

**EL PASO CRIMINAL DISTRICT AND COUNTY COURTS PLAN
STANDARDS AND PROCEDURES RELATED TO APPOINTMENT OF
COUNSEL FOR INDIGENT DEFENDANTS**

**Approved by the El Paso District and County Court Judges who preside over
criminal cases on October 29, 2015**

SECTION ONE

PROMPT MAGISTRATE WARNINGS

Procedures for Timely Appointment of Counsel

Definitions

1. “Judges” means all District and County Court Judges who preside over criminal cases, including the El Paso County Jail Magistrates.

2. “Indigent” means a person who is not financially able to employ counsel.

3. “Pre Trial Services Eligibility Officer” means the individual whose duties include taking an application from an arrestee requesting a court appointed attorney and determining if the arrestee is “indigent.”

4. “Council of Judges Eligibility Officer” means the individual whose duties include the appointment of court appointed attorney to arrestees who are not financially able to employ counsel.

Duties of Arresting Officer and Magistrate

A. The person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested before an El Paso County Magistrate (in person or by means of an electronic broadcast system). CCP Art. 15.17(a).

“Electronic Broadcast System” means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure internet videoconferencing.

B. The magistrate shall inform the arrestee, in person or through the electronic broadcast system, in clear language:

1. The accusation against him and of any affidavit filed therewith,
2. His right to retain counsel,
3. His right to remain silent,

4. His right to have an attorney present during any interview with peace officers or attorneys representing the state,

5. His right to terminate the interview at any time, and

6. His right to have an examining trial.

7. Arrestee is not required to make a statement and that any statement made by him may be used against him.

8. If arrestee is not a United States Citizen, he has the right to contact the consulate of his native country.

9. The magistrate shall inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel.

10. The magistrate shall inform the person arrested of the procedures for requesting counsel.

11. If the arrestee does not speak and understand the English language or is deaf, the magistrate shall inform the person through a qualified interpreter under CCP Art. 38.30 and 38.31, as appropriate.

12. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time.

C. The magistrate shall, without unnecessary delay, but not later than 24 hours after the person requests appointment of counsel, transmit, or cause to be transmitted, to the court or the court's designee authorized under CCP Art. 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel.

D. A pre-trial services eligibility officer shall interview arrestees during the booking process and who remain in custody no later than 24 hours after the person requests appointment of counsel to determine whether defendant meets eligibility standards for appointment of counsel. If a determination of indigence is made, the Order Appointing Attorney will be signed by an El Paso District Court Judge, El Paso Criminal District Court Judge, El Paso County Court at Law Judge, El Paso County Criminal Court at Law Judge, or an El Paso County Jail Magistrate. CCP Art. 26.04(b)(1).

E. A recording of the communication between the person arrested and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction.

F. In each case in which a person arrested is taken before a magistrate as required by Subsection A, a record (*See Forms-Magistrate Warnings*) shall be made of :

1. The date and time the magistrate informed the person of the person's right to request appointment of counsel;

2. The magistrate asking the person whether the person wants to request appointment of counsel; and

3. Whether the person requested appointment of counsel. CCP Art. 15.17(e).

G. A record required under CCP Art. 15.17 (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in El Paso County. CCP Art. 15.17(f.).

H. If the magistrate has reason to believe the accused is not mentally competent, the magistrate shall enter a request for counsel on behalf of the accused.

I. Defendants who did not request an attorney at the time of the magistrate warnings but request one at a later time will be interviewed by a Pre Trial Services eligibility officer. As an alternative, the Judge of the trial court or a Jail Magistrate may make the attorney appointment in court under "interest of justice" criteria. If the appointment is made by the Judge of the trial court or the Jail Magistrate in the interest of justice, the rationale for the appointment must be placed on the record. (*See Form-Appointment of Attorney Out of Order*).

Release on Bond of Certain Persons Arrested Without a Warrant

1. Misdemeanor-A person arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond. CCP Art. 17.033(a).

2. Felony-A person arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$10,000, not later than the 48th hour after the person's arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond. CCP Art. 17.033(b).

Out of County Warrants

The person making the arrest or the person having custody of a person arrested on an out-of-county warrant shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested before an El Paso County Magistrate (in person or by means of an electronic broadcast system). CCP Art. 15.18.

For persons arrested on out-of-county warrants, the magistrate will ask the defendant if he/she would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the arrestee with the appropriate forms (the indigence affidavit from the County issuing the warrant) for requesting counsel. The magistrate

will ensure assistance in completing the forms at the same time. The forms will be transmitted by a Pre-trial Eligibility Officer to the appointing authority in the county issuing the warrant within 24 hours of the request being made. Regarding the appointment of counsel, persons arrested in other counties on local warrants must be appointed counsel in a county that issued the warrant within 1 working day of receipt of the request in counties with a population of 250,000 or more and within 3 working days of receipt of the request in counties under 250,000. Persons arrested on out-of-county warrants must be appointed counsel in the county of arrest if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of the arrest. CCP Art. 1.051(c-1).

