



BRAZOS COUNTY INDIGENT DEFENSE PLAN

To implement the Texas Fair Defense Act, the following Local Rules of Administration are adopted under Texas Government Code §74.093, Texas Code of Criminal Procedure, Article 26.04 et. seq., and Texas Family Code §51.102. These rules shall be effective November 1, 2013, subject to the approval of the Presiding Judge of the Second Administrative Judicial Region. All prior indigent defense plans adopted are superseded by these rules.

Rule 1. Applicability

1.01 Scope. These rules will govern:

- (a). criminal procedures relating to the appointment of counsel to represent indigent adult defendants in all juvenile, county and district courts in Brazos County; and
- (b). civil procedures relating to the appointment of counsel to represent indigent juvenile offenders in Brazos County.

1.02 Limitation. Nothing contained in these rules shall be interpreted to require or compel appointment of counsel in any criminal case or juvenile case involving a Class C misdemeanor or contempt of child support.

1.03 Prior Orders. Nothing contained in these rules shall affect the validity of any court order entered prior to the effective date of these rules.

Rule 2. Determination of Indigency

2.01 Definitions.

- (a). "Indigent" means a person who is not financially able to employ counsel, using the financial standards established in these rules.
- (b). "Net household income" means **all** income of the defendant and spousal income actually available to the Defendant. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); overtime, severance pay, unemployment benefits, financial aid assistance, disability or workman's compensation; 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, or periodic receipts from estates or trusts, regular payments from Social Security, veteran's benefits, food, rent or household expenses received in lieu of wages or as a result of any agreement to share household expenses, income of persons claiming defendant as a tax exemption for federal tax purposes, tax refunds, gifts, one-time insurance payments or compensation for injury. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the defendant has no income or lesser income.

- (c). "Non-exempt assets and property" means cash in the defendant's possession or control, stocks and bonds, accounts at financial institutions, and equity in real or personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.
- (d). "Household" means all individuals who are actually dependent on the defendant for financial support or upon whom the Defendant is dependent for financial support.
- (e). "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.

2.02 Financial Standards for Determining Indigency. The following financial standards shall be used to determine whether a defendant is indigent and shall be applied equally to each defendant in the county.

- (a). A defendant is considered indigent if:
 - (1) the defendant's net household income does not exceed 125% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and
 - (2) the value of the non-exempt assets and property owned by the defendant:
 - a. does not exceed \$1,500;
 - b. does not exceed \$3,000 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

- c. is insufficient to pay the cost of retaining competent private legal representation in Brazos County for the offense(s) with which the defendant is charged.

(3) A defendant is considered indigent if, at the time of requesting appointed counsel, the defendant or the defendant's dependents (biological or adopted child under the age of 18) have been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.

(4) A defendant is considered indigent if the defendant is:

- a. currently serving a sentence in a correctional institution, residing in a public mental health facility, or is the subject of a proceeding in which admission or commitment to such a mental health facility is sought; and
- b. has no non-exempt assets or property in excess of the amounts specified in Rule 2.02(a)(2).

2.03 Partial Indigency. A defendant determined to be partially indigent shall be eligible for appointment of counsel only upon payment to the county of the designated fee schedule as set forth in this Plan for misdemeanors, felonies, or a combination thereof. If a defendant determined to be partially indigent pleads or is found guilty, the county may order the defendant to comply with a payment schedule to reimburse the county for all indigent defense costs in the case.

(a). A defendant shall be considered partially indigent if the defendant does not meet the standards for indigence set forth in paragraph 2 and:

- (1). The defendant's net household income is greater than 125% but does not exceed 175% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and
- (2). The value of the non-exempt assets and property owned by the defendant:
 - a. does not exceed \$2,500.00;

- b. does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or
- c. does not exceed the estimated costs of obtaining private legal representation on the offense(s) with which the defendant is charged.

(b). A defendant who does not meet any of the financial standards above shall nevertheless be determined to qualify for court appointed counsel if the defendant is otherwise unable to retain private counsel without substantial hardship to the defendant or the defendant's dependents, taking into account the nature of the criminal charge(s), the anticipated complexity of the defense, the estimated cost of obtaining competent private legal representation for the matter charged, and the amount needed for the support of the defendant and the defendant's dependents.

2.04 Limitation. The judge determining indigency shall not consider whether the defendant has posted bail, except to the extent that it reflects on the defendant's financial circumstances.

2.05 Procedure. Each person arrested who chooses to request the appointment of counsel, shall complete a sworn Application for Court Appointed Attorney, on a form approved by the county court at law and district judges of Brazos County (See Appendix for approved forms). The completed form shall be delivered to the judge or judge's designee and utilized in determining the indigency of the requesting person. If counsel is appointed, the defendant shall have the continuing duty to notify the court immediately of any material change in the defendant's financial circumstances.

2.06 Reimbursement. 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 during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay if it does not impose a payment to be made through the Probation Department to the Fund for Indigent Defense of Brazos County. **§26.05(g)**, Texas Code of Criminal Procedure.

If convicted, the court may require a defendant who is unable to pay a fine or costs of court to discharge all or part of the fine or costs by performing community service with a governmental entity or nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. The governmental entity or nonprofit organization that accepts a defendant must agree to supervise

the defendant in the performance of the defendant's work and report on the defendant's work to the court-related services office.

2.07 Review of Indigency. The defendant is presumed to remain indigent for the remainder of the case unless a material change in the defendant's circumstances occurs.

(a) The defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the defendant, the defendant's attorney, or the attorney representing the state. The defendant's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:

(1) Evidence of a material change in the defendant's financial circumstances as a result of which the defendant does not meet any of the standards for indigence contained in these rules; or

(2) Additional information regarding the defendant's financial circumstances that shows that the defendant does not meet any of the standards for indigence contained in these rules.

