

CAUSE NO. _____

JEFFORY BLACKARD, individually and on behalf of other similarly situated taxpayers,

Plaintiff,

V.

THE HONORABLE GEORGE GALLAGHER, in his official capacity,

COLLIN COUNTY JUDGE KEITH SELF, in his official capacity,

COMMISSIONER SUSAN FLETCHER,
in her official capacity,

COMMISSIONER CHERYL WILLIAMS, in her official capacity,

COMMISSIONER CHRIS HILL, in his
official capacity,

COMMISSIONER DUNCAN WEBB, in
his official capacity, and

AUDITOR JEFF MAY, in his official capacity,

Defendants.

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

JUDICIAL DISTRICT

**PLAINTIFF'S VERIFIED ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

Plaintiff Jeffory Blackard, on behalf of himself and all taxpayers in Collin County, Texas, for his Verified Petition and Application for Temporary Restraining Order against Defendants the Honorable George Gallagher; Collin County Judge Keith Self; Commissioners Susan Fletcher, Cheryl Williams, Chris Hill, and Duncan Webb; and Collin County Auditor Jeff May (collectively, “Defendants”), states and alleges as follows.

Discovery

1. Discovery is intended to be conducted according to Rule 190.4 of the Texas Rules of Civil Procedure.

Nature of the Action

2. This lawsuit seeks to halt a threatened expenditure of public funds that would unlawfully serve to enrich private attorneys at the expense of taxpayers in Collin County, Texas. On information and belief, the Attorneys Pro Tem appointed to prosecute Ken Paxton, the sitting Attorney General for the State of Texas, have sought or will soon seek payment for their services that is both premature and far exceeds the compensation permitted for an attorney pro tem under Texas law.

3. Under the Texas Fair Defense Act, an attorney pro tem must be paid in the same amount and in the same manner as counsel appointed to represent an indigent person. These standards and procedures are established by the Board of District Judges. In pertinent part, a payment of fees may not occur until disposition of the case and must be paid consistent with the approved fee schedule. The Attorneys Pro Tem may believe their case to be extraordinary, and may have been promised lucrative fees, but there is no legal basis for a fee payment to occur prior to disposition of the case or for an amount higher than the amount permitted in the fee schedule. Any other result would open the door to drastic consequences, including severe financial impact to Collin County. Additionally, allowing individual judges to value intriguing white collar prosecutions far more than the effective defense of capital cases is plainly contrary to the plan and intent of the rules and statutes. An injunction against any such payment is warranted.

4. The payment sought by the Attorneys Pro Tem would constitute an illegal expenditure of taxpayer funds because it: (1) violates Collin County Local Rule of Administration 4.02 by seeking an advance fee payment prior to disposition of the matter; and (2) violates Local Rule of Administration 4.01 and Tex. Code of Crim. Proc. § 26.05 by seeking fees inconsistent with and in excess of the authorized fee schedule. Plaintiff seeks relief in the form of declaratory judgment and an injunction preventing Judge Gallagher from ordering payment and preventing the Collin County Commissioners and Auditor from making payment, on a non-compliant request.

The Parties

5. Plaintiff Jeffery Blackard resides in Sulphur Springs, Hopkins County, Texas. He pays property taxes in Collin County associated with his ownership of two parcels of real property in Collin County. Mr. Blackard also pays sales taxes in Collin County on a regular basis.

6. Defendant the Honorable George Gallagher is a district court judge for the 396th Judicial District Court of Tarrant County, Texas. He is the presiding judge in the litigation styled *Texas v. Warren Kenneth Paxton, Jr.*, Case Nos. 416-81913-2015, 416-82148-2015, and 416-82149-2015, in the District Court of Collin County, Texas (the “Paxton Litigation”). Judge Gallagher is sued in his official capacity. On information and belief, Judge Gallagher is a Texas resident who may be served with process at 396 District Court, 401 W. Belknap, Fort Worth, Texas 76196-0215.

7. Defendant Judge Keith Self is the presiding officer of the Collin County Commissioner’s Court. He is sued in his official capacity. On information and belief, Judge Self

is a Texas resident who may be served with process at the Collin County Administration Building, 2300 Bloomdale Rd., Suite 4192, McKinney, Texas 75071.

8. Defendant Susan Fletcher is the Collin County Commissioner for Precinct 1. She is sued in her official capacity. On information and belief, Commissioner Fletcher is a Texas resident who may be served with process at the Collin County Administration Building, 2300 Bloomdale Rd., Suite 4192, McKinney, Texas 75071.

9. Defendant Cheryl Williams is the Collin County Commissioner for Precinct 2. She is sued in her official capacity. On information and belief, Commissioner Williams is a Texas resident who may be served with process at the Collin County Administration Building, 2300 Bloomdale Rd., Suite 4192, McKinney, Texas 75071.

10. Defendant Chris Hill is the Collin County Commissioner for Precinct 3. He is sued in his official capacity. On information and belief, Commissioner Hill is a Texas resident who may be served with process at the Collin County Administration Building, 2300 Bloomdale Rd., Suite 4192, McKinney, Texas 75071.

11. Defendant Duncan Webb is the Collin County Commissioner for Precinct 4. He is sued in his official capacity. On information and belief, Commissioner Webb is a Texas resident who may be served with process at the Collin County Administration Building, 2300 Bloomdale Rd., Suite 4192, McKinney, Texas 75071.

12. Defendant Jeff May is the Collin County Auditor, which is responsible for issuing authorized payment to an attorney pro tem. He is sued in his official capacity. On information and belief, County Auditor May is a Texas resident who may be served with process at the Collin County Administration Building, 2300 Bloomdale Rd., Suite 4192, McKinney, Texas 75071.

Jurisdiction and Venue

13. This Court has jurisdiction because Plaintiff is a taxpayer in Collin County and the challenged expenditure would be payable from Collin County public funds. Pursuant to Rule 47(c), Plaintiff seeks monetary relief of \$100,000 or less and non-monetary relief.

14. Venue is proper in this Court under Tex. Civ. Prac. & Rem. Code Ann. §§ 15.002 and 15.015 because a substantial part of the events, including fees arising out of the Paxton Litigation, occurred in Collin County and would be paid by Collin County and because this action is brought against officials in Collin County.

Allegations Common to All Counts

15. In April 2015, Craig McDonald from the George Soros-funded Texans for Public Justice filed a formal complaint against Texas Attorney General Ken Paxton for alleged violations of securities laws. The complaint was forwarded to Collin County District Attorney Greg Willis, who recused himself from the matter.

16. On information and belief, Collin County District Judge Scott Becker promptly appointed Kent A. Schaffer and Brian W. Wice, both private attorneys in Houston, Texas, as attorneys pro tem. They convened a grand jury, which returned a true bill indicting Attorney General Paxton on July 7, 2015 and, after the dismissal of two indictments from July 28, 2015, issued indictments again on August 18, 2015. Nichole Deborde was appointed as the third attorney pro tem on September 18, 2015. She is a private attorney located in Houston, Texas at the same law firm as Mr. Schaffer (collectively, the “Attorneys Pro Tem”).

17. On information and belief, the Attorneys Pro Tem have requested immediate payment for their services to date pertaining to the Paxton matter. On December 28, 2015, counsel for Paxton filed a public brief indicating that the Attorneys Pro Tem seek an interim

payment for their services at a rate of at least \$300.00 per hour. *See* Paxton's Objection to Excessive or Interim Payment of Fees to Attorneys Pro Tem, Case No. 416-81913-2015 in the 416th Judicial District of Collin County, Texas (Dec. 28, 2015). In a media interview shortly thereafter, Attorney Pro Tem Wice confirmed that Judge Becker had in fact cut a deal to pay the Attorneys Pro Tem \$300.00 per hour. *See* <http://www.chron.com/news/politics/ken-paxton/article/ken-paxton-cost-prosecutors-fees-securities-fraud-6724480.php>.

18. This request for payment is unlawfully premature, seeks a per-hour rate that is inconsistent with the flat fee provided by the Attorney Fee Schedule, and far exceeds the compensation permitted by law for an attorney pro tem. The payments sought by the attorneys pro tem are in violation of Texas law and, as a result, threaten an imminent and illegal expenditure of taxpayer funds.

I. The Compensation of an Attorney Pro Tem is Specifically Governed by Texas Law

19. Tex. Code Crim. Proc. § 2.07 governs the appointment of an attorney pro tem. The statute also establishes the compensation that may be paid to an attorney pro tem. It provides that the attorney pro tem “shall receive compensation in the same amount and manner as an attorney appointed to represent an indigent person.” *Id.* at § 2.07(c).

20. Under Tex. Code Crim. Proc. § 26.05, indigent defense counsel must be paid a “reasonable attorney’s fee” for performing the services, which is “based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel[.]” The statute further provides that “[a]ll payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county.” *Id.* at § 26.05(b).