If an indigent defendant is arrested in another county based on an El Paso County warrant, counsel will be appointed within one working day of this county's receipt of the request for counsel. The completed indigence affidavit will be emailed to the Council of Judges.

If a defendant is arrested in this county based on another county's warrant, counsel will be appointed pursuant to chapter 11 or chapter 17 of the Texas Code of Criminal Procedure, if on the eleventh day after the arrest, the defendant is still in this county's custody.

SECTION TWO

INDIGENCE DETERMINATION STANDARDS

A. Definitions, as used in this section:

1. "Indigent" means a person who is not financially able to employ counsel. CCP Art. 1.051(b).

2. "Defendant's adjusted gross income" means all income of the accused and spousal income actually available to the accused. 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, regular payments from Social Security, veteran's benefits, unemployment compensation, money 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 accused has no income or lesser income.

3. "Household" means all individuals who are actually dependant on the accused for financial support.

4. "Net Household income" is the Defendant's necessary expenses will be subtracted from the Defendant's and spouse's adjusted gross income. The resulting number will be referred to as the defendant's "net household income."

5. "Necessary expenses" should include but are not limited to: rent or mortgage, food/groceries, a single car payment, utilities, unusual medical bills, child support, and alimony.

4. “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.

B. After the 15.17 hearing, if the arrested person has informed the magistrate that she/he wants to request court appointed counsel, the arrested person will be interviewed by a Pre Trial Services eligibility officer whether or not they are able to make bond. If the defendant makes bond, this interview will take place before release on bond, if possible. If the defendant posts bond or is released on a PR bond before an indigence affidavit was completed, instructions will be given upon release from the jail to complete the affidavit at 500 E. San Antonio, Rm. LL117, El Paso, Texas 79901.

C. As soon as possible following the article 15.17 hearing, a Pre Trial Services eligibility officer shall interview each arrested person who wants to request appointment of counsel, and the arrested person will provide under oath the necessary information including supporting documentation (if not in custody) concerning the person’s financial resources. They shall input this information onto an affidavit (*See Forms: El Paso District and County Court Application for Appointed Attorney*) for the arrested person. The indigence affidavit shall be transmitted to the Office of the Council of Judges no later than 24 hours after the arrestee appeared before the magistrate.

D. A defendant is considered indigent if any of the following conditions or factors are present:

1. At the time of the application, the defendant, spouse or children residing with the defendant are eligible to receive Food Stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or Public Housing;

2. The defendant’s net household income does not exceed 100% of the federal HHS poverty guidelines as revised annually by the United States Department Of Health and Human Services and published in the Federal Register and the defendant does not have nonexempt assets greater than \$2500, or

3. The defendant is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental facility is sought.

E. In determining whether a defendant is indigent who does not qualify under D (1), (2),(3) 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 dependants, and spousal income that is available to the defendant. If this analysis of net household income results in an amount less than the amount stated in the poverty guidelines for the applicable household size, the defendant will be considered indigent. The court or court’s 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 considerations listed in this subsection. CCP Art. 26.04 (m).

F. The procedures and standards for determining a defendant’s indigence shall apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been

released on bail. The procedures and standards for determining whether a defendant is indigent shall apply to misdemeanors and felonies. CCP Art. 26.04(l).

G. A defendant who requests a determination of indigent and appointment of counsel shall:

1. Complete under oath a questionnaire concerning his financial resources;
 2. Respond under oath to an examination regarding his 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.
- CCP Art. 26.04(n).

H. Before making a determination of whether a defendant is indigent, the court shall request the defendant to sign under oath before a Pretrial Services Eligibility Officer, a Clerk, or a Judge a statement substantially in the following form:

“On this _____ day of _____, 20____, I have been advised by the (name of the court) Court of my right to representation by counsel in connection with the charge 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. (signature of the defendant)” CCP Art. 26.04(o).

I. 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 indigent status or to impeach the direct testimony of the defendant. The defendant may be prosecuted under Texas Penal Code, Chapter 37. CCP Art. 26.04 (q).

J. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in the Code of Criminal Procedure and this Indigent Defense Plan.