(b) If a defendant previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case. The court may take into consideration, a defendant's subsequent ability to retain counsel, to require the defendant to reimburse court appointed attorney's fees.

Rule 3. Selection and Appointment of Counsel in Criminal Cases

3.01 Method of Appointment. Attorneys shall be appointed to represent indigent adult defendants from public appointment lists using an "alternative program" as described in Article 26.04(g) of the Texas Code of Criminal Procedure and as further specified in this rule.

3.02 Public Appointment Lists. The judges hereby establish the following public appointment lists from which counsel for indigent defendants shall be appointed:

(a) A Misdemeanor List consisting of attorneys eligible for appointment in Class A and B misdemeanors.

(b) An Other Felony List consisting of attorney eligible for appointment in any non-capital felony case which is not:

- (1) an offense listed under Tex. Code Crim. Pro. Art. 42.12, Sec. 3g(a)(1); or
 - (2) an offense for which the punishment may be enhanced under Tex. Pen. Code Sec. 12.42(b), (c) or (d).
- (c) A 3g/Enhanced Felony List consisting of attorneys eligible for appointment to represent indigent defendants in any non-capital felony case which is:
- (1) an offense listed under Tex. Code Crim. Pro. Art. 42.12, Sec. 3g(a)(1); or
 - (2) an offense for which the punishment may be enhanced under Tex. Penal Code Sec. 12.42(b), (c) or (d)
- (d) A Capital Felony List consisting of attorneys eligible for appointment in capital felony cases.
- (e) An Appellate Attorney List consisting of attorneys eligible for appointment to represent indigent defendants on appeal from any Class A or B misdemeanor and any non-capital felony case.

3.03 Attorney Qualifications. At least twice each year, on or before April 1st and October 1st, attorneys may apply to be included on one or more of the public appointment lists. In order to be considered to receive appointments and, once approved, to continue to receive appointments to represent indigent felony defendants in Brazos County, an attorney must meet the following minimum qualifications:

(a) General Objective Qualifications to Receive Appointments.

- (1) currently licensed and in good standing with the State Bar of Texas;
- (2) consistently demonstrates commitment to providing effective assistance of counsel and quality representation to criminal defendants;
- (3) consistently demonstrates professionalism, proficiency and reliability in representing criminal defendants, and in dealing with the courts and opposing counsel;
- (4) be of sound mind, as well as good moral and ethical character;
- (5) not have been sanctioned by the court for failure to appear or any type of unprofessional or abusive conduct;

- (6) not have been the recipient of any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States within the last five (5) years;
- (7) not have been convicted of any felony offense or of any misdemeanor involving moral turpitude within the last ten (10) years. For the purposes of this requirement, “convicted” includes, but is not limited to, serving any period of probation, community supervision, or deferred adjudication supervision under any order of a court of record, regardless of whether the charges were ultimately dismissed or not.
- (8) not be delinquent in the payment of obligations to the State Bar of Texas, or to any taxing authority, including Brazos County, the State of Texas, and the United States;
- (9) not be delinquent in the payment of any child support obligation;
- (10) must have and maintain an office with a permanent physical address (other than a Post Office Box), together with a facsimile transmission machine and telephone capable of receiving information twenty-four (24) hours per day;
- (11) timely and promptly respond to telephone, e-mail, regular mail or fax requests from each court;
- (12) promptly notify the Brazos County Associate Judge 1, in writing of any changes of address, telephone, email or standing with the State Bar of Texas;
- (13) annually file with the Brazos County Associate Judge 1, by the last day of the attorney’s birth month, an accurate copy of his/her State Bar of Texas Minimum Continuing Legal Education Annual Verification Report and a sworn “Annual Certification of Attorney” that he/she is in compliance with the general and specific qualifications required under this Plan;
- (14) unless currently certified in criminal law by the Texas Board of Legal Specialization, must annually complete a minimum of six (6) hours of continuing legal education pertaining to criminal law;
- (15) timely appear and represent each appointed defendant at each and every court date scheduled by the court. 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;

- (16) within 72 hours of receiving the notice of appointment, submit to the Court, an acknowledgment of the appointment and a confirmation that the attorney has made the reasonable effort required under Article 26.04(j)(1) to contact the defendant by the end of the first working day after the date of appointment;
 - (17) **within ten days of receiving the notice of appointment personally interview any defendant incarcerated in the Brazos County Jail.** A court MAY REPLACE AN ATTORNEY if the appointed attorney does not interview an incarcerated defendant within this ten day period;
 - (18) must appear for arraignment and pretrial proceedings and may not waive arraignment for an incarcerated defendant unless the waiver is signed by the defendant;
 - (19) comply with Art 28.01 Section 2 Code of Criminal Procedure;
 - (20) notify the court within 30 days of appointment, or as soon as information becomes available, of special accommodations necessary for the defendant, including but not limited to, the necessity of an interpreter;
 - (21) advise defendant of immigration consequences relating to criminal offenses;
 - (22) submit only a properly documented and accurate "Request for Motion for Court Appointed Attorney's Fees / Approval; and
 - (23) with the exception of the appellate list, unless already approved for appointments in Brazos County, Texas, must live in Brazos County or contiguous counties.
 - (24) no later than October 15, submit 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 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.
- (b) Specific Objective Qualifications to Receive Appointments

(1) **Misdemeanor Cases**

- (a) Practiced in the area of criminal law for at least one (1) year or exhibited professionalism and reliability when providing representation to criminal defendants.

(2) Other Felony List .

- (a) Meet the minimum qualifications for placement on the Misdemeanor List;
- (b) Practiced in the area of criminal law for at least two (2) years;
- (c) Have tried to verdict at least two (2) criminal jury trials as lead counsel.

(3) 3g/Enhanced Felony List

- (a) Meet the minimum qualifications for placement on the Misdemeanor List;
- (b) Practiced in the area of criminal law for at least three (3) years; and
- (c) Have tried to verdict at least ten (10) criminal jury trials as lead counsel, five of which must have been felony trials.