21. The schedule of fees adopted by the district judges must “state reasonable fixed rates or minimum and maximum hourly rates.” *Id.* at § 26.05(c). The county must provide a form for appointed counsel to itemize, and no payment may be made until the form is properly submitted to the presiding judge. *Id.* The county responsible for payment is the “general fund of the county in which the prosecution was instituted.” *Id.* at 26.05(f).

22. Under §§ 2.07 and 26.05, an attorney pro tem cannot be paid in a different amount or a different manner than appointed counsel for an indigent defendant. Any payment, and the manner of that payment, must comply with the procedures for payment and according to the schedule of fees. There is no legal basis for obtaining fees in a manner that is inconsistent with the adopted schedule and procedures or that exceed the permitted fee schedule.

II. The Payment Sought by the Attorneys Pro Tem Violates the Applicable Payment Procedures and Fee Schedule in Collin County

23. In accordance with Tex. Code Crim. Proc. §§ 2.07 and 26.05, the District Judges in Collin County have adopted a procedure for appointed counsel, including an attorney pro tem, to seek compensation. They have also promulgated a schedule of fees providing fixed rates or set hourly rates, depending on the type of case. The procedures and schedule of fees are set forth in the Collin County District Court Plan, titled “Local Rules to Implement the Texas Fair Defense At: 2015-16 Plan Standards and Procedures Related to Appointment of Counsel for Indigent Defendants in Felony Cases in Collin County” (the “Local Rules”), attached as **Exhibit A** (Oct. 28, 2015).

A. The Payment Sought by the Attorneys Pro Tem is Unlawful Because Payment Would Occur Prior to Disposition of the Case

24. Under the Local Rules, an appointed attorney must submit a completed “Payment Request Form” in order to receive payment. *See* Local Rule 4.02. As described in the Local Rule, a request for payment may only be made on or after disposition of the case:

In cases disposed of by a guilty plea or similar pre-trial disposition, Counsel shall submit their requests for payment on the auditor’s approved Payment Request Form ***on the date of the disposition***. If the case is disposed of by trial, the Payment Request Form ***shall be submitted within seven days of the date the trial is concluded***.

Id. (emphasis added).

25. Although the Local Rules permit advance payment of certain investigative and expert expenses if shown to be reasonably necessary, the Local Rules do not permit advance or interim payment of fees or other compensation. *See* Local Rule 4.03.

26. The interim payment requested by the Attorneys Pro Tem violates Local Rule 4.02 because it is sought prior to disposition of the case. As a result, any payment prior to disposition of the case would be an illegal expenditure of taxpayer funds. Any such payment should be enjoined.

B. The Payment Sought by the Attorneys Pro Tem is Unlawful Because it Exceeds the Compensation Fixed by the Attorney Fee Schedule

27. After disposition of the case and submission of the Payment Request Form, payment must be made in accordance with the approved Attorney Fee Schedule. *See* Local Rule 4.01.A (“The District Judges adopt, pursuant to Article 26.05 Tex. Code of Crim. Proc., a fee schedule for appointed attorneys, attached hereto as ‘Fee Schedule for Appointed Attorneys.’”).

28. The Fee Schedule for Appointed Attorneys (the “Attorney Fee Schedule”) states that: “In all felony cases, except as hereafter provided, counsel shall be paid according to the

following fee schedule, without exception:” *See* Attorney Fee Schedule, attached as Exhibit A (emphasis added). The Attorney Fee Schedule provides hourly rates for capital cases resolved by plea, fixed rates for non-capital felony cases resolved by plea, fixed rates for trials, and fixed rates for appeals. *See id.*

29. The Attorney Fee Schedule also allows for a limited discretionary adjustment per case based on the circumstances. This discretionary adjustment is “not to exceed” \$1,000.00 per case. *See id.*

30. According to materials obtained from a public records request, the District Court Judges for Collin County determined that the fixed rates and amounts in the Attorney Fee Schedule are to be strictly followed. For instance, in a September 8, 2015 email titled, “Fixed Fee Rates in Indigent Criminal Cases,” the Honorable Judge Ray Wheless stated:

In May of this year, the District Judges had an occasion to discuss whether the fixed fee rates in indigent defense cases were to be followed or if there was some judicial discretion allowed. The enclosed email from Judge Oldner makes it clear that the prior “discretionary” language was amended by stating that the fixed fee schedule was to be followed without exception. I believe that the later adopted amendment controls.

See Email from Judge Ray Wheless, “Fixed Fee Rates in Indigent Criminal Cases” (Sept. 8, 2015), attached as **Exhibit B**.

31. The District Court Judges reached this decision despite the existence of a provision in Local Rules 4.01.B that states “Payment can vary from the fee schedule in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.” This issue was identified by Collin County Commissioner Judge Keith Self when he responded to Judge Wheless stating, “Ray, we checked, and the language still includes the discretionary language.” Judge Wheless explained:

It does, but in construing a contract or a statute, the latter amendment controls. The language that says “no exceptions” was adopted after the discretionary language. I believe a court would construe the document to give effect to what the parties intended and that was to require all court appointed cases to be paid only the flat fees with no exceptions.

Id.

32. This conclusion is supported by the history of the Local Rules and the associated Attorney Fee Schedule. From 2002 to 2007, the Attorney Fee Schedule was incorporated directly into Local Rule 4.01 and included the language that “Judges can vary from these guidelines in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.” *See* Indigent Defense Plans from 2002, 2004, 2005, 2007, 2009, and 2013, attached as **Exhibit C**.

33. This variance language has been repeated in every version of Local Rule 4.01. However, with each amendment, the Attorney Fee Schedule implemented by Local Rule 4.01 has increasingly restricted the discretion of district judges to vary from the fixed rates and fees that can be paid.

34. In 2007, the Attorney Fee Schedule was moved to an appendix of the Local Rules. Although it contained language that largely mirrored the variance language in Local Rule 4.01, it specifically elaborated on that language by requiring the appointing attorney to submit a detailed explanation of the circumstances supporting a variance. *See id.* The variance language was further restricted in 2009, when the Attorney Fee Schedule stated that “[e]ach Judge has discretion to adjust fees in an additional amount not to exceed \$1,000.00.” Nonetheless, the 2009 amendment did provide that “a Judge may still bring an exceptional fee request to the attention of the Board at his or her discretion.” *See id.* Lastly, in 2013, the District Judges amended Local Rule 4.01 and the Attorney Fee Schedule into their present form. The 2013 version eliminated

35. Based on the history of these amendments, and consistent with the reasoning provided by Judge Wheless, it is apparent that the flat fees and rates referenced in the Attorney Fee Schedule, including the permitted discretionary adjustment, govern any variance permitted under Local Rule 4.01.B. Accordingly, under the Local Rules, appointed attorneys may only receive a \$1,000.00 discretionary adjustment to their fees in addition to the flat fees and rates provided by the schedule.

36. The payment sought by the Attorneys Pro Tem at a rate of at least \$300.00 per hour is both inconsistent with the applicable Attorney Fee Schedule and far exceeds the compensation permitted by law for an attorney pro tem. The Attorney Fee Schedule only provides – “without exception” – flat fees for a First Degree Felony case, not an hourly rate. The total amount of compensation depends on whether the case is disposed of by trial or plea. *See* 2015-16 Plan Standards, Exhibit A.

37. As described previously, Defendant Judge Gallagher has discretion to adjust the payment in an amount not to exceed \$1,000.00, but that payment is a “[p]er case adjustment” and cannot occur until disposition of the case. *See id.*

38. For these reasons, the payment sought by the Attorneys Pro Tem violates Local Rule 4.01 and Tex. Code Crim. Proc. §§ 2.07 and 26.05. It seeks an illegal expenditure of taxpayer funds.

III. Any Variance from the Fixed Amounts Set by the Attorney Fee Schedule Would Violate Texas Statute and the Texas Constitution

39. The Attorneys Pro Tem seek an order from Judge Gallagher authorizing payment that exceeds the sums fixed by the Attorney Fee Schedule adopted by Local Rule 4.01. However, any interpretation of Local Rule 4.01 or order that departs from the flat fees and rates provided

any interpretation of Local Rule 4.01 or order that departs from the flat fees and rates provided by the Attorney Fee Schedule would violate Tex. Code Crim. Proc. § 26.05 and the Texas Constitution.

40. Under Tex. Code Crim. Proc. § 26.05, the judges of the county courts, statutory county courts, and district courts trying criminal cases are required to establish a schedule of fees. In Collin County, the Attorney Fee Schedule adopted by Local Rule 4.01 satisfies that requirement.

41. However, § 26.05 also specifically provides that the “fee schedule adopted shall state reasonable *fixed rates* or *minimum and maximum hourly rates*.” In other words, § 26.05 is explicit that the compensation provided to appointed counsel is fixed and cannot vary from those fixed rates. The Attorney Fee Schedule complies with this requirement, including the discretionary component, because it is fixed in an amount “not to exceed” \$1,000.00 per case.