K. A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel. CCP Art. 26.04 (r).

L. A defendant that does not meet any of the standards above shall nonetheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the defendant’s dependents. In considering if obtaining private counsel will create a substantial hardship, the magistrate or judge authority shall take into account; (1) the nature of the criminal charge(s); (2) anticipated complexity of the defense; (3) the estimated cost of obtaining competent private legal representation for the matter(s) charged; (4) the amount needed for the support of the accused and the defendant’s dependents; (5) defendant’s income; (6) source of income; (7) assets and property owned; (8) outstanding obligations; (9) unusual, excessive or extraordinary medical expenses; (10) necessary expenses; (11) age or physical infirmity of household members; (11) the number and ages of dependents; and (12) spousal income that is available to the accused.

M. After the 15.17 hearing, if the arrested person has informed the magistrate that he does not want to request court appointed counsel, this will be reflected on the Magistrate Warning Form. If at any time after the arrested person is given his magistrate warnings he decides that he would like to be interviewed after declining court appointed counsel, he will be referred to a Pre Trial Services eligibility officer for an interview. If at any time after the Magistrate administers the 15.17 warnings, the arrested person decides that he does not want to be interviewed for court appointed counsel, after making the request with the magistrate, he will be referred to a Pre Trial Services eligibility officer to sign a form reflecting a waiver. (*See Forms-Waiver of Counsel*).

N. An unrepresented non indigent felony defendant remaining in custody for 14 days shall have his status changed to indigent and an attorney shall be appointed by the COJ. An unrepresented non indigent misdemeanor defendant remaining in custody for 7 days shall have his status changed to indigent and an attorney shall be appointed by the COJ.

O. 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 indigence or non indigence is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination. CCP Art. 26.04 (p).

P. The presumption can be rebutted in the review proceedings based on the following:

1. Evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or
2. Additional information regarding the accused's financial circumstances that show that the accused does not meet any of the standards of indigence contained in these rules.

Q. If an accused previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated according to the fee schedule for hours reasonably expended on the case.

R. If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay, if convicted, as court costs the amount that it finds the defendant is able to pay. The finding shall include additional evidence prior to imposition of sentence that justifies a finding that the defendant can repay part or in whole the costs. An order supporting such finding shall be entered. CCP Art. 26.05(g).

S. Each Trial Court in which the case is filed (transferred or assigned) shall conduct a hearing after due notice on all re-evaluations of indigent and/or material change of financial circumstances according to the law so as not to interfere with established attorney-client relationship.

SECTION THREE

PROMPT APPOINTMENT OF COUNSEL

A. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the first working day after the date on which the appointing authority receives the defendant's request for court appointed counsel. Working day means Monday through Friday, excluding El Paso County holidays. Counsel must be appointed whether or not a case has been filed in the trial court. CCP Art. 1.051(c).

B. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first. CCP Art. 1.051(j).

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 at <http://tidc.tamu.edu/public.net/> or from the Pre Trial Services Department, 500 E. San Antonio, Rm. LL117, El Paso, Texas 79901. The defendant may submit these completed forms to the Pre Trial Services Department. The court will rule on all requests for counsel submitted in this manner. 1 TAC 174.51

Appointment Authority

If a misdemeanor case or felony case is UNFILED, the appointing authority is: Office of the Council of Judges.

If the case has been FILED in a trial court, the appointing authority is: Office of the Council of Judges or the Trial Court.

A. Pre Trial Services will receive a list every morning containing the names of all defendants who were arrested the previous day and wish to apply for a court appointed attorney. Eligibility Officers will interview these defendants and take an application to determine if the defendant qualifies for a court appointed attorney. If the defendant qualifies, an attorney shall be appointed for all his/her cases, regardless of whether the cases have been filed or not.

B. Appointments for Motions to Revoke Probation, and Motions to Adjudicate Guilt will be made from a rotational list of qualified attorneys in the same manner as any other misdemeanor or felony case, depending on the classification of the offense.

C. At any time, a defendant may appear before the trial judge or a jail magistrate and request a court appointed attorney, and the trial judge or jail magistrate has the discretion to appoint an attorney to represent the defendant. The attorney must be qualified to take that degree of offense, and may be chosen from the next five names on the wheel in the order in which the attorney's name appears on the list, or a request can be made for the system to make an automatic appointment. The judge shall make a finding of good cause on the record if appointing an

attorney out of order, and may appoint any qualified, willing attorney regardless of whether the attorney's name is among the next five names on the appropriate list.

D. Before withdrawing as counsel for the defendant after trial or the entry of a plea of guilty, the appointed trial attorney 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 either or both of these remedies, the appointed trial attorney must assist the defendant in requesting the prompt appointment of replacement counsel, and if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal.

