court approval for any expenses exceeding \$750.00. All vouchers for experts and investigators must be submitted by the attorney of record in the Defense Portal on behalf of the expert or investigator.

Section VIII

Miscellaneous

8.0 Amendments to this Plan and the Fee Schedule require a two-thirds vote of the District Court Judges.

8.1 This plan will go into effect on June 1, 2020, or when the TechShare Magistration Portal and Indigent Defense System go live in Dallas, whichever date is later.