(4) Capital Felony List

- (a) Meet the minimum qualifications for placement on the 3g/enhanced Felony List;
- (b) Comply with the requirements of Article 26.052 of the Texas Code of Criminal Procedure; and
- (c) Be admitted to the Second Administrative Judicial Region's List of Court-Appointed Counsel for Capital Felony Cases.

(5) Appellate Attorney List

- (a) Meet the minimum qualifications on the Other Felony List; and
- (b) Unless currently certified in criminal law by the Texas Board of Legal Specialization, have acted as counsel on appeal in at least 3 separate criminal appeals.

3.04 Application and Approval of Attorneys by the Judges

- (a) Application. Any attorney desiring to be placed on any public appointment list shall complete an application under oath on a form approved by the district and county court at law judges (See Appendix for approved forms). The application shall be delivered to the Brazos County Local Administrative District Judge.
- (b) Misdemeanor List. In addition to meeting the objective minimum qualifications described in Rule 3.03(a) and (b)(1) above, an attorney

may be placed on the misdemeanor appointment list only if both of the County Court at Law Judges approves the attorney's placement on the misdemeanor list.

- (c) Other Felony List. In addition to meeting the objective minimum qualifications described in Rule 3.03(a) and (b)(2) above, an attorney may be placed on the felony appointment list only if a majority of the district judges approves the attorney's placement on the Other Felony List.
- (d) 3g/Enhanced Felony List. In addition to meeting the objective minimum qualifications described in Rule 3.03(a) and (b)(3) above, an attorney may be placed on the felony appointment list only if all three of the district judges approve the attorney's placement on the 3g/Enhanced Felony List.
- (e) Capital Felony List. In addition to meeting the objective minimum qualifications described in Rule 3.03(a) and (b)(4) above, an attorney may be placed on the Capital Felony List only if all three of the district judges approve the attorney's placement on the Capital Felony List.
- (f) Appellate Attorney List. In addition to meeting the objective minimum qualifications described in Rule 3.03(a) and (b)(5) above, an attorney may be placed on the Appellate Attorney List only if all three of the district judges and both of the county court at law judges approve the attorney's placement on the Appellate Attorney List.
- (g) Action on Applications. When an attorney's application to be placed on a public appointment list is received by the Local Administrative District Judge, the Local Administrative District Judge shall prepare and route to the County Court at Law Judges and the District Judges an evaluation form (See Appendix for Form). Each County Court at Law and District Judge shall evaluate the new applicants for each public appointment list and write his/her recommendation, approval, or disapproval on the evaluation form together with any comments, as appropriate, and forward the evaluation form to the next appropriate judge for consideration. The last judge to act on the evaluation shall return the completed evaluation form to the Local Administrative District Judge who will determine whether the appropriate number of judges have approved the addition of the attorney to any list. Each attorney will be approved for addition to the appropriate list:
 - (1) who meets the objective qualifications set forth in Rule 3.03 for placement on the list; and
 - (2) whom the judges consider to be actually competent to adequately handle cases associated with the list.

An objective qualification requirement for any list may be waived by unanimous vote of the judges required for approval of an attorney for placement on any list.

- (h) Notification of Judge's Action. The Local Administrative District Judge shall notify each attorney by letter of the judges' action on each application. If the attorney's application has been denied, the notification letter shall describe the reasons for the denial by reference to each qualification required by these rules which has not been met, and inform the attorney when another application may be considered. The Local Administrative District Judge shall transmit all retained documentation to the Associate Court 1 Judge.
- (i) Confidentiality. The evaluations and communications between the courts and the attorneys relating to the applications to be placed on any appointed attorney list are records of the judiciary and not subject to public disclosure under the Texas Open Records Act. However, any attorney desiring to review the completed evaluation form concerning the attorney's application to be placed on any list may obtain a copy of the attorney's evaluation by request to the Local Administrative District Judge.
- (j) Records Maintenance and Retention. The Associate Court 1 Judge shall be responsible for and maintain each original application, completed evaluation, and records of MCLE compliance under these rules until a period of five (5) years after an attorney:
 - (1) is denied addition to any appointed attorney list; or
 - (2) is removed or otherwise no longer on any appointed attorney list.

3.05 Removal of Attorneys from Public Appointment List

- (a) An attorney may be removed, at any time, from one or more public appointment lists by a majority of the judges for the corresponding court level whenever the judges determine that the attorney:
 - (1) no longer meets the objective qualifications for that list;
 - (2) is not fully competent to adequately handle the category of cases associated with that list;
 - (3) fails to annually certify completion of the required continuing legal education requirements;

- (4) repeatedly fails to comply with the time requirements imposed by the Texas Rules of Appellate Procedure, the Texas Code of Criminal Procedure, or any of this county's local rules of administration;
- (5) submitted a claim for legal services not performed by the attorney;
- (6) has twice or more failed to contact or interview appointed defendants in a timely manner as required by Article 26.04(j)(1), Code of Criminal Procedure and this Plan;
- (7) has been found by a court to have provided ineffective assistance of counsel;
- (8) has been convicted or received deferred adjudication for any offense other than an offense punishable by a fine only;
- (9) is under indictment or being formally charged with an offense, other than an offense punishable by a fine only; or
- (10) has been sanctioned by the State Bar of Texas or any other State.

(b) The judges may, in their discretion, remove an attorney from one or more lists, while continuing to approve the attorney for other lists.

(c) When a majority of the judges remove an attorney from any list, the Local Administrative District Judge shall inform the attorney in writing of the judges' action and of the reasons for the removal. Within 15 days following the date of the letter removing an attorney from any list, an attorney may then deliver to the Local Administrative District Judge a written request to appear before the judges en banc to appeal the decision. A majority of the judges may reinstate the attorney. If a majority of the judges do not vote in favor of reinstatement of the attorney, the original removal of the attorney from the list shall remain in effect.