E. Once these steps have been completed, the court appointed trial attorney's representation of the defendant is concluded. No motion to withdraw is necessary. The trial court may then appoint a qualified attorney from the Appellate list. The trial court may appoint a lawyer from the next five names on the appropriate Appellate list in the order in which the attorney's name appears on the list, or a request can be made for the system to make an automatic appointment. The judge shall make a finding of good cause on the record if appointing an attorney out of order, and may appoint any qualified, willing attorney regardless of whether the attorney's name is among the next five names on the appropriate list.

DIMS Jail Pleas

1. An "Attorney of the Day" will be appointed at the Jail Magistrate for all the indigent defendants at the DIMS jail pleas. This attorney will represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted to or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record. "Attorney of the Day" attorneys will be rotated from the Class A&B Misdemeanor/State Jail Felony wheel list and will be on a voluntary basis. If an attorney does not wish to be the "Attorney of the Day", they will not be taken off the wheel.

2. If a defendant already has a court appointed attorney on a prior case, the same attorney will be appointed in order to avoid the appointment of multiple attorneys. If this occurs, the prior court appointed attorney will be appointed to this case and notified of the new case.

Defendants Appearing Without Counsel

1. If a defendant who has refused appointed counsel in order to retain private counsel appears without counsel after having been given an opportunity to retain counsel, the court, after giving the defendant a reasonable opportunity to request appointment of counsel or, if the defendant elects not to request appointment of counsel, after obtaining a waiver of the right to counsel pursuant to CCP Art. 1.051(f) (g) may proceed with the matter on 10 days notice to the defendant of a dispositive setting. CCP Art. 1.051(e).

2. The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the

procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel. CCP Art. 1.051(f-2).

3. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant:

a. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or

b. Waived or has waived the opportunity to retain private counsel. CCP Art. 1.051(f-2).

A. The attorney representing the state may not:

1. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or

2. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:

a. Has been given a reasonable opportunity to retain counsel; or

b. Waives or has waived the opportunity to retain private counsel. CCP Art. 1.051(f-1).

B. Waiver of the Right to Counsel

1. A defendant may voluntarily and intelligently waive the right to counsel.

2. A waiver obtained in violation of CCP Art. 1.051(f-1) or (f-2) is presumed invalid.

C. If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

“I have been advised this ___ day of ___, 2___, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”
CCP Art. 1.051(g).

D. A defendant may withdraw a waiver of the right to counsel at any time, but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare. CCP Art. 1.051(h).

E. The court or the courts' designee may, without unnecessary delay, appoint new counsel to represent an indigent defendant for whom counsel is appointed if:

1. The defendant is subsequently charged in the case with an offense different from the offense with which the defendant was initially charged; and

2. Good cause to appoint new counsel is stated on the record as required by CCP Art. 26.04(j) (2) [CCP Art. 1.051(k)].

F. An attorney appointed to a case that does not appear, or notify the court by 9:30 a.m. the following morning will be removed from the case and go back to the bottom of the list. Excessive tardiness or failures to appear may result in removal from the case and the wheel if it impedes the administration of justice.

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

SECTION FOUR

ATTORNEY SELECTION PROCESS

A. Whenever a court or the courts' designee authorized to appoint counsel for indigent defendants in the county determines, for the purpose of a criminal proceeding that a defendant charged with or appealing a conviction of a felony or a misdemeanor punishable by confinement is indigent or if the interests of justice require representation of a defendant in a proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to represent the defendant in accordance with the El Paso County Indigent Plan. CCP Art. 26.04(c).

B. The Office of the Council of Judges or the Trial Court will identify which of the appointment wheels, discussed in Section V (attorney qualifications), is the most appropriate based on the accusations against the defendant and will appoint an attorney from a public appointment list, which includes the El Paso Public Defender's Office, using a system of rotation. The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:

1. The defendant requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order to accommodate the client's language, if one is available;

2. The defendant has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case; or

3. Other good cause exists for varying from the list.

C. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

D. A public appointment list from which an attorney is appointed shall contain the names of qualified attorneys, each of whom:

1. Applies to be included on the list;

2. Meets the objective qualifications specified by the judges in the El Paso County Indigent Plan;

3. Meets any applicable qualifications specified by the Texas Indigent Defense Commission; and

4. Is approved by a majority of the judges who established the appointment list. CCP Art. 26.04(d).

E. An attorney appointed shall:

1. Make every reasonable effort to contact the defendant not 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. Reasonable effort includes letter, fax, phone, videoconference, or personal visit.

2. Represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted to or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record;

3. 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, the court appointed attorney shall:

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, assist the defendant in requesting the prompt appointment of replacement counsel; and

c. If replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal.

4. Not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under CCP Article 26.04 and Title 3, Family Code. The

report must be submitted through the online form to the Texas Indigent Defense Commission. CCP Art. 26.04(j).

