

Grayson County Courts At Law Plan

Preamble

Be it remembered that on this date, and pursuant to Art. 26.04 of the Texas Code of Criminal Procedure, the below-signed County Court at Law Judges for Grayson County hereby adopt, order, establish, and order published these countywide procedures, rules, and orders for timely and fairly appointing counsel for indigent defendants in the county arrested for or charged with a misdemeanor punishable by confinement.

I. Prompt Magistration

1. The arresting officer and magistrate shall perform the duties set forth at Art. 15.17, Texas Code of Criminal Procedure, together with any other duties required by state or federal law.
2. Any person arrested or taken into custody within this county shall be taken before a magistrate of this county without unnecessary delay, and not later than 48 hours after the person is arrested.
3. The Justices of the Peace of Grayson County shall establish a plan to coordinate daily availability of a District or County Judge, Justice of the Peace or other magistrate authorized by law to provide magistrate warnings to arrested persons. Justice of the Peace, Precinct 1, shall be responsible for coordinating availability.
4. The magistrate shall provide the warnings required by law, either in person or by closed circuit television or in any other manner authorized by law, and may use the Adult Magistrate Warning form to document said warnings.
5. The magistrate shall inform the arrested person of the right to request appointment of counsel and of the procedures for requesting appointment of counsel.
6. If the arrested person is indigent and requests the appointment of counsel, the magistrate shall, without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit or cause to be transmitted to the Indigent Defense Coordinator of Grayson County any forms or other information provided by the arrested person as may be necessary for appointment of counsel as set forth in this plan. The Indigent Defense Coordinator shall make available to the arrested person the forms necessary for the appointment of counsel as set forth in this plan, and shall ensure that the arrested person is provided reasonable assistance in completing said forms.
7. 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 transmit or cause to be transmitted to the Indigent Defense Coordinator of Grayson County any forms or other information provided by the arrested person as may be necessary for appointment of counsel. The Indigent

Defense Coordinator shall make available to the arrested person the forms necessary for the appointment of counsel, and shall ensure that the arrested person is provided reasonable assistance in completing said forms. The forms will be transmitted to the appointing authority in the county issuing the warrant within 24 hours of the request being made.

II. Indigence Determination Standards

Criteria for Indigence

1. Definitions.

- a. "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); 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. 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
- b. "Household" means all individuals who are actually dependent on the defendant for financial support.
- c. "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. Financial Standards for Determining Indigence. The Court or the Court's designee making court appointments of counsel for indigents shall consider the following standards for determining indigence and such other reasonable factors as the Court finds bearing on financial inability of a defendant to retain counsel:

- a. Defendant's income from any and all sources;
- b. Sources of the defendant's income;
- c. Assets of the defendant;
- d. Property owned by the defendant, or in which the defendant has an interest;
- e. Outstanding obligations of the defendant;
- f. Necessary expenses of the defendant;
- g. The number and age of the defendant's legal dependents;
- h. Spousal income available to the defendant; and
- i. Such other reasonable factors as determined by the judge.
- j. The Court or the Court's designee shall not consider whether the defendant has posted bail, except to the extent that it reflects on the defendant's financial circumstances.

3. Application Process. Persons who request a determination of indigency and appointment of counsel shall:

- a. Complete under oath the Affidavit of Indigency (see plan documents) concerning financial resources, or such substantially similar Application as may be approved by the Court; or
 - b. Respond under oath to an examination regarding his financial resources by the judge responsible for determining whether the defendant is indigent; or
 - c. Complete the Affidavit of Indigency and respond to examination by the judge.
4. Determination of Indigence. A defendant shall be considered indigent if the person falls within any of the following criteria, as established by evidence deemed competent and reliable by the court:
- a. Poverty Guidelines. The accused/defendant's net household income is at or below the most recently published Federal Poverty Guidelines, as determined by the U.S. Department of Health and Human Services and published annually in the Federal Register. See, <http://aspe.hhs.gov/poverty/index.shtml>.
 - b. Governmental Assistance. The defendant or the defendant's dependents have been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.
 - c. In Custody. The defendant is currently serving a sentence in a correctional institution, is currently held in custody and unable to post bail, is currently 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.
 - d. Other Factors. A defendant who does not meet any of the financial standards above shall nevertheless be determined indigent 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.
5. Partial Indigence. Pursuant to Art. 26.05 (g), if the Court finds that the defendant is employed, and has financial resources that enable him to offset in part the costs of the legal services provided, the court shall ORDER that the defendant pay during the pendency of the charges the amount that it finds the defendant is able to pay. Failure to make payments as required may result in the dismissal and discharge of the attorney appointed.
6. Employment of Retained Counsel. A defendant that retains counsel following the appointment of counsel shall be required to repay the costs of the court-appointed legal services provided.