(d) Unless the notice of removal from an appointment list specifies a different duration of suspension or removal, any attorney removed from the list may reapply to be placed on that list after a period of one (1) year.

3.06 Assignment of Attorneys. The following method shall be used to assign attorneys from the appropriate public appointment list to represent individual defendants:

(a) Prompt Appearance Before a Magistrate. The law enforcement officer making the arrest and any officer who later has custody of a defendant

shall ensure that the defendant is taken before any magistrate (Justice of the Peace) authorized by law without unnecessary delay, but not later than 48 hours after the defendant was arrested. The magistrate (Justice of the Peace) before whom the defendant was brought shall administer the required magistrate's warnings, set bail, if appropriate, and provide the defendant with an application for court appointed attorney and assistance in completing the application, if appointment of counsel is requested by the individual arrested.

- (b) Out of County. If the defendant is taken before a magistrate of a county other than the county that issued the warrant, the magistrate (Justice of the Peace) shall inform the defendant of the procedures for requesting appointment of counsel and ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the defendant at the same time. If the defendant requests the appointment of counsel, the magistrate (Justice of the Peace) shall, without unnecessary delay, but not later than 24 hours after the defendant requested the appointment of counsel, transmit, or cause to be transmitted, the necessary request forms pursuant to Section 3.06(c) for forwarding to the county issuing the warrant.
- (c) Transmittal of Request for Appointed Counsel. Any magistrate (Justice of the Peace) who administers magistrate's warnings to a defendant shall make a written note on any request for appointment of counsel of the date and time the request was made. Pursuant to §15.17, Texas Code of Criminal Procedure, the magistrate (Justice of the Peace) shall, as soon as possible, without unnecessary delay, but not later than 24 hours after the defendant requests appointment of counsel, transmit or cause to be transmitted to the Brazos County Associate Court 1, as authorized under §26.04, Texas Code of Criminal Procedure, the forms requesting appointment of counsel for defendants charged with a Class A or B misdemeanor or any felony other than a capital felony. If the arrested individual is charged with a capital felony, the request and any documentation shall be delivered within twenty-four (24) hours to the Local Administrative District Judge, who shall determine indigency and appoint counsel within three (3) working days after the request is received.
- (d) Brazos County Associate Court 1 to Determine Indigency and Appoint Counsel for Incarcerated Individuals. If the defendant requesting appointment of counsel remains incarcerated on the charges, the Associate Court 1, shall, within three (3) working days after the request for appointment of counsel is received by the Associate, determine whether or not the requesting defendant is indigent and, if found to be indigent or otherwise qualifies pursuant to Section 2.03(a) or (b) above, shall appoint an attorney from the appropriate list. In determining which

attorney to appoint, the Associate Court 1 shall appoint the attorney whose name next appears in order on the public appointment list that corresponds to the most serious offense as currently charged, unless any of the following circumstances exist, which override the sequential appointment preference:

- (1) if the defendant requesting appointed counsel does not understand English, an attorney who can communicate with the defendant in the defendant's language is preferable to one who cannot;
 - (2) if the defendant requesting appointed counsel has pending charges in which he has previously been appointed counsel, the attorney who was previously appointed should be appointed;
 - (3) if the defendant requesting appointed counsel has been arrested on both felony and misdemeanor charges, or has pending felony charges at the time of a misdemeanor arrest, an attorney from the appropriate Felony List should be appointed; or
 - (4) if the defendant requesting appointed counsel has been arrested on any motion to proceed with adjudication or motion to revoke community supervision, and the attorney who represented the defendant at the time the defendant was placed on supervision continues to be on the appropriate public appointment list, the attorney who represented the defendant previously should be appointed.
- (e) Out of County Appointments. If the defendant is arrested under a warrant issued in a county other than the county in which the arrest was made and the defendant is entitled to and requests appointed counsel, Associate Court 1 shall appoint counsel within the periods prescribed by section 3.06(d) above, regardless of whether the defendant is present within the county issuing the warrant and even if adversarial judicial proceedings have not yet been initiated against the defendant in the county issuing the warrant. However, if the defendant has not been transferred or released into the custody of the county issuing the warrant before the 11 day after the date of the arrest and if counsel has not otherwise been appointed for the defendant in the arresting county, the Associate Court 1 shall immediately appoint counsel to represent the accused in any matter under Chapter 11 or 17, regardless of whether adversarial judicial proceedings have been initiated against the accused in the arresting county. If counsel is appointed for the defendant in the arresting county as required by the subsection, the arresting county may seek from the county that issued the warrant reimbursement for the actual costs paid by the arresting county for appointed counsel.

- (f) Limitation on Appointment after Overriding Circumstance. When any attorney is appointed out of order due to an overriding circumstance, that attorney shall not receive another sequential appointment until every other attorney on that list has received an appointment in that rotation (but may receive additional overriding circumstance appointments).
- (g) Ad Hoc Distribution of Appointments in the Trial Court. The Court may deviate from the rotation system and appoint an attorney in that court who is specifically qualified under the Plan on an ad hoc basis to represent indigent defendants upon a finding of good cause to deviate from the rotation system.
- (h) Determination of Indigency and Appointment Counsel for Individuals Not Incarcerated. 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 Commissions' website at <http://tidc.tamu.edu/public.net/> or from <https://www.brazoscountytexas.gov/DocumentCenter/View/1383>. The court will rule on all requests for counsel submitted in this order. All completed applications may be faxed to Associate Court 1 at 979-361-4559 or hand delivered to 300 East 26th Street, Suite 205, Bryan, Texas 77803 between 9 a.m. and 11:30 a.m. or 2 p.m. and 4 p.m., Monday through Thursday, or the defendant may call for an appointment to complete an application which will be considered and ruled on immediately. The misdemeanor request and any related documentation shall be maintained by the Associate Court 1 Judge and delivered to the assigned court upon the filing of a charging instrument by either the District Attorney or the County Attorney. The Associate Court 1 Judge shall deliver all felony requests and any related documentation to the Associate Court 2 Judge, who shall maintain and deliver to the assigned court upon the filing of a charging instrument by either the District Attorney or the County Attorney. Upon filing of any request for appointment of counsel, the District Clerk shall deliver the request to the assigned court.
- (i) TDCJ Inmates Charged with Offenses Committed While in TDCJ Custody. Notwithstanding anything herein to the contrary, if the court determines that a defendant before the court is indigent and is an inmate charged with an offense committed while in the custody of the Institutional Division of the Texas Department of Criminal Justice, the court may request the Office of the State Counsel for Offenders to provide legal representation to that defendant in accordance with Tex. Code Crim. Proc. Art. 26.051 and the policies and procedures established by the Texas Board of Criminal Justice.

