

EL PASO COUNTY INDIGENT DEFENSE PLAN

SCHEDULE OF FEES

FOR THE COMPENSATION OF COURT APPOINTED COUNSEL

October 27, 2023

The El Paso County Council of Judges, in accordance with the requirements of Texas Code of Criminal Procedure Article 26.05, formally adopt the following fee schedule for the compensation of appointed counsel in all misdemeanor and felony cases. The following rates shall only apply to court appointments made after January 1, 2024. Court appointments made prior to January 1, 2024, shall be compensated according to the fee schedule in place at the time of the appointment.

This fee schedule does not include an “opt-out” provision that allows a judge to approve a different rate on a case-by-case basis.

The uniform schedule of fees takes 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.

I. Hourly Rates.

The maximum hourly rates for non-capital felony cases, felony habeas corpus proceedings, and felony probation revocations and other evidentiary hearings are \$100.00 per hour for time in court and \$85.00 per hour for time out of court.

When two attorneys are appointed to represent one defendant, each attorney is entitled to the presumptive maximum reasonable compensation if the hours spent by each were necessary for an adequate defense. An attorney shall be compensated for time spent in court beginning at the time the attorney arrived at the court or logged on to the zoom hearing.

The maximum hourly rates for misdemeanor cases, misdemeanor habeas corpus proceedings, and misdemeanor contested probation revocations and other evidentiary hearings are \$100.00 per hour for time in court and \$85.00 per hour for time out of court.

The maximum hourly rate for preparation and perfection of an appeal to either the Eighth Court of Appeals or the Texas Court of Criminal Appeals is \$85.00 per hour. The hourly rate for time spent in court on appellate matters is \$100 per hour. This includes but is not limited to hearings on a motion for new trial or bond matters.

II. FELONIES

Presumptive Maximum Reasonable Compensation for Jury Trials (Completed)

| | |
|---------------------|-----------|
| Third Degree Felony | \$5000.00 |
|---------------------|-----------|

| | |
|-------------------|-----------|
| State Jail Felony | \$3000.00 |
|-------------------|-----------|

Presumptive Maximum Reasonable Compensation for Cases Resolved Without a Completed Jury Trial

| | |
|---------------------|-----------|
| Third Degree Felony | \$3000.00 |
|---------------------|-----------|

State Jail Felony \$1500.00

III. MISDEMEANORS

Presumptive Maximum Reasonable Compensation for Jury Trials (Jury selected and sworn)

Misdemeanors \$ 3000.00

The MAXIMUM COMPENSATION for a defendant whose cases are resolved through a jury trial is \$3500.00. If multiple jury trials are required, the maximum compensation increases by \$1000.00 for each additional jury trial.

Presumptive Maximum Reasonable Compensation for Cases Resolved Without a Completed Jury Trial

Misdemeanors \$ 750.00

The MAXIMUM COMPENSATION for a defendant whose cases are resolved without a trial is \$1750.00.

Flat Fee Rate for Misdemeanor Cases:

Attorneys may file flat fee vouchers on misdemeanor cases. A request for a flat fee payment does not require the attorney to itemize time spent on the case(s). The flat fee is based on the number of misdemeanor cases the attorney resolved for a defendant, regardless of outcome.

Attorneys requesting the flat fee payment will make a single line entry under OUT of court services that will read “flat fee voucher (# of cases).”

The flat fee amounts and the corresponding number of hours to bill are as follows:

| | | |
|---------------|----------|-----------|
| (One case) | \$210.00 | 2.8 hours |
| (Two cases) | \$285.00 | 3.8 hours |
| (Three cases) | \$360.00 | 4.8 hours |
| (Four cases) | \$435.00 | 5.8 hours |
| (Five cases) | \$510.00 | 6.8 hours |

The flat fee voucher should be used for misdemeanor marijuana cases filed in 2020 and 2021 unless the attorney attended in-person hearings for the defendant.

IV. Payment In Excess of the Presumptive Case Maximums.

Payment of a fee over the presumptive case maximum will only be made if the case was complex or extended. Whether a fee above the presumptive case maximum is warranted is within the sole discretion of the trial court. However, that decision may be appealed as provided for in section 8 of the “Fee and Expense Payment Process” of the El Paso County Indigent Defense Plan.

“Extended Case” means a case in which more time is reasonably required for total processing than the average case.

“Complex Case” means a case in which the legal or factual issues are unusual, thus requiring expenditure of more time, skill, and effort than would be required in the average case.