42. Accordingly, any interpretation of Local Rule 4.01 that permits a fee payment that exceeds the amounts fixed by the Attorney Fee Schedule would interpret the rule in a manner such that it violates § 26.05. As with statutes, a rule should not be construed in a manner that would render it invalid. *See State v. Gambling Device*, 859 S.W.2d 519, 526 (Tex. App. 1993) (“Statutes are vested with a presumption of validity and must be construed in a way as to uphold their validity.”).

43. There is an important reason that § 26.05 requires the payment to appointed attorneys to be fixed: it prevents an unconstitutional delegation of legislative authority that violates separation of powers. Under Tex. Const. art. II, sec. 1, the state government is separated into three branches and no branch “shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.” Article III, sec. 44 of the Texas

Constitution confirms that the compensation of all state officers, agents, and contractors is a legislative function.

44. Permitting a district judge unfettered discretion to establish the compensation for appointed attorneys would violate separation of powers. And while the legislature may delegate its constitutional authority, it can only do so if it “has proscribed sufficient standards to guide the discretion conferred.” *Commissioners Court of Lubbock County v. Martin*, 471 S.W.2d 100, 105 (1975).

45. If Rule 4.01.B and § 26.05 were interpreted to allow judges discretion to alter the compensation of an attorney pro tem without regard to the fixed rates, it would render the rule and statute an unconstitutional delegation of legislative authority to the judiciary.

46. Lastly, the amount of compensation sought by the Attorneys Pro Tem would impose an excessive and unreasonable monetary demand on Collin County taxpayer funds. Tex. Gov't Code § 111 provides that County Commissioners have authority to set the county budget. An order from the district court authorizing substantial attorneys' fees would frustrate the budgetary discretion given to the County Commissioners, including the ability to appropriate funds from taxpayers and ensure that such funds remain available for indigent criminal defense.

Count I

Declaratory and Injunctive Relief – Prohibiting an Advance Payment to the Attorneys Pro Tem

47. Plaintiff incorporates by reference all allegations in all paragraphs of the Verified Petition as though fully set forth in this paragraph.

48. Plaintiff brings this claim on his behalf and on behalf of all taxpayers in Collin County, Texas.

49. The payment requested by the Attorneys Pro Tem violates Local Rule 4.02 because it seeks an advance or interim payment that is not permitted by the Local Rules. Specifically, Local Rule 4.02 only permits payment at the disposition of the case, and the Paxton Litigation has not yet been disposed of by plea or trial.

50. The issue of whether the request for payment by the Attorneys Pro Tem violates Local Rule 4.02 is an actual, real, substantial, and presently existing controversy that may be resolved by specific relief.

51. Plaintiff seeks declaratory relief against the Defendants finding that an advance or interim payment of fees is not permitted by Local Rule 4.02. Plaintiff also seeks injunctive relief against the Defendants to prevent an order that the requested payment be made or to prevent payment by the Collin County Commissioners or Auditor if already so ordered.

Count II

Declaratory and Injunctive Relief – Prohibiting a Payment in Excess of the Attorney Fee Schedule

52. Plaintiff incorporates by reference all allegations in all paragraphs of the Verified Petition as though fully set forth in this paragraph.

53. Plaintiff brings this claim on his behalf and on behalf of all taxpayers in Collin County, Texas.

54. The payment requested by the Attorneys Pro Tem at a rate of at least \$300.00 per hour would violate Local Rule 4.01 and § 26.05 because compensation based on an hourly rate is inconsistent with the flat fee compensation permitted for a First Degree Felony case under the Attorney Fee Schedule. In addition, the rate of \$300.00 per hour and the number of hours sought to be compensated, which Attorney Pro Tem Wice has recently told the Houston Chronicle amounts to “hundreds of hours,” far exceeds the compensation permitted by law for an attorney

pro tem under the Attorney Fee Schedule. See <http://www.chron.com/news/politics/ken-paxton/article/ken-paxton-cost-prosecutors-fees-securities-fraud-6724480.php>. At most, the Attorneys Pro Tem are authorized to receive payment of \$1,000.00 for pre-trial work, plus a one-time discretionary adjustment of \$1,000.

55. The issue of whether the request for payment by the Attorneys Pro Tem violates Local Rule 4.02 is an actual, real, substantial, and presently existing controversy that may be resolved by specific relief.

56. Plaintiff seeks declaratory relief against the Defendants finding that the hourly rate and amount of compensation sought by the Attorneys Pro Tem violates Local Rule 4.01 and § 26.05 because it exceeds the fixed rates and amounts set by the Attorney Fee Schedule. Plaintiff also seeks injunctive relief against the Defendants to prevent an order that the requested payment be made or to prevent payment by the Collin County Commissioners or Auditor if already so ordered.

Application for Temporary Restraining Order and Injunctive Relief

1. Plaintiff incorporates by reference all allegations in all paragraphs of the Verified Petition as though fully set forth in this Application.

2. As previously described, the request for payment sought by the Attorneys Pro Tem threatens and immediate and irreparable expenditure of taxpayer funds that is prohibited by law.

3. Plaintiff Blackard has alleged claims against the Defendants and has demonstrated a likelihood of success on the merits. Furthermore, because any expenditure of taxpayer funds will likely not be recoverable, Plaintiff and similarly situated taxpayers in Collin County, Texas

will suffer irreparable harm without intervention by this Court and any remedy at law would be unavailable or inadequate.

4. The status quo should be preserved by temporarily restraining and enjoining the Defendants from ordering payment or making payment to the Attorneys Pro Tem until the important legal issues and claims raised in this Verified Petition and Application are resolved.

5. On information and belief, a phone call with Judge Gallagher is scheduled for 9:00 am on December 30, 2015 to discuss the payment requested by the Attorneys Pro Tem in the Paxton Litigation. Plaintiff Blackard became aware of this scheduled phone call on December 29, 2015.

6. Plaintiff verifies and the undersigned counsel certifies that Plaintiff will have attempted in good faith to provide notice to the Defendants at least two hours before presenting the application and proposed order to the Court for decision in accordance with Local Rule 2.4. Specifically, Plaintiff verifies and the undersigned counsel certifies that Plaintiff will provide notice via electronic mail to Defendant Gallagher at ggallagher@tarrantcounty.com and to the remaining defendants, all Collin County officials sued in their official capacities only, by electronic mail to their presumed outside counsel, Greg Hudson, Esq., at ghudson@holaw.net. The emails will be sent no later than 1:00 a.m. on Wednesday, December 30, 2015, and in any event within 10 minutes of the electronic filing of this Petition. In the event this notice is deemed insufficient, Plaintiff seeks emergency relief as early as possible on December 30, 2015, under Local Rule 2.4(b)(2). Given the immediacy of the phone call that was recently discovered, Plaintiff seeks a temporary restraining order without delay because entry of an order by Judge Gallagher may occur shortly after 9:00 a.m., the presentation of the order and billing to Collin County may follow shortly thereafter, and these events will cause irreparable harm. Any delay

caused by providing additional notice would impair the Court's power to grant relief because it threatens to deprive Plaintiff of the ability to prevent the unlawful disbursement of funds. *See* Local Rule 2.4(b)(1)-(2). Plaintiff respectfully requests that the Court issue a temporary restraining order to restrain the Honorable Judge Gallagher from issuing an order authorizing a payment prior to disposition of the case or in such amount that it exceeds the fixed fees set forth in the applicable Attorney Fee Schedule for Collin County. Plaintiff further requests that the Court issue a temporary restraining order to restrain the Collin County Commissioners and Auditor from issuing payment to the attorneys pro tem prior to disposition of the case or in such amount that departs from or exceeds the fixed fees set forth in the applicable Attorney Fee Schedule for Collin County.

7. Lastly, Plaintiff requests that the Defendants be enjoined from authorizing or making payment prior to disposition of the Paxton Litigation or in excess of the Attorney Fee Schedule throughout the pendency of this taxpayer lawsuit, as well as by permanent injunction.

Prayer for Relief

WHEREFORE, Plaintiff Jeffory Blackard prays that Honorable George Gallagher; Collin County Judge Keith Self; Commissioners Susan Fletcher, Cheryl Williams, Chris Hill, and Duncan Webb; and Collin County Auditor Jeff May, or any other persons in active concert or participation with them who receive actual notice of a temporary restraining order or injunction by personal service or otherwise, be restrained and enjoined from remitting, causing to be remitted, or otherwise facilitating the remittance of payment for services rendered by Attorneys Pro Tem appointed in the matter of *Texas v. Warren Kenneth Paxton, Jr.*, Cause Nos. 416-81913-2015, 416-82148-2015, and 416-82149-2015, pending in the 416th Judicial District Court of

Collin County, Texas. Plaintiff further requests that a temporary injunction hearing be set and Defendants be enjoined as described above until trial.