F. A court may replace an attorney who does not make every reasonable effort to contact the defendant and to interview the defendant as soon as practicable after the attorney is appointed, but not later than the end of the first working day after the date on which the attorney is appointed. CCP Art. 26.04(k). A majority of the judges of the county courts and the district courts, who preside over criminal cases may remove from consideration for appointment an attorney who intentionally or repeatedly violates CCP Article 26.04 subsection (j)(1). CCP Art. 26.04(k).

G. Once appointed, with the exception of the El Paso County Public Defender's Office, an attorney's name will be moved to the bottom of the appointment list. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

H. The El Paso County Public Defender's Office will receive no more than 50% of cases for each category of offense. The District and County Court Judges may, from time to time, adjust the percentage of cases received by the El Paso County Public Defender's Office, the percentage shall not be more than 50% of all the cases. The Public Defender's Office may refuse to accept an appointment to a case, if:

1. A conflict of interest exists;
2. The office has insufficient resources to provide adequate representation;
3. The office is incapable of providing representation in accordance with the rules of professional conduct; or
4. The office shows other good cause for refusing appointment.

I. The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:

1. Counsel's failure to appear at a court hearing;
2. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
3. Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;
 - a. Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;

b. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;

c. The defendant requests an attorney, other than trial counsel, for appeal; or

d. The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

J. Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

SECTION FIVE

MINIMUM ATTORNEY STANDARDS

Attorneys shall be appointed to represent indigent defendants from public appointment lists using a system of rotation as described later in this plan.

Public Appointment Lists

1. Class A/ B Misdemeanor and State Jail Felony List;
 2. Third Degree Felony and Second Degree list;
 3. First Degree (Non Death) list;
 4. Murder List which includes all offenses involving a death
 5. Capital Murder List-established by the Sixth Judicial Administrative Regional Judge as required by CCP art. 26.052(2);
 6. Appellate list for all Misdemeanor and Felonies;
 7. Appellate list for all Murder and Felonies Involving a Death; and
 8. An Appellate list for all Capital Murders-established by the Sixth Judicial Administrative Regional Judge.
- A. Appointment of counsel to represent a defendant in a motion to revoke probation proceeding or a motion to adjudicate guilt proceeding shall be from any of the first three lists outlined above, depending on the level of the offense.
- B. Every month, attorneys may apply to be included on one or more of the public appointment lists. Attorneys do not need to re-apply for lists they are already on, but may apply for additional lists if they have met the qualifications.

C. To be eligible for placement on each public appointment list, attorneys must meet the following minimum qualifications:

1. An attorney must have a substantial criminal defense practice in El Paso County, Texas;

2. An attorney must have on file with the Council of Judges or the Court Administration Office a completed and notarized application approved by the majority of the District and County Judges presiding over criminal cases. All the information on the application must be accurate and current. All changes must be promptly reported to the Council of Judges;

3. An attorney must be a licensed practicing attorney and in good standing with the State Bar of Texas;

4. An attorney must attend any CLE course required by the District and County Judges;

5. To qualify for any appointment, including appeals, an attorney must have completed nine hours of CLE in criminal law or procedure in the past year, including carryover from the previous year only. All attorneys must file a CLE affidavit with the Council of Judges each year by the last day of their birth month attesting to the completion of the required CLE. Self-study hours may not be included in meeting the required CLE hours. In lieu of the CLE affidavit, a Criminal Law Board Certified Attorney must show proof of that certification. 9 CLE hours in criminal law or procedure are required even though the attorney is exempt from taking CLE hours by the State Bar of Texas;

6. An attorney must have a secretary, receptionist, answering service, or a cell phone capable of receiving emails. An attorney must have a functioning fax machine and an active e-mail account, both monitored on a daily basis, to receive court appointments and notices regarding procedural changes. The email address and the fax machine must be available 24 hours a day. In addition, an attorney must respond promptly to a phone call or email from the Trial Court, Office of the Council of Judges;

7. An attorney must promptly notify, in writing, the Council of Judges of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments;

8. An attorney must maintain the capacity to access and review the El Paso District Attorney's Office and the El Paso County Attorney's Office electronic case filing system, such as PORTAL;

9. An attorney must be familiar with the Texas Penal Code, the Texas Code of Criminal Procedure, the Texas Rules of Evidence, the Texas Rules of Appellate Procedure, Texas Disciplinary Rules of Professional Conduct, and the El Paso County Local Rules;

10. An attorney must consistently demonstrate commitment to providing effective assistance of counsel and quality representation to criminal defendants;

11. An attorney must be of sound mind, as well as good moral and ethical character;

12. An attorney shall consistently demonstrate professionalism, proficiency, and reliability in representing criminal defendants, and in dealing with the courts and opposing counsel; and

13. An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission.

Qualifications for the Wheel Lists

“Criminal jury trial” means an adult or juvenile criminal prosecution in which the case is presented to the jury and the jury renders a guilty verdict, not guilty verdict or is unable to render a decision after deliberating.