- 3.07 Notice of Determination that the Defendant is Not Indigent. If the person making the indigency findings, determines that a person who requests appointment of counsel is not indigent, that finding shall be entered on the request for appointment of counsel and file the original with the other orders in the case and cause a copy to be returned to the requesting person.
- 3.08 Notice of Determination that the Defendant is Indigent and Appointment of Counsel. If the person making the appointment finds that a defendant who requests counsel is indigent, an order appointing counsel shall be completed and a copy delivered to the appointed counsel, to the indigent defendant, to the prosecutor with jurisdiction over the charge, and the original delivered to the assigned court to be filed with the orders in the case. Immediately after an order appointing counsel is signed, the appointing judge shall notify the appointed attorney of the appointment by at least one of the following methods: telephone, facsimile transmission, electronic mail, in person, or other means of immediate communication.
- 3.09 Attorney Acceptance of Appointment and Contact with the Defendant. The appointed attorney is required to provide the court, within 72 hours of receiving the notice of appointment, an acknowledgment of the appointment and a confirmation that the attorney has made the reasonable effort required under Article 26.04(j)(1) to contact the defendant by the end of the first working day after the date of the appointment.
- (a) The appointed attorney shall deliver an acknowledgment and confirmation in written form to the appointing judge or person designated by the judges to appoint counsel.
 - (b) The acknowledgment and confirmation shall be delivered by hand, by facsimile, by electronic mail, or by such other means as the judges may approve.
- 3.10 Reporting Requirements
- (a) Reporting Period. In determining compliance with the minimum continuing legal education requirements of these rules, the period used shall be the same as the MCLE compliance year used by the State Bar of Texas [See State Bar Rules, Art. XII, Sec. 2(L)].
 - (b) CLE Reporting Requirement. Not later than the last day of an attorney's birth month each year, an attorney on any appointment list must submit to the Brazos County Associate Judge 1:
 - (1) An affidavit signed by the attorney detailing the criminal continuing legal education activities completed in the prior year, with a copy of the State Bar of Texas Minimum Continuing Legal Education

Annual Verification Report covering the reporting period (see Appendix for form);

- (2) An affidavit signed by the attorney, that the attorney is currently certified in criminal law by the Texas Board of Legal Specialization (See Appendix for form).
- (c) Carryover Limited to One Year. Continuing legal education activity completed during any reporting period in excess of the minimum six hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one (1) year only.
- (d) Initial Reporting Period. Continuing legal education activity completed within a two-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year.
- (e) Failure to Timely File Compliance Affidavit. Failure to timely file proof of compliance with the reporting requirements of Section 3.10 (a) and (b) will result in automatic suspension from the public appointment list(s) until proper documentation is provided.
- (f) Reporting Practice Information. Each year, no later than October 15, an attorney shall submit 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 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.

Rule 4. Attorney Fee Schedule and Compensation of Appointed Attorneys

4.01 Trial Fee Schedule. Brazos County will pay appointed counsel for all trial time reasonably necessary for adequate representation of the defendant, as approved by a judge, according to the fee schedule shown below and adopted as provided under Article 26.05(b) of the Texas Code of Criminal Procedure. For purposes of this Indigent Defense Plan, there is a presumption of a Fixed Fee.

TRIAL SERVICES FEE SCHEDULE (Effective January 2013)			
Type of Service	Fixed Fee	Daily Rate	Hourly Rate (Min - Max)
JURY			
Capital (Death Penalty)-Lead Counsel			\$125
Capital (Death Penalty)-Assoc. Counsel			\$115
Capital (Non death penalty) - Lead Counsel			\$115
Capital (Non death penalty) - Assoc. Counsel			\$100
Non-capital 3g/Enhanced Felony*	\$3,000	\$800	\$100
Other Felony	\$1,500	\$700	\$80
Misdemeanor	\$1,000	\$400	\$60
Contested Competency	\$1,000	\$400	\$60
BENCH			
Contested 3g/Enhanced Felony Trial	\$2,000	\$800	\$100
Contested Other Felony Trial Contested Felony MTR/MTP	\$1,000	\$700	\$80
Uncontested 3g/Enhanced Felony Plea* Uncontested 3g/Enhanced MTR/MTP	\$1,000	---	---
Uncontested Other Felony Plea Uncontested Other Felony MTR/MTP	\$600	---	---
Contested Misdemeanor Trial Contested Misdemeanor MTR/MTP	\$600	\$400	\$60
Uncontested Misdemeanor Plea Uncontested Misdemeanor MTR/MTP	\$400	---	---
"Uncontested" Competency	\$400	---	---
In addition to the fixed fee, an additional \$50 shall be paid for each additional felony and/or misdemeanor, up to a maximum of an additional \$400.00. Please see revisions to §4.06 below.			

*Enhanced Felony - a felony offense for which the punishment is enhanced under Tex. Penal Code Sec. 12.42(b), (c), or (d).