Plaintiff further requests the Court enter declaratory and permanent injunctive relief, including any other relief found appropriate, that: (1) declares any payment of compensation to the Attorneys Pro Tem prior to disposition of the Paxton Litigation unlawful and orders it enjoined; and (2) declares that any payment to the Attorneys Pro Tem must be made in accordance with the Attorney Fee Schedule and enjoins any payment in excess of those fixed amounts.

Dated: December 29, 2015

Respectfully submitted,

**GRIFFITH BATES CHAMPION
& HARPER LLP**

/s/ Austin Champion

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-AND-

GRAVES GARRETT, LLC

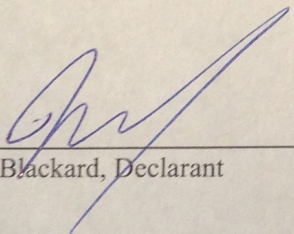
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Counsel for Plaintiff Jeffory Blackard

Verification

My name is Jeffory Blackard, my date of birth is 12/15/1957, and my address is 6403 Fm 2297, Sulphur Springs, Texas 75483 in Hopkins County. I declare under penalty of perjury pursuant to Tex. Civ. Prac. & Remedies Code § 132.001 that the statements contained in this Verified Complaint and Application for Temporary Restraining Order are true and correct to the best of my knowledge and belief.

Executed in Collin County, State of Texas,
on this 29th day of December, 2015.



Jeffory Blackard, Declarant

EXHIBIT A

Collin District Court Plan

Prompt Magistration

10/28/2015

LOCAL RULES TO IMPLEMENT THE TEXAS FAIR DEFENSE ACT

2015-16 PLAN STANDARDS AND PROCEDURES RELATED TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN FELONY CASES IN COLLIN COUNTY

To implement the Texas Fair Defense Act (FDA, Acts. 2001, 77th Leg.), the following Local Rules of Administration are adopted under Texas Local Government Code Sec. 74.093, effective November 1, 2015.

SECTION ONE APPOINTING COUNSEL

1.01 Procedures for Timely Appointment of Counsel

A. Magistration

All persons confined in state custody in Collin County shall be magistrated as soon as practicable after their arrest, but no later than 48 hours after arrest. The magistrate shall deliver the warnings and admonishments and comply with all requirements contained in Article 15.17, Texas Code of Criminal Procedure, including making a record of:

1. Informing the accused of the accused's right to request appointment of counsel;
2. Whether the accused wants to request appointment of counsel; and
3. Whether the person requested court-appointed counsel.

As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, each arrested person who wants to request appointment of counsel shall be provided with a form on which the arrested person will provide under oath the necessary information concerning the person's financial resources and will indicate that the person requests appointment of counsel. The arrested person will be provided reasonable assistance in completing the form. A copy of the form is attached hereto as Affidavit of Indigency.

The form requesting appointment of counsel and containing the information concerning the arrested person's financial resources will be transmitted to the appointing authority within 24 hours of the request being made.

If a person has been identified as a person suffering from mental illness or mental defect, the magistrate shall promptly notify the Office of Collin County Mental Health Managed Counsel Program.

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 for requesting counsel. The magistrate will ensure assistance in completing the forms at the same time. The forms will be transmitted 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 the county that issued the warrant within one working day of receipt of the request. 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 arrest. [Art. 1.051(c-1),CCP).

B. Appointing Authorities

The district courts trying criminal cases hereby designate the following individuals or offices as having authority to appoint counsel for indigent defendants charged with a criminal matter within the jurisdiction of the district courts:

1. The Office of the Indigent Defense Coordinator.
2. Any magistrate performing the duties under 1.01 (A) above that has authorized access to the county's electronic appointment system.
3. In cases where the defendant may be suffering from a mental illness or mental defect, the Office of Mental Health Managed Counsel Program.

Indigence Determination Standards

10/28/2015

PART THREE PROCEDURES FOR INDIGENCY DETERMINATION

3.01 Definitions

As used in this rule:

A. "Total income" shall include all income of the defendant and spousal income available to the defendant. Total income shall include wages, salaries, tips, taxable interest, dividends, capital gains, business income, IRA distributions, pensions and annuities, rental real estate, royalties, partnerships, S corporations, trusts, farm income, unemployment compensation,

Social Security benefits, and all other income. Unless there has been a substantial change in income, total income will be determined from line 22 of the most recent U.S. Individual Income Tax Return or employment records accessible by the Office of the Indigent Defense Coordinator.

B. "Household size" shall be determined by the number of dependents claimed on the most recent U.S. Individual Income Tax Return or all individuals who are dependent on the defendant for financial support.

C. "Liquid assets" shall include but are not limited to cash, savings, checking accounts, stocks, bonds, certificates of deposit, and equity in real and personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.

3.02 Financial Considerations

The financial standards set forth below shall be used to determine whether a defendant is indigent and shall be applied equally to each defendant in the county. A defendant is considered indigent if:

A. their total income does not exceed 125% of the Federal Poverty Guidelines established and revised annually by the U.S. Department of Health and Human services and published in the Federal Register; or

B. the defendant and defendant's spouse were not required by law to file the most recent U.S. Individual Income Tax return (either 1040 or 1040EZ) due to gross income below the filing requirements; and

C. the defendant and defendant's spouse liquid assets do not exceed \$2,500;

D. liquid assets do not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged;

E. if defendant is currently serving a sentence in a correctional institution, is currently held in custody, is currently residing in a mental health facility, or is the subject of proceeding in which admission or commitment to such a mental health facility is sought; and does not have liquid assets in excess of 3.02 (C); or

F. at the time of requesting appointed counsel, the defendant or defendant's dependents have been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, public housing or Collin County Indigent Health Care.

3.03 Factors Not to be Considered

A. A defendant's posting of bail or ability to post bail may not be considered, except as provided by law, in determining whether the defendant is indigent. Even when a defendant has posted bail, the defendant's financial circumstances are measured by the financial standards stated in these rules.

B. The resources available to friends or relatives of the defendant, except the defendant's spouse, may not be considered in determining whether the defendant is indigent. Only the defendant's and defendant's spouse's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. A defendant may not be denied indigent status merely because the person is employed.

3.04 Procedures for Determining Indigence

A. As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, each arrested person who wants to request appointment of counsel shall be provided with a form on which the arrested person will provide under oath the necessary information concerning the person's financial resources and will indicate that the person requests appointment of counsel. The arrested person will be provided reasonable assistance in completing the form. A copy of the form is attached hereto as Affidavit of Indigency.

B. The form requesting appointment of counsel and containing the information concerning the arrested person's financial resources will be transmitted to the appointing authority within 24 hours of the request being made.

C. The appointing authority will determine whether the person meets the financial standards for indigence in Rule 3.02. The determination will be recorded on the form requesting appointment of counsel and the form will be filed with the other orders in the case.

D. The arrested person may be required by the appointing authority, magistrate, or the judge presiding over the case to respond to examination regarding the person's financial resources.

E. 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 indigence or to impeach the direct testimony of the defendant regarding the defendant's indigence.

F. A defendant determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the defendant's financial circumstances occurs.

G. If there is a material change in the defendant's financial circumstances, the defendant or the defendant's counsel shall inform the court in which the indictment is pending of the change.

H. The District Judges hereby designate the Office of the Indigent Defense Coordinator to review and audit applications for court appointed attorneys in felony cases in accordance with these rules. A copy of the request form shall be transmitted to the Office of the Indigent Defense Coordinator for investigation and review. Income verification and determination will be completed no later than the end of the first working day after the date on which the Office of the Indigent Defense Coordinator receives the defendant's request for appointment of counsel. The Office of the Indigent Defense Coordinator shall notify the defendant and the Court of the results of the review and audit.

I. An unrepresented defendant remaining in custody for 14 days after it has been determined they are not indigent shall have his indigency status reviewed.

3.05 Partial Indigency

A. The court may find a defendant to be partially indigent if the person is able to pay some part of the cost of legal representation and if the payment does not impose manifest hardship on the accused or the accused's household.

B. An accused person found to be partially indigent may be ordered by the court to pay, while the case is pending, monthly installments commensurate with the accused's ability to pay based upon his/her income and assets.

Minimum Attorney Qualifications

10/28/2015

SECTION TWO ATTORNEY QUALIFICATIONS

2.01 Procedures for the Fair Allocation of Attorneys

The appointing authority shall at all times comply with the Texas Fair Defense Act, and Article 26.04, Texas Code of Criminal Procedure.

2.02 Minimum Standards for Court Appointed Attorneys

The minimum standards for placement in the electronic appointment system shall be:

- A.** Licensed and in good standing with the State Bar of Texas;
- B.** Must have at least two years of experience in the practice of criminal law; and
- C.** Must have completed at least ten hours of continuing legal education in the field of criminal law in the calendar year prior to application.

2.03 Graduated Lists

Applications will be received for, and lists approved for, the following graduated lists. Each list details the qualifications required for placement on the list:

A. SJF and Third Degree Felonies

1. Meet minimum qualifications of Rule 2.02, and
2. Board Certified in Criminal Law; or
3. At least four criminal jury trials as lead counsel in a court of record.