1. To qualify for the Class A / B Misdemeanor and State Jail Felony list, an attorney must:
 - (a) Be Board Certified in Criminal Law or Appellate Criminal Law, or
 - (b) Have experience as lead or co-counsel in two criminal jury trials.
2. To qualify for the Third Degree/Second Degree Felony list, an attorney must:
 - (a) Be Board Certified in Criminal Law or Appellate Criminal Law, or
 - (b) Have one year of experience in criminal litigation, and
 - (c) Have experience as lead counsel or co-counsel in four criminal jury trials, of which two must be felony criminal jury trials.
3. To qualify for the First Degree Felony (Non Death) list, an attorney must have:
 - (a) Be Board Certified in Criminal Law or Appellate Criminal Law, or
 - (b) Have three years of experience in criminal litigation, and
 - (c) Have experience as lead counsel or co-counsel in six criminal jury trials, of which four must be felony criminal jury trials.
4. To qualify for the Murder and any Felony Involving a Death List, an attorney must:
 - (a) Be Board Certified in Criminal Law or Appellate Criminal Law, or
 - (b) Have four years of experience in criminal litigation, and
 - (c) Have experience as trial counsel in six felony criminal jury trials, served as lead counsel in three felony criminal jury trials and served as lead counsel in two 1st degree felony criminal jury trials, and
 - (d) Must have attended at least 10 hours CLE in criminal law per year for the last three years, and

5. To qualify for the Appellate list for all Misdemeanors and Non Death Felonies, an attorney must:
 - (a) Be Board Certified in Appellate Criminal Law, or
 - (b) Have one year of experience in criminal litigation and/or criminal appellate, and
 - (c) Have filed two appellate briefs in a criminal or juvenile case.

6. To qualify for the Appellate list for Murder and all Offenses Involving a Death, an attorney must:
 - (a) Be Board Certified in Appellate Criminal Law, or
 - (b) Have two years of experience in criminal litigation and/or criminal appellate, and
 - (c) Have filed four appellate briefs in a criminal or juvenile case.

7. To qualify for the Capital Murder list and the Appellate list for Capital Murder, an attorney must comply with the qualifications and standards adopted by the local selection committee created by the Administrative Regional Judge in compliance with CCP art. 26.052.

Placement on the Wheel Lists

A. In addition to the above qualification requirements, in order to be placed on any of the wheel lists, a majority of the county and district court judges who preside over criminal cases must vote to approve the attorney's placement on each list. In lieu of the above qualification requirements in each wheel list, in extraordinary circumstances, an attorney may be deemed qualified by a majority of the county and district court judges who preside over criminal cases. Unusual or exceptional experience 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.

B. Judges trying criminal cases will vote "approved" or "not approved" or will designate a proxy vote as to each applicant. In casting his/her vote, each judge shall also indicate whether an applicant is competent to be assigned to the requested appointment list or should be assigned to another category of appointment list. If an applicant is not approved by a majority vote for one category, but the majority of the judges do approve him/her for other appointment categories, the applicant shall be approved for the lesser appointment category. Judges will vote by secret ballot. Blank or tardy ballots will be deemed "not approved." A majority vote (11 votes) of "approved" is necessary for an attorney to be included on the appointment lists.

C. If an attorney does not meet the qualifications to accept cases of a certain degree, but would like the judges to consider qualifying him/her for that list under the provision above, he/she can fill out a form called "Application for Exception to Qualifications to Receive Court Appointments" and turn that in with his/her application.

D. Every month, following the submission of attorney applications for the public appointment lists, the criminal district court and county court judges shall evaluate the new applicants for each list and the attorneys already on the lists. The judges will vote on the new

applications and any new exceptions to the qualifications received. Attorneys approved by a majority of the votes of the judges will be placed on the public appointment lists.

E. A court may appoint any attorney as co-counsel on any case in order for the attorney to obtain jury trial experience. The attorney will not receive any compensation for the trial.