JUVENILE FEE SCHEDULE (Effective January 2018)			
Type of Service	Daily Rate	Fixed Fee	Hourly Rate (Min - Max)
JURY			
Detention		\$100.00	
Uncontested Adjudication /Disposition		\$300.00	
Contested Adjudication / Disposition		\$600.00	\$80

4.02 Compensation for Services Not Provided by Schedule.

(a) Multiple Cases for Single Defendant. In determining the amount of compensation for disposition of multiple cases involving a single defendant, \$50.00 shall be paid, in addition to the fixed fee, for each additional felony and/or misdemeanor, up to a maximum of an additional \$400.00.

(b) Other Services. Services not specifically described above (e.g., bond reductions, pre-filing dismissals, defense of motions to deny bail or revoke bond, dismissals, habeas corpus, etc.) will be paid on a rate basis using a daily or hourly rate most appropriate to the circumstances. Any request for compensation on a rate basis must be accompanied by an itemized statement showing the amount of time actually expended by the attorney on the case.

4.03 Appellate Fee Schedule. Brazos County will pay appointed counsel for appellate services only on a fixed fee basis, unless otherwise approved by a judge for good cause, according to the following fee schedule adopted as provided under Article 26.05(b) of the Texas Code of Criminal Procedure:

APPELLATE SERVICES FEE SCHEDULE			
Type of Case	Motion for New Trial and Brief	Oral Argument and Motion for Rehearing	Total
Capital Felony	\$10,000	\$2,500	\$12,500
Non-Capital 3g/*Enhanced Felony (*See note above)	\$1,750	\$750	\$2,500
Non-Capital <u>Other</u> Felony	\$1,250	\$500	\$1,750
Misdemeanor	\$800	\$400	\$1,200

- 4.04 Incidental Expenses. Appointed counsel, both trial and appellate, shall be reimbursed for reasonable and necessary incidental expenses such as copying, telephone, mileage, etc., incurred without prior approval of the Court.
- 4.05 Investigations and Expert Testimony. Counsel appointed in a non-capital case shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior court approval shall be reimbursed, according to the procedures set forth below. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.
- (a) Procedure with Prior Court Approval. Appointed counsel may file with the trial court a Motion for Court Appointed Attorneys Fee/Approval (Appendix E) together with a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for advance payment of expenses must state, 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 or each expert.
- (b) Procedure Without Prior Court Approval. Appointed counsel may incur investigative or expert expenses without prior approval of the court. Appointed counsel may file with the trial court a Motion for Court Appointed Attorneys Fee/Approval (Appendix E). The motion must have an itemized statement attached which states, as applicable:
- (1) the type of investigation that was conducted or the type of expert that was retained;
 - (2) specific facts that show the investigation was necessary to assist in preparation of the defense; and
 - (3) an itemized list of actual expenses incurred for each investigation or each expert.
- (c) Approval of Requests. On presentation of a Motion for Court Appointed Attorneys Fees/Approval (Appendix E) and the request for advance payment or itemized statement required, the court shall

approve the payment of the requested amount if the expenses are reasonably necessary and reasonably incurred. Upon approval by the Court, the completed Motion for Court-Appointed Attorneys Fees/Approval shall remain a public record and be transmitted to the County Auditor for payment. If the request for advance payment or claim for reimbursement is made prior to the conclusion of the trial of the case, the request for claim, together with any supporting documentation, that was attached to the motion may be ordered sealed until the trial of the case is concluded. All payments shall be made directly to the requesting counsel. No payments will be made directly to the investigator or expert.

(d) Denial of Requests. If the court denies in whole or in part a request for advance payment or a claim for reimbursement of expenses incurred for investigation or expert testimony, the court shall:

- (1) state the reasons for the denial in writing;
- (2) attach the denial to the request or claim;
- (3) submit the request or claim and denial as an exhibit to the record;
and
- (4) if the request or claim has been made ex parte prior to trial, may order the request or claim and denial sealed until the trial of the case is concluded.

4.06 Procedure for Compensation. For **Felony Courts**, not later than **thirty (30) days** after the case is disposed by the trial court, the appointed attorney shall prepare and submit to the trial court last having jurisdiction of the most serious offense case, a Motion for Court Appointed Attorney Fees on a form approved by the judges (See Appendix for approved forms). The motion shall include all services provided a single defendant, regardless of the number of cases disposed. The judge shall determine the reasonableness of the amount requested based upon the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel using the above fee schedules. If the judge disapproves the requested amount, 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. The attorney may file written objections to the court's action and request an oral hearing to show the court reasons that justify the amount requested. If a request for payment of court appointed attorney's fee is not submitted within 30 days, the attorney will automatically be paid on a fixed fee basis. For **Misdemeanor Courts**, all fee requests shall be submitted or recited at the time of disposition or the attorney will automatically be paid on a fixed fee basis.

- 4.07 Appeals from any Disapproval of Requested Amount. The attorney may appeal any determination disapproving the requested amount to the Presiding Judge of the Second Administrative Judicial Region in accordance with the rules promulgated by the Second Administrative Judicial Region. The amount determined by the Presiding Judge of the Second Administrative Judicial Region shall be paid by Brazos County to the attorney appointed within forty-five (45) days after the appeal is determined.