B. 1st and 2nd Degree Felonies

1. Meet minimum qualifications of Rule 2.02, and

2. Board Certified in Criminal Law; or
3. At least eight jury trials, including at least four felony jury trials, as lead counsel in a court of record.

C. Appeals and Non-Capital Writs

1. Meet minimum qualifications of Rule 2.02, and
2. Board Certified in Criminal Law or Criminal Appellate Law; or
3. Demonstrate objective competence in the field of criminal appellate law.

D. Mental Health Cases

In addition to the foregoing requirements, attorneys requesting appointment in criminal cases where the defendant may be suffering from a mental illness or mental defect must apply for appointment to the mental health electronic appointment system. The Program Attorney will submit the list of qualified attorneys proposed for appointment to the Mental Health Wheel to the Board of District Judges for approval by majority vote. Additional qualifications for appointment to the Mental Health Wheel include: Six hours of annual mental-health related CLE and at least eight felony jury trials.

2.04 Selection and Appointment of Counsel in Death Penalty Cases

A. Whenever a person is arrested for a capital offense, the appointing authority shall appoint one attorney qualified as lead counsel under Art. 26.052, Texas Code of Criminal Procedure, and on the approved list of attorneys maintained by the presiding judge of the First Administrative Judicial Region for capital cases.

B. If the State does not give notice in writing that they will not seek the death penalty as a sentencing option on or before the 60th day following the arrest of a person for a capital offense, or by the time charges are filed by indictment alleging a capital offense, the appointing authority shall appoint a second attorney from the approved list of attorneys maintained by the presiding judge of the First Administrative Judicial Region for capital cases, who is otherwise qualified under Art. 26.052, Texas Code of Criminal Procedure, or who is qualified on the electronic appointment system for first degree felony offenses.

C. At any time after being appointed to a capital offense, an attorney appointed under 2.04 (1) above may request, from the Local District Court Administrative Judge if no indictment has been presented or from the presiding judge of the court in which an indictment is pending, the appointment of a second chair attorney from the approved list of attorneys maintained by the presiding judge of the First Administrative Judicial Region for capital cases, who is otherwise qualified under Art. 26.052, Texas Code of Criminal Procedure, or who is qualified on the electronic appointment system for first degree felony offenses.

D. If the State gives notice that it will not seek the death penalty as a sentencing option after a second attorney has been appointed, the court shall remove the second appointed attorney, except for good cause shown by motion of the lead attorney.

2.05 Mental Health Managed Counsel Program – Continuity of Care Court Cases

A. All cases in which the defendant has been identified in the CARE match system and meet the other requirements for placement in Continuity of Care Court will be referred to the Managed Assigned Counsel Office for assignment of counsel to defendants who qualify for appointed counsel due to indigency. The court in which a criminal case is currently pending may also refer defendants to the Managed Assigned Counsel Office for assignment of counsel for defendants who may not be identified in CARE match or do not meet the other requirements for placement in Continuity of Care Court. The Managed Assigned Counsel may refuse to accept the case for assignment 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 good cause for refusing appointment.

B. Appointed attorneys who represent defendants assigned through the MHMC Program may utilize the services of the MHMC Office case managers.

2.06 Annual Renewal and Review of Counsel

A. Counsel on the court appointment list shall be required to complete at least six hours of continuing legal education in the field of criminal law annually. Failure to complete the required continuing legal education may result in removal from the electronic appointment system.

B. No later than the 15th day of October of each year, an attorney that was appointed to represent a defendant under this plan must submit, through the Texas Indigent Defense Commission attorney reporting portal, the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30.

C. Counsel on the mental health appointment list shall be required to complete an additional six hours of continuing education in the field of mental health defense. Applicants must comply with MHMC program procedures.

2.07 Duties Of Court-Appointed Counsel

In addition to all other duties, appointed counsel shall comply with Art. 26.04(j).

2.08 Removal and Review of Counsel

A. Any District Judge trying criminal cases may remove an attorney from the electronic appointment system for:

1. failure to make reasonable efforts 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;

2. failure to provide effective representation to any person to whom they have been appointed; or
3. failure to comply with these rules, the Texas Disciplinary Rules of Professional Conduct or the Texas Code of Criminal Procedure.

B. Attorneys on the mental health appointment list may be removed in the best interests of the MHMC Program by request of the MHMC Program Director and approval of the designated judicial officer for the Mental Health Managed Counsel Program.

Prompt Appointment of Counsel

10/28/2015

C. Prompt Appointment of Counsel

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 appointed counsel.

If an indigent defendant is arrested in another county based on this county's warrant, counsel will be appointed within one working day of this county's receipt of the request for counsel.

If a defendant is arrested in this county based on another county's warrant, counsel will be appointed for the defendant if, on the eleventh day after the arrest, the defendant is still in this county's custody.

If a defendant wishes to request counsel prior to the initial appearance, the forms required to request counsel may be obtained at the Collin County website at http://www.collincountytx.gov/indigent_defense/Pages/default.aspx or at the Office of the Indigent Defense Coordinator. The defendant may submit these forms to the Indigent Defense Coordinator or email to: cclndigentDefense@co.collin.tx.us. The court will rule on all requests for counsel submitted in this manner.

D. Defendants Appearing Without Counsel

1. A defendant may voluntarily and intelligently waive the right to counsel. A waiver obtained in violation of Subsection D (2) or D (3) is presumed invalid.
2. In any adversary judicial proceeding that may result in punishment by confinement the attorney representing the state may not:
 - a. Initiate or encourage an attempt to obtain from a defendant who is not represented by counsel a waiver of the right to counsel; or
 - b. 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:

- i. Has been given a reasonable opportunity to retain and has failed to retain private counsel; or
 - ii. Waives or has waived the opportunity to retain private counsel.
3. In any adversary judicial proceeding that may result in punishment by confinement, 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. 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 private counsel; or
 - b. Waived or has waived the opportunity to retain private counsel.

E. Waiver of the Right to Counsel

1. 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 made, 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).

2. 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 shall provide the appointed or retained counsel 10 days to prepare..

1.02 Computerized Attorney Listing System

A. The District Judges direct that each appointing authority shall utilize the electronic appointment system and all appointments shall be made from the list as published within Collin County's Odyssey system. If the Odyssey system is unavailable, the appointing authority shall appoint an attorney from the written list of approved attorneys. The appointing authority shall select an attorney from among the list of the next five attorneys whose names are listed on the Odyssey system. If this procedure is not followed, the appointing authority must state in writing the good cause found for deviating from this requirement.

B. The computerized attorney listing system shall contain identifying information to indicate those attorneys who have been specially approved for appointment in cases involving mental illness or mental defect.

1.03 Admonishments Form

All magistrates shall use the approved Admonishment Form (Exhibit A) or a substantially similar form.

Fee and Expense Payment Process

10/28/2015

SECTION FOUR PROCEDURES FOR ATTORNEY COMPENSATION

4.01. Attorney Fee Schedule

A. The District Judges adopt, pursuant to Article 26.05 Tex. Code of Crim. Proc., a fee schedule for appointed attorneys, attached hereto as "Fee Schedule for Appointed Attorneys."

B. Payment can vary from the fee schedule in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

4.02 Payment Request Form

In cases disposed of by a guilty plea or similar pre-trial disposition, Counsel shall submit their requests for payment on the auditor's approved Payment Request Form on the date of the disposition. If the case is disposed of by trial, the Payment Request Form shall be submitted within seven days of the date the trial is concluded. Payment requests not submitted within thirty days of the date of disposition shall not be approved by the Court, absent extenuating circumstances.

4.03 Investigation Expenses

A. Appointed counsel may file with the trial court a pretrial *ex parte* motion for advance payment of investigative and expert expenses. The request for expenses must state:

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. 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.

B. 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 only if they are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved. See, Articles 26.05(d), 26.052(f), (g), & (h), Code of Criminal Procedure.

Miscellaneous

10/28/2015

SECTION FIVE

5.01 Amendments

This plan is subject to amendment.

5.01 Availability of Forms

Forms provided for in this plan are available on the county website.

5.03 Effective Date

This plan is effective on the 1st day of November, 2015, and shall remain in effect until further order of the District Judges trying criminal cases.