Removal from the Wheel List

A. An attorney may be sanctioned or removed from one or more of the public appointment lists by vote of a majority of the criminal district and county court judges for any of the following reasons:

1. Whenever the judges determine that the attorney no longer meets the objective qualifications for that list or is not fully competent to adequately handle the category of cases associated with that list. The judges may, in their discretion, remove an attorney from one or more lists, while continuing to approve the attorney for other lists;

2. When an attorney intentionally or repeatedly violates the requirement that the attorney make every reasonable effort to contact the defendant not 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;

3. When, after a hearing, it is shown that the attorney submitted false information or misrepresented any information on the Application for Court Appointments;

4. When, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney. CCP art. 26.05(e);

5. When, after a hearing, it is shown that the attorney requested and/or received any money or anything else of value for representing the accused, other than what is paid or anticipated to be paid to them by the county, without approval from the court in writing;

6. When an attorney has been arrested, or formally charged for any offense, excluding traffic tickets. The notification to the Council of Judges must be done by the end of the first business day after the arrest or the formal charge;

7. When an attorney has been convicted or received deferred adjudication for any offense, excluding traffic tickets;

8. When an attorney fails to disclose to the Council of Judges that he/she has been arrested or formally charged for any offense, excluding traffic tickets;

9. When, after a hearing, it is shown by credible evidence that the attorney has an alcohol or substance abuse problem and has failed to address it;

10. When an attorney fails to be in good standing with the State Bar of Texas;

11. When an attorney fails to submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission;

12. When an attorney fails to submit proof of the required 9 hours of CLE in criminal law to the Council of Judges by the last day of his birth month;

13. When an attorney violates rules of professional conduct;

14. When an attorney voluntarily removes himself from the appointment list;

15. When an attorney is excessively tardy or excessively fails to appear in court;

16. Any judge, for good cause, may raise an issue regarding representation by an attorney or attorney misconduct at a monthly Council of Judges meeting. Specific and timely allegations must form the basis of the complaint; and

17. For good cause at the discretion of the majority of the district and county courts hearing criminal cases.

B. The possible sanctions for an attorney violating any of the rules in subsection A include:

1. Removal from the appointment list(s);

2. Temporary removal from the appointment list(s);

3. Requirement of additional CLE;

4. Requirement of a mentor;

5. Demotion of the attorney to a lower appointment list;

6. Written reprimand signed by the Presiding Judge; or

7. No action.

C. Appellate Attorneys – Late Briefs

1. Any time an attorney receives notice from an appellate court that the deadline for filing of a brief has not been met and the brief is overdue, the attorney shall notify the Office of the Council of Judges. That attorney shall be temporarily suspended from the appellate appointment

list until the attorney files the brief (or is permitted to withdraw) in that case, and submits a written or electronic copy of that brief to the Office of the Council of Judges.

2. Any time an attorney receives an order to show cause why he should not be held in contempt for a failure to timely file a brief, or the appeal is abated to determine whether the defendant still wishes to pursue the appeal after appellate counsel has failed to respond to notice from an appellate court that his brief is overdue, the attorney shall be permanently removed from the appellate appointment lists. A attorney so removed may apply for immediate reinstatement to the appellate appointment list by submitting proof of exceptional circumstances which reasonably prevented the lawyer from responding to the notice of the brief being overdue. A majority vote of the Judges is required for such immediate reinstatement. Alternatively, the attorney may re-apply for the appellate appointment list at the next open application period, and include a statement of steps the attorney has taken to prevent a future recurrence of failure to timely file a brief.

D. An attorney removed from the appointment list may reapply after the expiration of one year's removal, unless the judges hearing criminal cases have removed the attorney for a longer period. The attorney must provide a written description of all the measures taken by the attorney to correct the problem which led to the removal from the appointment list. If an attorney was removed due to noncompliance with CLE hours, the attorney will be placed back on the appointment lists once proof of CLE is provided to the Council of Judges.

E. An attorney who is court appointed to represent a defendant charged with capital murder in which the death penalty is sought will be temporarily inactivated on the felony and misdemeanor appointment list starting 30 days before the beginning of voir dire and lasting for the duration of the case.

F. The trial courts shall keep a list of attorneys who do not appear for a hearing. This list will be taken into consideration should an attorney's qualifications be under review by the judges. Failure to appear at the initial hearing may be grounds for appointing new counsel on an individual case.

SECTION SIX

FEE AND EXPENSE PAYMENT PROCESS

A. Court appointed counsel, other than an attorney with the Public Defender's Office, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

1. Time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

2. Reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

3. Preparation of an appellate brief and preparation and presentation of oral argument to the Eighth Court of Appeals Court or the Court of Criminal Appeals; and

4. Preparation of a motion for rehearing.

B. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the District Courts, Criminal District Courts, County Courts at Law, and County Criminal Courts at Law who preside over criminal cases in El Paso County. A copy of the schedule shall be sent to the El Paso County Commissioners Court.

C. An attorney shall submit only one misdemeanor voucher if the defendant has multiple misdemeanor cases. An attorney shall submit only one felony voucher if the defendant has multiple felony cases. The fee schedule takes into consideration reasonable and necessary overhead costs. Overhead costs that are included in the fee schedule and may not be additionally claimed on a voucher include but are not limited to: facsimile expenses, parking, supplies, equipment, rent, repairs, utilities, insurance, advertising, taxes, or CLE.