Rule 5. Selection and Appointment of Counsel in Juvenile Cases

- 5.01 Method of Appointment. Attorneys shall be appointed to represent indigent juvenile offenders using an “alternative program” as described in Article 26.04(g) of the Texas Code of Criminal Procedure, by use of an **Ad Hoc Distribution as described in §3.06(e)** or as further specified in this rule.
- 5.02 Contract Attorneys. Upon approval by the Judges of the District Courts and County Courts at Law in Brazos County of the individual or firm selected to provide indigent juvenile representation, the Commissioners Court of Brazos County may enter into a contract with the selected individual or law firm to provide the majority of all legal representation to indigent juvenile offenders entitled to representation under the Texas Juvenile Justice Code. During the term of such contract, the contract attorney(s) shall be appointed to represent any juvenile offenders determined to be indigent according to these rules, except:
- (a) contract attorneys shall not be appointed or obligated under the contract to provide representation to juveniles charged with delinquent conduct arising from the criminal offense of Capital Murder;
 - (b) contract attorneys shall not be appointed or obligated under the contract to provide representation to juveniles when the contract attorney or contract firm is disqualified from such representation or has a conflict of interest under the Texas Disciplinary Rules of Conduct.
- 5.03 Terms of Contract. Any contract executed by the Commissioners Court of Brazos County and an attorney or law firm under these rules shall provide:
- (a) The contract shall provide a set term of one year, renewable upon the consent of (1) the District Judges and County Court at Law Judges, (2) the Commissioners Court, and (3) the attorney or law firm selected.
 - (b) The attorney or law firm selected shall agree to make the representation of indigent juveniles the priority of their practice and file few, if any, motions for continuance in juvenile cases to which they

have been appointed on the grounds of a conflicting setting in another court.

- (c) The attorney or law firm selected shall agree to meet or exceed the IJA-ABA Standards for Juvenile Justice relating to the quality of service provided by court-appointed attorneys to indigent juveniles. (A copy of these standards is attached as Appendix I). The contract shall state a policy to assure that the attorney or firm selected shall not provide representation to indigent juveniles when doing so would involve a conflict of interest.
- (d) The attorney or firm selected will be solely responsible for all routine expenses associated with the representation of indigent juveniles to which they are appointed under the contract. Routine expenses include paralegal and secretarial services, library expenses, office supply and equipment expenses, telephone services, facsimile transmission services, copying expenses, postage and parcel delivery expenses, transportation expenses incurred within Brazos County and the counties contiguous to Brazos County, and expenses associated with serving subpoenas on and contacting witnesses. Prior written approval by the juvenile court or referee is required for reimbursement of other expenses including investigation and expert witness services. Requests for approval of investigative expenses and expenses for expert testimony shall be filed in the appropriate court setting forth good cause for such investigation and a justification of the cost. There shall be no additional compensation or reimbursement due on any case without the express, written approval of the Juvenile Court having jurisdiction over the case.
- (e) The amount of compensation under the terms of the contract shall be stated in the contract and payable at such frequency as determined by the contract, with no provision for advances. The contract shall require the contract attorney or firm to submit an itemized fee voucher to be approved by the juvenile judge prior to being forwarded to the County Judge for approval and payment.
- (f) The contract shall identify the attorneys who will perform legal representation and prohibit the substitution of other attorneys without prior approval by the juvenile court and the Commissioners Court of Brazos County. Nothing in the contract shall prohibit the contract attorney or firm from being relieved or replaced in accordance with the Texas Family Code or the Texas Code of Criminal Procedure.
- (g) The contract shall set the maximum number of cases or workload each attorney may be required to handle pursuant to the contract.

- 5.04 Qualifications. Each attorney appointed to represent an indigent juvenile under the contract shall meet and maintain throughout such representation each of the following minimum qualifications.
- (a) Be an attorney licensed to practice law in the State of Texas and maintain that license in good standing throughout the term of the contract.
 - (b) If only one attorney is contracted, that contract attorney must be a resident of Brazos County, Texas; if a law firm is contracted, the contract firm must maintain its principal office located in Brazos County, Texas.
 - (c) The contract attorney or any member of a contract law firm may not be or have been the recipient of any disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States.
 - (d) The contract attorney or any member of a contract law firm may not have ever been convicted of any felony or misdemeanor involving moral turpitude. For the purposes of this requirement, “convicted” includes, but is not limited to, serving any period of probation, community supervision, or deferred adjudication supervision under any order of a court of record, regardless of whether the charges were ultimately dismissed or not.
 - (e) The contract attorney or any member of a contract firm may not be currently or at any time during the term of the contract delinquent in the payments of obligations to the State Bar of Texas or to any taxing authority, including Brazos County, the State of Texas and the United States of America.
 - (f) The contract attorney or any member of a contract firm may not be currently or at any time during the term of the contract delinquent in the payment of any child support obligation.
 - (g) The contract attorney or contract firm must maintain a policy of malpractice insurance in a coverage amount for each claim of at least \$500,000. This policy of insurance must survive the termination of the attorney’s or firm’s contract for any claim arising from actions occurring during the term of the contract.
 - (h) The contract attorney or any member of the contract firm must comply with the minimum continuing legal education requirements of these rules.

(i) The contract attorney or any member of the contract firm must meet the following minimum experience requirements to represent juveniles with charges of children in need of supervision (CINS) and delinquent conduct, including those in which commitment to the Texas Youth Commission (TYC) is and is not authorized disposition, determinate sentence is an authorized disposition, and proceedings seeking discretionary transfer to a criminal court:

(1) Must have a minimum of 3 years work experience in juvenile law;

(2) Must have participated in at least 10 criminal juvenile cases, of which at least 3 were tried to a jury verdict;

(3) Must have tried at least 3 criminal or juvenile cases as lead counsel.

5.05 Procedure for Award of Contract. Unless a contract is a renewal of an existing contract under these rules, the following procedures shall be used in awarding contracts to an attorney or law firm:

(a) Not later than July 1st, the County Purchasing Office will prepare and submit to the Commissioners Court a formal request for Proposals. Once approved by the Commissioners Court, the Request for Proposals will be mailed to every licensed attorney residing in Brazos County and to the Brazos County Bar Association.

(b) Upon passing of the deadline for submission, the proposals will be reviewed by the Commissioners Court and the Judges of the District Courts and County Courts at Law.

(c) Once the Commissioners court and the Judges of the District Courts and County Courts at Law have had a reasonable opportunity to review the proposals, the Commissioners Court shall select an individual or firm and submit the selected proposal to the District and County Court at Law Judges for approval. If approved by the District Court and County Court at Law Judges, the Commissioners Court may accept the proposal of the selected individual or firm and enter into a contract for services in accordance with the requirements of these rules.