Fee Schedule For Indigent Defense Court Appointed Attorneys

In all felony cases, except as hereafter provided, counsel shall be paid according to the following fee schedule, without exception:

PLEAS:

Death Penalty:	\$150.00 per hour
Capital, non-death penalty:	\$100.00 per hour
First Degree Felony:	\$1,000.00
Second Degree Felony:	\$750.00
Third Degree & State Jail Felonies:	\$500.00
Additional cases:	\$250.00 (per case at discretion of the judge)

TRIALS:

Pre-Trial preparation:	\$1,000.00
Trial, per ½ day:	\$500.00

APPEALS:

Appeal from trial:	\$3,500.00
Other appeal:	\$2,000.00

DISCRETIONARY ADJUSTMENT

Per case adjustment, not to exceed:	\$1,000.00
-------------------------------------	------------

Child Advocacy Center cases and all cases with a minimum 15 year sentence:

Per case adjustment, not to exceed:	\$3,000.00
-------------------------------------	------------

Cases involving serious mental illness, competency or mental defect under the direction of the mental health program managing attorney:

Per case adjustment, not to exceed:	\$1,750.00
-------------------------------------	------------

Plan Documents

Collin District Court 2009 Federal Poverty Guideline Percentages.pdf (11/30/2009 2:44:15 PM) [view](#)
Collin District Court 2015 Federal Poverty Guidelines.xls (10/21/2015 11:11:56 AM) [view](#)
Collin District Court Affidavit of Indigence.doc (10/22/2013 4:11:30 PM) [view](#)
Collin District Court Attorney Annual Renewal Application for Appointment.pdf (10/21/2015 10:41:59 AM) [view](#)
Collin District Court Attorney Application for Appointment.docx (10/22/2013 4:12:14 PM) [view](#)
Collin District Court Attorney Application for MHMC Program Appointment.docx (10/25/2013 9:42:13 AM) [view](#)
Collin District Court Attorney Fee Schedule.docx (11/8/2013 11:42:19 AM) [view](#)
Collin District Court Attorney Fee Voucher.pdf (10/22/2013 4:12:56 PM) [view](#)
Collin District Court Collin District Court 2013 Federal Poverty Guidelines.docx (4/9/2013 2:22:07 PM) [view](#)
Collin District Court Contract amendment for Indigent Defense Services.pdf (10/21/2015 11:15:43 AM) [view](#)
Collin District Court Contracts for Indigent Defense Services.pdf (11/7/2013 12:27:01 PM) [view](#)
Collin District Court Local Rules To Implement The Fair Defense Act.pdf (12/8/2009 11:27:41 AM) [view](#)
Collin District Court Magistrate's Warning Form.doc (10/22/2013 4:03:45 PM) [view](#)
Collin District Court Managed Assigned Counsel Plan of Operation.docx (10/31/2013 7:52:21 AM) [view](#)
Collin District Court Waiver of Counsel.docx (10/23/2013 4:36:27 PM) [view](#)

EXHIBIT B

From: [Judge Ray Wheless](#)
To: [Grim, Edward D.](#)
Subject: FW: Fixed Fee Rates in Indigent Criminal Cases
Date: Friday, October 23, 2015 2:44:03 PM

Judge Ray Wheless
366th District Court
Collin County, Texas 75071
972-548-4574

-----Original Message-----

From: Judge Ray Wheless
Sent: Wednesday, September 09, 2015 1:46 PM
To: Keith Self Judge
Subject: RE: Fixed Fee Rates in Indigent Criminal Cases

It does, but in construing a contract or a statute, the latter amendment controls. The language that says "no exceptions" was adopted after the discretionary language. I believe a court would construe the document to give effect to what the parties intended and that was to require all court appointed cases would be paid only the flat fees with no exceptions.

Ray Wheless

From: Keith Self Judge
Sent: Tuesday, September 08, 2015 8:46 PM
To: Judge Ray Wheless
Subject: Re: Fixed Fee Rates in Indigent Criminal Cases

Ray, we checked, and the language still includes the discretionary verbiage.

Keith Self
County Judge
Collin County

> On Sep 8, 2015, at 11:20 AM, Judge Ray Wheless <rwheless@co.collin.tx.us> wrote:
>
> Judge Self,
>
> Enclosed is the last adopted indigent defense plan. It is also on the County website at: http://cp.mcafee.com/d/1jWVledElcK9CzBxxcTsSztVNNUse7fCOrL3D7TDzhOyrhKYUUYe73D3qdTxPwVwsO-rZoz7VawEz7jfQ8X6fPD0V1z7jfQ8X6fPD0V1e_LqCU_R-s7fL6zBdfHTbELELYyOU-OYyeuYcJlDmXP_axZicHs3jq9JcTvASbFITjKqejhOrK01mGuva5GJMcM7YhGpOk494vxcJg2TUK_0JF7WoxXKJDPU7xVK9wDV_QE2HIWRJpVgWovP13qb3BPpOK0GhEw5V1_E6yOn_Ph0ZZDZ3h1a1Ew3o8i8_2pEw4EOIB3jPh09rjW6S73rsNz.
>
> pal
> Judge Ray Wheless
> 366th District Court
> Collin County, Texas 75071
> 972-548-4574
>
> From: Keith Self Judge
> Sent: Tuesday, September 08, 2015 11:06 AM
> To: Judge Ray Wheless
> Subject: RE: Fixed Fee Rates in Indigent Criminal Cases
>
> Judge, may I get a copy that includes the latest language?
>
> Thanks,
>
> Keith Self
> County Judge
> Collin County
>
> From: Judge Ray Wheless
> Sent: Tuesday, September 08, 2015 10:05 AM
> To: Keith Self Judge; Duncan Webb; Cheryl Williams; Chris Hill; Susan Fletcher
> Subject: Fixed Fee Rates in Indigent Criminal Cases
>
> Good morning,
>
> In May of this year, the District Judges had an occasion to discuss whether the fixed fee rates in indigent defense cases were to be followed or if there was some judicial discretion allowed. The enclosed email from Judge Oldner makes it clear that the prior "discretionary" language was amended by stating that the fixed fee schedule was to be followed without exception. I believe that the later adopted amendment controls.
>
> Judge Ray Wheless
> 366th District Court
> Collin County, Texas 75071
> 972-548-4574
>
> From: Judge Ray Wheless
> Sent: Tuesday, September 08, 2015 9:57 AM
> To: Judge Angela Tucker; Judge Benjamin N. Smith; Judge Cyndi Wheless; Judge Jill Willis; Judge John Roach Jr.; Judge Mark Rusch; Judge Oldner; Judge Ray Wheless; Judge Scott Becker
> Subject: FW: Enrique Acosta
>
> It is clear that all of us, and specifically Judge Oldner, agreed as recently as May 25, 2015, that the fixed fee schedule was to be followed. The language now being cited by Judge Becker at our recent meeting was previously rejected in favor of the later amendment cited below.
>
> Judge Ray Wheless
> 366th District Court
> Collin County, Texas 75071
> 972-548-4574
>
> From: Judge Oldner
> Sent: Tuesday, May 26, 2015 9:23 AM
> To: Judge Angela Tucker
> Cc: Judge Ray Wheless
> Subject: RE: Enrique Acosta
>
>
> [cid:image001.png@01D0EA28.53D0AB00]
>
> Our fee schedule, which is attached to the FDA plan and incorporated in it, says without exception. The degree to which this is followed, I do not know. The language in the plan is:
>
>
> [cid:image002.png@01D0EA28.53D0AB00]
>
> This language seems to have more flexibility, but I recall our agreement was to strictly follow the fee schedule. We removed the language that permitted a BODJ appeal, but the plan does not specifically prohibit it.
>
>
> This may not be much help, not I would not object to this being brought to the BODJ to remove the pressure she is putting on you. Likewise, if you wanted to say "appeal to Judge Murphy," that is fine with me, too.
>
>
>
>
> Judge Chris Oldner
>
> 416th Judicial District Court
> 2100 Bloomdale, Ste. 20030
>
> McKinney, TX 75071
>
> (972)548-4520
>
> (972)548-4525 fax
>
> http://cp.mcafee.com/d/avndy0s821J5xxZNcOslc9CXCQrLeeF3xMvYSztUs--YYqekjqdTD77xMUsUrhKYes7c3CnPvE4o_9k54oWp-x7oN-s-ndAoWp-x7oN-s-ndETZxKT7-

LPwVZUoSFFZuVt5Z5_Amn7SnDzhPR4kRHFGTuvVkfGhBrwqrjdFCXYCNtdCWlPhOqejtPoOaRuJkY-keC7YTJ49kD6lfYJGJNDJ0bU00ryo9-vZa0GRuJkY-keC7YtgSyMYVsSbwaAq81ugvW1Ew5_YQg0Lp_gQgiwq80S24yfMCq81acBpgQYQg2mQ-xJxMS3q2tY_bx0GR

>

>

>

> NOTE: All email correspondence relating to pending cases will be filed with the District Clerk for inclusion in the record of the case. Any communication to the Court or staff via email must comply with Rules 21 and 21a, T.R.C.P., and to do so by the fastest means available to the other affected parties or counsel. The provisions of Canon 3B.(8) of the Code of Judicial Conduct should be carefully reviewed before any person connected with a case attempts any communication with the judge or court personnel.