An attorney must attach a detailed memorandum explaining to the court why the case was extended or complex compared to the average case and that excess payment is necessary to provide fair compensation

In order to approve excess payments, the trial court shall make the following written findings:

- A. The case was extended, complex, or both.
- B. Excess payment is necessary to provide fair compensation. On this issue, the following factors will be considered:
 - i. Responsibilities of the attorney measured by the magnitude and importance of the case.
 - ii. Manner in which the attorney performed his/her duties.
 - iii. The attorney's knowledge, skill, efficiency, and professionalism.
 - iv. Judgment required of and used by the attorney.
 - v. Nature of the attorney's practice and injury to it because of this case.
 - vi. Extraordinary pressure of time or other factors.
 - vii. Any other relevant factors.

Payment of a voucher in a case presided over by a visiting judge requires the approval of the trial court judge or the Local Administrative Judge.

V. Capital Murder-Death Penalty

Death Penalty-First Chair.

The maximum hourly rates for pre-trial (before voir dire) are **\$100.00** for time expended in court and **\$85.00** per hour for time reasonably expended out of court.

The maximum hourly rates for voir dire and trial are **\$150.00** for time expended in court and **\$85.00** per hour for time reasonably expended out of court.

The maximum hourly rates for a motion for new trial, appeals and writs are **\$150.00** for time expended in court and **\$100.00** per hour for time reasonably expended out of court for the first chair.

Death Penalty-Second Chair.

The maximum hourly rates for pre-trial (before voir dire) are **\$100.00** for time expended in court and **\$85.00** per hour for time reasonably expended out of court.

The maximum hourly rates for voir dire and trial are **\$125.00** for time expended in court and **\$85.00** per hour for time reasonably expended out of court.

The maximum hourly rates for a motion for new trial, appeals and writs are **\$125.00** for time expended in court and **\$100.00** per hour for time reasonably expended out of court for the first chair.

Payment of Expenses.

Appointed counsel in a noncapital case shall be reimbursed for reasonable and necessary expenses, including but not limited to expenses for investigation and for mental health experts. Prior court

approval shall be obtained before expenses for investigation and experts are incurred. A trial court may ask for a proposed budget in order to ascertain the expenses in advance of a jury trial.

VI. 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 amount will not be paid unless the overage payment voucher is accompanied by another court order granting the overage amount.

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 the voucher. The investigator voucher must be submitted within 45 days of when services are completed or the disposition date of the case.

Appointed Counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request may be sealed upon a motion by the attorney and order signed by the court.

The request for expenses must state the type of investigation to be conducted or the type of expert to be retained, 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 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 state the reasons for the denial in writing, attach the denial to the confidential request, and submit the request and denial as a sealed exhibit to the record. CCP art. 26.05(d)

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

VII. 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, 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.

VIII. Reimbursement of Expenses.

According to Article 26.05(c) of the Code of Criminal Procedure, this fee schedule takes into consideration reasonable and necessary overhead costs, Overhead costs that are included in the fee schedule and may not be claimed on a voucher include but are not limited to: printing/reproduction expenses, postage, facsimile expenses, parking, supplies, equipment, rent, repairs, utilities, insurance, advertising, taxes, or CLE.

The following are the only kinds of expenses which will be reimbursed if a proper request for reimbursement is made:

- A. Travel expenses for the attorney, witnesses, experts, and/or investigators, only if prior court approval has been obtained.
- B. A court reporter's fee for transcripts only if prior court approval has been obtained.
- C. Photographs and media submitted as exhibits at trial.
- D. 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.
- E. Other expenses required to adequately defend the case only if prior court approval has been obtained.

The following items will not be paid: receiving the court appointment, opening or closing a case file on an appointed case, filling out the voucher, delivering dismissal to the defendant, faxing documents, receiving settings or faxes, requesting portal access; printing documents from portal, calendaring hearings, setting up appointments, reminding defendants of upcoming court hearings, and e- filing documents.

An attorney's time spent traveling outside El Paso County, Texas, when such travel is necessary for an adequate defense or to adequately prosecute an appeal, shall be compensated at the appropriate out of court rate but only the hours in transit shall be compensated.

IX. Removal From the Wheel.

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

X. Denial of Voucher.

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).

Court appointed attorneys have a responsibility to turn in their voucher within 90 days after disposition of the case. Disposition of the criminal case includes an order of withdrawal or substitution, a plea of guilty or true, a trial verdict, a revocation of supervision or an adjudication of guilt, or a dismissal.