(d) The criteria for selection and approval of the individual or firm shall not be based solely upon the low bid. Consideration of the selection must be based upon at least the following factors:

(1) experience and qualifications of the individual or firm submitting the proposal;

- (2) past performance of the individual or firm submitting the proposal in representing juveniles;
 - (3) disciplinary history of the individual or firm submitting the proposal with the state bar;
 - (4) ability of the individual or firm submitting the proposal to comply with the terms of the contract; and
 - (5) the cost for the services.
- (e) Upon execution of the contract by the individual or firm selected and the Commissioners Court, the Juvenile Courts will exclusively appoint the contract attorney or law firm, subject to the limitations described in these rules.
- (f) It is the intent of these rules that the contract be executed prior to the final adoption by the Commissioners Court of the county's annual budget and that the term of the contract be concurrent with the county's fiscal year.

5.06 Procedure for Renewal of Contract

- (a) Not later than June 1st prior to the expiration of the contract, the contract attorney or firm will prepare and submit to the County Purchasing Office a letter of intent to renew the contract, specifying any proposed changes to the terms of the contract.
- (b) The County Purchasing Office shall immediately forward to the Commissioners Court and the Judges of the District Courts and County Courts at Law a copy of the contract attorney's or firm's letter of intent to renew the contract and any proposed changes to the terms of the contract.
- (c) The Judges of the District Courts and County Courts at Law shall review the contract attorney's letter of intent to renew the contract. If a majority of the Judges of the District Courts and County Courts at Law object to renewal of the contract, the Local Administrative District Judge shall prepare and deliver a letter of objection to renewal of the contract to the County Judge no later than July 1st prior to the expiration of the current contract.
- (d) If no letter of objection by the Judges of the District Courts and County Courts at Law to renewal of the contract is received by the County Judge by July 1st prior to expiration of the current contract, the Commissioners Court may renew the contract on such terms that do not conflict with these rules.

- (e) If a letter of objection by the Judges of the District Courts and County Courts at Law to renewal of the contract is received by the County Judge on or before July 1st prior to expiration of the contract, the process for award of a new contract specified in Rule 4.05 above shall immediately begin.
- (f) It is the intent of these rules that any renewal contract be executed prior to the final adoption by the Commissioners Court of the county's annual budget and that the term of the contract be concurrent with the county's fiscal year.
- (g) Notwithstanding anything to the contrary in these rules, no contract may be renewed more than four (4) times without rebidding the contract under Rule 5.05 above.

5.07 Reporting Compliance with Minimum continuing Legal Education Requirements.

- (a) Reporting Period. In determining compliance with the minimum continuing legal education requirements of these rules, the period used shall be the same as the MCLE compliance year used by the State Bar of Texas [See State Bar Rules, Art. XII, Sec. 2(L)].
- (b) Reporting Requirement. Not later than the last day of an attorney's birth month each year, any attorney providing service to indigent juveniles under the contract must submit to the Local Administrative Judge:
 - (1) An affidavit signed by the attorney detailing the juvenile continuing legal education activities completed in the prior year, with a copy of the State Bar of Texas Minimum Continuing Legal Education Annual Verification Report covering the reporting period (see Appendix for form); or
 - (2) An affidavit signed by the attorney, that the attorney is currently certified in juvenile law by the Texas Board of Legal Specialization (See Appendix for form).
- (c) Carryover Limited to One Year. Continuing Legal Education activity completed during any reporting period in excess of the minimum six hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one (1) year only.
- (d) Initial Reporting Period. Continuing legal education activity completed within a two-year period immediately preceding an attorney's initial

reporting period may be used to meet the educational requirements for the initial year.

- 5.08 Appointment of Non-Contract Attorneys. In those circumstances where:
- (a) the juvenile is charged with delinquent conduct arising from the criminal offense of Capital Murder;
 - (b) the contract attorney or law firm is disqualified from representation of juvenile;
 - (c) the contract attorney or law firm has a conflict of interest under the Texas Disciplinary Rules of Conduct; or
 - (d) the contract has been terminated or expired without renewal.

An attorney shall be appointed from the public appointment list established in Section 3 above appropriate to the criminal offense forming the basis of the alleged delinquent conduct. The juvenile judge or referee making such appointment shall utilize the "alternative program" or Ad Hoc program as set forth in Section 3.

No later than October 15, each attorney must submit 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 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.

- 5.09 Determination of Indigency. The juvenile referee or (juvenile judge in the referee's absence) shall determine a juvenile's indigency in accordance with the Texas Juvenile Justice Code and the standards established by Section 2 above. The income and assets of the juvenile's parent or other person responsible for the juvenile's support must be used in determining whether the child is indigent.
- 5.10 Appointment of Counsel. Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child.
- If the juvenile is released from detention and if a petition to adjudicate or a motion to modify is filed, the juvenile court will use the financial forms gathered at intake to make a determination of indigence. If no financial information is available, the juvenile court shall promptly summon the child's parent/guardian/custodian to the court so that the financial information may be gathered for a determination of indigence.

If the court makes a finding of indigence, the court shall appoint an attorney on or before the fifth working day after:

- (a) The date a petition for adjudication or discretionary transfer hearing has been served on the child; or
- (b) A motion to modify disposition seeking commitment to TYC or placing in a secure correctional facility has been filed.

If the family does not qualify for appointed counsel or if the parent or guardian is not available, and the family fails to provide an attorney, the juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

The prosecuting attorney/court clerk shall notify the juvenile court upon the filing of and return of service of a motion to modify or the return of service of a petition for adjudication or discretionary transfer.

An attorney appointed for a detention hearing shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.

Court appointed attorneys shall make every effort to comply with the Texas State Bar code of Ethics for communication with a client.