>

>

>

> -----Original Message-----

> From: Judge Angela Tucker

> Sent: Tuesday, May 26, 2015 8:32 AM

> To: Judge Ray Wheelless; Judge Oldner

> Subject: FW: Enrique Acosta

>

>

> Judges:

>

>

> Darlina has been emailing me for over a week and she has come to my office regarding this pay sheet. I told her I would submit it to the BODJ via email at her request. You suggested I send her the new pay sheet appeal info from Judge Murphy, which I did. After giving her that information, I received the following email. Before I respond-- I want to make sure I have a clear understanding of the process:

>

>

> 1. Ray pointed out that our internal appeal process was no longer in the plan.

>

> 2. We pay on the flat fee scale with the discretionary amounts listed in the plan.

>

> 3. Any amount over the flat fee and approved discretionary amounts are appealed to Judge Murphy.

>

>

> Is that correct?

>

>

> Angela Tucker

>

> Judge, 199th Judicial District Court

>

> Collin County Courthouse

>

> 2100 Bloomdale Road, Suite 10030

>

> McKinney, Texas 75071

>

> 972-548-4415

>

> 972-548-4465 (Fax)

>

>

>

>

>

> -----Original Message-----

> From: Darlina Crowder [<mailto:crowderlawfirm@gmail.com>]

> Sent: Friday, May 22, 2015 2:51 PM

> To: Judge Angela Tucker

>

> Cc: Leila Olivarri; Debbie Blackshear

> Subject: Re: Enrique Acosta

>

>

> Judge:

>

>

> Forgive me, am I understanding that the district judges are now having to disapprove any pay sheets that are above the maximum limit set for felonies and have no discretion to increase the fee?

>

>

>

> I just want to be clear.

>

> Thank you.

>

>

> Warm Regards,

>

>

> Darlina Crowder

>

>

> The Crowder Law Firm P.C.

>

> 1600 First Ave.

>

> McKinney, Texas 75069

>

> (214) 544-0061 office

>

> (214) 544-8601 facsimile

>

> (214) 491-7011 cellular

>

>

>

>

>

> CONFIDENTIALITY NOTICE: This e-mail is sent by The Crowder Law Firm, P.C. and may contain confidential or privileged information which is authorized to be read only by the intended recipient. Use of it by anyone other than an intended recipient is unlawful. If you have received this message in error, you are hereby notified that any use, dissemination, distribution or reproduction of this message is strictly prohibited. If you are not the intended recipient, please immediately notify me by e-mail or telephone and delete the message from your system.

>

>

>>> On May 22, 2015, at 1:59 PM, Judge Angela Tucker <atucker@co.collin.tx.us> wrote:

>>

>

>> Darlina:

>

>

>> Last week, Region 1 Judges voted on the attached appeal process. Paysheet Appeals are no longer submitted to the BODJ. The appeal is submitted to Judge Murphy. When I submitted your request to the BODJ, they made me aware of the new process. I apologize for the misinformation.

>

>

>> Please see the attached. Let me know if you need anything additional. Yes, you did send the information below to me and you discussed it with me in chambers.

>

>

>> Angela Tucker

>

>> Judge, 199th Judicial District Court

>
>> Collin County Courthouse
>
>> 2100 Bloomdale Road, Suite 10030
>
>> McKinney, Texas 75071
>
>> 972-548-4415
>
>> 972-548-4465 (Fax)
>
>
>> -----Original Message-----
>
>> From: Darlina Crowder [<mailto:dcrowderlawfirm@gmail.com>]
>
>> Sent: Friday, May 22, 2015 1:49 PM
>
>> To: Leila Olivarri; Debbie Blackshear; Judge Angela Tucker
>
>> Subject: Enrique Acosta
>
>
>> Judge:
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>
>> I don't believe I stated nor explained in the detailed paysheet the reason I am asking for an amount above the fixed fee.
>
>
>> I mentioned it to you. However, I believe it's important.
>
>
>> My client was indicted for 2 cases. Aggravated Assault with deadly weapon and kidnapping.
>
>
>> I believe I set it for trial early on and filed a Motion for Speedy Trial. After explaining the issues in the states case they refused to dismiss the cases and they were set for trial. I had an investigator appointed. The investigator and myself worked together to resolve this case in the best way possible to present case in trial.
>
>
>> On our first pre-trial hearing I was told we were the only case set that following Monday and the state was ready to go. We also had a Motion for Speedy Trial filed.
>
>
>> On that day I presented the assistant district attorney with evidence to dismiss these cases. I had explained to them the issues prior but they wanted to go forward. After they reviewed what I presented they agreed to dismiss the Aggravated Assault with Deadly Weapon and reduced the Kidnapping to a misdemeanor.
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>
>> I would like the board of judges to know that given the severity of a lot of criminal offenses we are appointed to defend it is IMPOSSIBLE for a lawyer to work hard and spend the amount of time needed to represent these indigent defendants.
>
>> I do not even like to mention "effective assistance" of counsel. To me that is not enough.
>
>> Given the fact that defendants have been found indigent they deserve the same attention and hard work as anyone else. I understand there is a budget.
>
>
>> However, if a case is prepared for trial and in numerous of circumstances the prosecutors either dismiss cases or lower the recommendations a lawyer should still be compensated.
>
>
>> More importantly the fees for a felony trial do not compensate for the time a good lawyer spends on a case.
>
>> I'm certain this has caused good lawyers to get off the wheel or unfortunately to have lawyers plea a case just for the small fee.
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>> I know these issues have been addressed for years. However, I wanted you'll to know my thoughts for whatever it's worth.
>
>> Thank you for your consideration in this matter.
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>> Warm Regards,
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>
>> Darlina Crowder
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>
>> The Crowder Law Firm P.C.
>
>> 1600 First Ave.
>
>> McKinney, Texas 75069
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>> (214) 544-0061 office
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>
>> CONFIDENTIALITY NOTICE: This e-mail is sent by The Crowder Law Firm, P.C. and may contain confidential or privileged information which is authorized to be read only by the intended recipient. Use of it by anyone other than an intended recipient is unlawful. If you have received this message in error, you are hereby notified that any use, dissemination, distribution or reproduction of this message is strictly prohibited. If you are not the intended recipient, please immediately notify me by e-mail or telephone and delete the message from your system.
>
>> <1st-admin-rules-for-appealing-court-appointed-attorneys-fees.pdf>
> <Felony_TFDA.pdf>
> <image001.png>
> <image002.png>

EXHIBIT C

PART FOUR PROCEDURES FOR ATTORNEY COMPENSATION

4.01 Attorney Fee Schedule

The district judges adopt (pursuant to Article 26.05 Tex. Code of Crim. Proc.) the following fee schedule for appointed attorneys:

A minimum of \$75 an hour and a maximum of \$125 an hour, or a total fixed fee as set forth below:

1. Pretrial Habeas Corpus motions: \$200
2. SJF or 3rd degree case which results in a plea of guilty: \$400
3. 1st or 2nd degree case which results in a plea of guilty: \$750
4. Case which results in a trial: \$500 a day, plus up to \$1,000 pretrial
5. Appeals: \$3,500, except for Anders briefs and complicated appeals, as determined by the judge.

Judges can vary from these guidelines in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

4.02 Payment Request Form

Counsel shall submit their requests for payment on the approved Payment Request Form, a copy of which is attached hereto as Exhibit "D".

PART FIVE CONCLUSION

5.01 Interim Plan

This plan is an interim plan and subject to amendment.

5.02 Availability of Forms

Forms provided for in this plan are immediately available on the Internet at the following URL address: www.texasjudge.com/fda

5.03 Effective Date

This plan is effective January 1, 2002 and shall remain in effect until further order of the district judges.

3.06 Payment by Defendant.

If a court finds that a criminal defendant has sufficient financial resources to offset the costs of legal services provided under this Plan it may order the defendant to pay the county all or a portion of the costs of legal services.

PART FOUR PROCEDURES FOR ATTORNEY COMPENSATION

4.01 Attorney Fee Schedule

The district judges adopt (pursuant to Article 26.05 Tex. Code of Crim. Proc.) the following fee schedule for appointed attorneys:

A minimum of \$75 an hour and a maximum of \$125 an hour, or a total fixed fee as set forth below:

1. Pretrial Habeas Corpus motions: \$200
2. SJF or 3rd degree case which results in a plea of guilty: \$400
3. 1st or 2nd degree case which results in a plea of guilty: \$750
4. Case which results in a trial: \$500 a day, plus up to \$1,000 pretrial
5. Appeals: \$3,500, except for Anders briefs and complicated appeals, as determined by the judge.

Judges can vary from these guidelines in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

4.02 Payment Request Form

Counsel shall submit their requests for payment on the auditor's approved Payment Request Form.

PART FIVE CONCLUSION

5.01 Amendments

This plan is subject to amendment.

5.02 Availability of Forms

Forms provided for in this plan are available on the Internet at the following URL address: www.texasjudge.com.

3.06 Partial Indigency

a. The court may find a defendant to be partially indigent if the person is able to pay some part of the cost of legal representation and if the payment does not impose manifest hardship on the accused or the accused's household.

b. An accused person found to be partially indigent may be ordered by the court to pay, while the case is pending, monthly installments commensurate with the accused's ability to pay based upon his/her income and assets.