The following items will not be paid: receiving the court appointment, opening a case file on an appointed case, filling out the voucher, delivering dismissal to the defendant, faxing documents, speaking to court personnel and receiving settings or faxes.

Legal research up to three hours in a misdemeanor case and six hours in a felony will be paid. Any legal research hours in excess of the three or six hours will only be paid if an ex parte memorandum addressing the issue and the need for further legal research is attached to the attorney voucher. This ex parte memorandum may be sealed upon the motion of the attorney and order signed by the court.

The following are the only kinds of expenses which will be reimbursed if a proper request for reimbursement is made; (1) travel expenses for the attorney, witnesses, experts, and/or investigators, only if prior court approval has been obtained; (2) a court reporter's fee for depositions only if prior court approval has been obtained; (3) long distance telephone calls; (4) copying; (5) photographs; (6) other expenses required to adequately defend the case only if prior court approval has been obtained; and (7) mileage reimbursement to and from the Jail Annex. Destination points to and from Jail Annex must be listed.

D. The uniform schedule of fees shall take into consideration reasonable and necessary overhead costs, the availability of qualified attorneys, time and labor expended, complexity of the case, and the experience and ability of counsel.

See Forms:

El Paso County Fee Guidelines for Appointed Counsel in Misdemeanor and Felony Criminal Cases

E. No payment of attorney's fees will be made other than in accordance with the rules set forth below:

1. An appointed attorney shall fill out and submit a felony fee voucher to the Court for services rendered, which must be submitted at the time the case is concluded. If the form provided by El Paso County is not used, the format of the voucher must be similar to the County form.

2. An appointed attorney shall fill out and submit a misdemeanor fee voucher to Court Administration for services rendered, which must be submitted at the time the case is concluded. If the form provided by El Paso County is not used, the format of the voucher must be similar to the County form.

3. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove the requested amount of payment. If the trial Judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the Commissioners Court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county. CCP Art. 26.05(c).

F. Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings

Payment of Expenses

Appointed counsel in a noncapital case, appointed to represent a defendant shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Prior court approval should be obtained before expenses for investigation and for mental health and other experts are incurred.

Expert/Investigator Expenses with Prior Court Approval

Investigators must attach the court order to the payment voucher. The defense attorney must verify investigative services were provided by signing the investigator payment voucher. If the payment voucher exceeds the amount approved by the trial court, another motion for the overage must be tendered to the court and the overage will not be paid unless the overage payment voucher is accompanied by another court order. The County Auditor shall not pay an

investigator payment voucher unless it is approved by the defense attorney and the court order is attached to voucher.

The request for expenses must state the below, 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 and/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. CCP art. 26.05(d)

A majority of the judges of the district and county courts trying criminal cases in the county may remove an investigator from consideration for appointment if, after a hearing, it is shown that the investigator submitted a claim for services not performed by the investigator.

Procedure Without Prior Court Approval

Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement for investigative or expert expenses, 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.

The El Paso County Auditor will not pay any attorney or investigator who is not on the approved list at the time of the appointment.

Court appointed attorneys have a responsibility to turn in their voucher within 45 days after disposition of the case. Disposition of the criminal case includes a plea of guilty, a trial verdict, a dismissal or the defendant not appearing for a court hearing.

Plan Documents

STATUS OF APPOINTMENT OF COUNSEL

_____ **DISTRICT COURT / JAIL MAGISTRATE**

NAME: _____ **TRAC/CASE #:** _____

D.O.B.: _____ **SO #:** _____

CHARGE: _____

DATE: _____

_____ **MY INTENTION IS TO HIRE AN ATTORNEY.**

_____ **I AM WAIVING MY RIGHT FOR APPOINTMENT OF COUNSEL BECAUSE I HAVE AN ATTORNEY TO REPRESENT ME IN THE ABOVE CASE.**

_____ **DEFENDANT REFUSED TO SIGN AN APPLICATION OR A STATUS OF APPOINTMENT OF COUNSEL.**

_____ **MI INTENCION ES CONTRATAR A UN ABOGADO.**

_____ **RENUNCIO AL DERECHO DE QUE SE ME ASIGNE UN ABOGADO DEBIDO A QUE TENGO UN LICENCIADO QUE ME REPRESENTA CON EL CASO ARRIBA MENCIONADO.**

_____ **EL ACUSADO SE REHUSO A FIRMAR UNA SOLICITUD O LA HOJA PARA DETERMINAR SI UN ABOGADO SERA DESIGNADO.**

DEFENDANT

CASEWORKER