3.07. Reimbursement

a. An accused person who is found guilty, and after all appeals, if any, are exhausted, shall be required to reimburse Collin County a sum not more than the amount paid by the County to the accused's attorney, provided however that a finding is made at the time of final disposition that the accused has the ability to reimburse the County without substantial financial hardship. Such reimbursement shall be taxed as costs in the accused person's case.

PART FOUR PROCEDURES FOR ATTORNEY COMPENSATION

4.01 Attorney Fee Schedule

The district judges adopt (pursuant to Article 26.05 Tex. Code of Crim. Proc.) the following fee schedule for appointed attorneys:

A minimum of \$75 an hour and a maximum of \$125 an hour, or a total fixed fee as set forth below:

1. Pretrial Habeas Corpus motions: \$200
2. SJF or 3rd degree case which results in a plea of guilty: \$400
3. 1st or 2nd degree case which results in a plea of guilty: \$750
4. Case which results in a trial: \$500 a day, plus up to \$1,000 pretrial
5. Appeals: \$3,500, except for Anders briefs and complicated appeals, as determined by the judge.

Judges can vary from these guidelines in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

4.02 Payment Request Form

Counsel shall submit their requests for payment on the auditor's approved Payment Request Form.

Procedure With Prior Court Approval:

Appointed counsel may file with the trial court a pretrial *ex parte* confidential request for advance payment of investigative and expert expenses. The request for 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.

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.

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.

Articles 26.05(d), 26.052(f), (g) & (h), Code of Criminal Procedure

4.02 Payment Request Form Counsel shall submit their requests for payment on the approved Payment Request Form, a copy of which is attached hereto as Exhibit "B".

PART FIVE CONCLUSION

5.01 Amendments

This plan is subject to amendment.

PART FOUR PROCEDURES FOR ATTORNEY COMPENSATION

4.01 Attorney Fee Schedule

The district judges adopt (pursuant to Article 26.05 Tex. Code of Crim. Proc.) a fee schedule for appointed attorneys, attached hereto as "2007 Fee Schedule for Appointed Attorneys".

Payment can vary from the fee schedule in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel. In such cases, appointed counsel shall submit their pay request, together with an explanation of the circumstances, to the entire board of district judges.

4.02 Payment Request Form

Counsel shall submit their requests for payment on the auditor's approved Payment Request Form. Counsel seeking compensation in excess of the flat fee guidelines described in Section 4.01 shall submit their pay request, together with an explanation of the circumstances, to the entire board of district judges.

Procedure With Prior Court Approval:

Appointed counsel may file with the trial court a pretrial *ex parte* confidential request for advance payment of investigative and expert expenses. The request for 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.

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.

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.

Articles 26.05(d), 26.052(f), (g) & (h), Code of Criminal Procedure
4.03

Counsel failing to comply with Section 3.05 (f) shall not be permitted to apply for compensation in excess of the flat fee.

PART FIVE CONCLUSION

5.01 Amendments

This plan is subject to amendment.

5.02 Availability of Forms

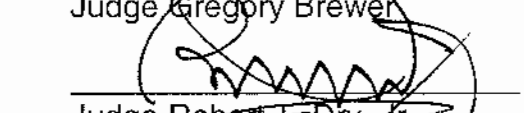
Forms provided for in this plan are available on the county website.

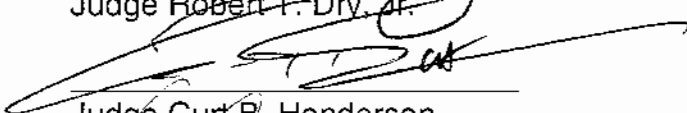
5.03 Effective Date

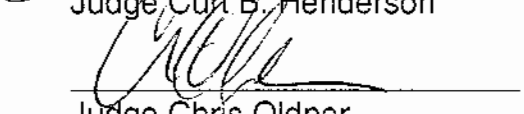
This plan is effective and shall remain in effect until further order of the district judges.


Signed this 12 day of January, 2007.




Judge Gregory Brewer

Judge Robert T. Dry, Jr.

Judge Curt B. Henderson

Judge Chris Oldner

Judge Charles Sandoval

Judge Mark Busch

Judge Cynthia Wheless

2007 Fee Schedule for Appointed Attorneys Felony Cases

Flat Fee Schedule

PLEA:

\$400 (\$200 for 2nd and each subsequent case)

MOTION TO ADJUDICATE/REVOKE

\$300 (\$150 for 2nd and each subsequent case)

TRIAL:

\$375 per ½ day(s) in trial + \$1,000 Pretrial

APPEALS:

Appeal from jury verdict or bench trial \$3,500

Other appeal \$2,000

Unusual Circumstances

In unusual circumstances or where the above fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel¹, you may submit a pay request to the board of judges. The request should be delivered to the local administrative judge, or the trial judge, and should include a detailed explanation of the circumstances that warrant a variation from the flat fee schedule.

¹ 2007 Local Rules to Implement the Texas Fair Defense Plan, §4.01

PART FOUR PROCEDURES FOR ATTORNEY COMPENSATION

4.01 Attorney Fee Schedule

The district judges adopt (pursuant to Article 26.05 Tex. Code of Crim. Proc.) a fee schedule for appointed attorneys, attached hereto as "2009-2010 Fee Schedule for Appointed Attorneys".

Payment can vary from the fee schedule in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

4.02 Payment Request Form

Counsel shall submit their requests for payment on the auditor's approved Payment Request Form. Counsel seeking compensation in excess of the flat fee guidelines described in Section 4.01 shall submit their pay request, together with an explanation of the circumstances, to the administrative judge appointed for this region in accordance with Article 26.05 of the Code of Criminal Procedure.

Procedure With Prior Court Approval:

Appointed counsel may file with the trial court a pretrial *ex parte* confidential request for advance payment of investigative and expert expenses. The request for 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.

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.

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.

Articles 26.05(d), 26.052(f), (g), & (h), Code of Criminal Procedure

4.03

Counsel failing to comply with Section 3.05 (f) shall not be permitted to apply for compensation in excess of the flat fee.

2009-2010 Fee Schedule for Indigent Defense Court Appointed Attorneys

PLEAS:

First & Second Degree Felonies: \$750

Third Degree & State Jail Felonies and all Drug cases: \$500

(\$200 for 2nd and each subsequent case at the discretion of the Judge)

TRIALS:

Pre-Trial: \$1000

\$375 per ½ day(s) in trial

APPEALS:

Appeal from jury verdict or bench trial \$3,500

Other appeal \$2,000

Each Judge has discretion to adjust fees in an additional amount not to exceed \$1,000.00.

The right of an attorney to appeal a fee amount to the Board of District Judges is eliminated. However, a Judge may still bring an exceptional fee request to the attention of the Board at his or her discretion.

4.01. Attorney Fee Schedule

A. The District Judges adopt, pursuant to Article 26.05 Tex. Code of Crim. Proc., a fee schedule for appointed attorneys, attached hereto as "Fee Schedule for Appointed Attorneys."

B. Payment can vary from the fee schedule in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

4.02 Payment Request Form

In cases disposed of by a guilty plea or similar pre-trial disposition, Counsel shall submit their requests for payment on the auditor's approved Payment Request Form on the date of the disposition. If the case is disposed of by trial, the Payment Request Form shall be submitted within seven days of the date the trial is concluded. Payment requests not submitted within thirty days of the date of disposition shall not be approved by the Court, absent extenuating circumstances.

4.03 Investigation Expenses

A. Appointed counsel may file with the trial court a pretrial *ex parte* motion for advance payment of investigative and expert expenses. The request for expenses must state:

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. 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.

B. 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 only if they are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved. See, Articles 26.05(d), 26.052(f), (g), & (h), Code of Criminal Procedure.

Fee Schedule For Indigent Defense Court Appointed Attorneys

In all felony cases, except as hereafter provided, counsel shall be paid according to the following fee schedule, without exception:

PLEAS:

Death Penalty:	\$150.00 per hour
Capital, non-death penalty:	\$100.00 per hour
First Degree Felony:	\$1,000.00
Second Degree Felony:	\$750.00
Third Degree & State Jail Felonies:	\$500.00
Additional cases:	\$250.00 (per case at discretion of the judge)

TRIALS:

Pre-Trial preparation:	\$1000.00
Trial, per ½ day:	\$500.00

APPEALS:

Appeal from trial:	\$3,500.00
Other appeal:	\$2,000.00

DISCRETIONARY ADJUSTMENT

Per case adjustment, not to exceed:	\$1,000.00
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Child Advocacy Center cases and all cases with a minimum 15 year sentence:

Per case adjustment, not to exceed:	\$3,000.00
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Cases involving serious mental illness, competency or mental defect under the direction of the mental health program managing attorney:

Per case adjustment, not to exceed:	\$1,750.00
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