III. Minimum Attorney Qualifications

Attorneys must possess the following qualifications to be eligible for the Misdemeanor Appointment List:

1. Attorneys must be licensed to practice law in the State of Texas.

2. Attorneys must be members in good standing with the State Bar of Texas.
3. Attorneys must devote at least thirty percent (30%) of their time practicing criminal law in the State of Texas or must be board certified by the Texas Board of Legal Specialization in criminal law.
4. Attorneys must not have been found by any court to have engaged in professional misconduct within the last three (3) years.
5. Attorneys must not have received a public reprimand or greater penalty within the last three (3) years.
6. Attorneys must not have been convicted, given probation, deferred adjudication or fined for a felony level offense, or a crime involving moral turpitude.
7. Attorneys must not be currently under indictment or charged with a felony or a criminal offense involving moral turpitude.
8. Attorneys must complete at least ten (10) hours of CLE in criminal law each year. This requirement shall be waived for the initial application process. All attorneys must file with the Indigent Defense Coordinator a copy of their Continuing Legal Education annual report form (or a list of CLE completed if the attorney has been licensed less than one year) no later than December 30th of each year. Such report shall reflect a minimum of ten (10) hours in criminal law. An attorney is allowed a maximum of five (5) hours of self-study to count toward CLE requirements. Attorneys may carry over up to 10 hours in criminal law to the next reporting year. Those attorneys who fail to comply with the CLE provisions of the Plan will be removed from the Misdemeanor Appointment List on January 16th of each year unless good cause is shown not to do so.
9. Attorneys must have an office in Grayson County with a physical address that can be given to defendants.
10. Attorneys must complete an application/affidavit and provide all relevant information to be considered for inclusion in this Plan.
11. Attorneys applying for inclusion in this Plan agree to be bound by and accept as a condition of appointment the schedule for Court-appointed attorneys fees set forth in this Plan.
12. Attorneys are required to act with competence, commitment and dedication to the interest of the accused/defendant and with zeal in advocacy upon their behalf.
13. Attorneys are under an independent and ethical duty to supplement their application/affidavit with information that may affect their eligibility for court appointments under this Plan.

14. An attorney meeting all the qualifications under the Plan must be approved by a majority of the County Court at Law Judges.
15. Pursuant to Article 26.04(j)(4), an attorney appointed under this Plan shall submit to the county an annual report for the preceding fiscal year that describes the percentage of the attorney's practice time that was dedicated to work based on the appointments accepted in the county under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code. The annual report shall be prepared on the form that is prescribed by the Texas Indigent Defense Commission and shall be submitted annually not later than October 15 of each reporting year.

IV. Duties/Responsibilities Of Attorneys

1. Appointed attorneys shall make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed.
2. Attorneys are appointed to represent an indigent defendant until the defendant is acquitted, appeals are exhausted, or the Court, after entering a finding of good cause on the record, relieves the attorney and/or replaces the attorney with other counsel.
3. Appointed attorneys are responsible for ascertaining whether an indigent client has a pending felony or is subsequently charged with a felony offense to which another attorney has been appointed. If this occurs, the misdemeanor attorney shall immediately inform both the misdemeanor court and the attorney appointed in the felony matter of such circumstance in writing. Upon receipt of such notification, the court will determine whether a substitution of counsel should be effected. The court will notify both attorneys of its determination. If the court determines that the indigent defendant should be represented in the misdemeanor matter by the attorney appointed in the felony matter, the misdemeanor attorney shall immediately make arrangements for an orderly transfer of his/her file(s) to the felony attorney and submit to the appropriate misdemeanor court a fee voucher for services rendered up to the date of substitution of counsel.

V. Prompt Appointment Of Counsel

1. Consideration of Application by Court or Court's Designee. Persons appearing in court without counsel will be advised of the right to counsel and procedures for obtaining counsel.
 - a. Court or Court's Designee. Determination of indigency and appointment of counsel under this Plan may be made by either County Court at Law Judge or by a person who may be designated by the Local Administrative County Court at Law Judge.
 - b. Persons in Custody. After receiving notice from the magistrate that an arrested person has requested the appointment of counsel, the Court or Court's designee for the County Courts at Law shall review the Affidavit of Indigency and such other

information bearing on the financial status of the defendant and make a determination of indigence status and appoint counsel not later than the end of the third working day after the date on which the Court or Court's designee receives the request, or, if later, within the time frame set forth in the Texas Code of Criminal Procedure.

- c. Persons Not in Custody. For persons out of custody, counsel will be appointed for persons determined to be indigent at defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.
 - d. Pending Felony Charges. Determinations of indigence and appointment of counsel to represent persons who have been charged with or are subject to bond pertaining to an offense classified as a felony shall be handled pursuant to Rules, Orders and Procedures as may be adopted by the District Courts of this county.
2. At the time the Court or Court's designee finds that the defendant is indigent and appoints an attorney, the Court Coordinator shall notify both the defendant and attorney, and may use the Notice of Appointment (see plan documents) to provide said notice.
 3. If the defendant is in custody, a copy of the Notice of Appointment shall be delivered to the Grayson County Sheriff to be provided to the defendant. If the defendant is not in custody, the Notice of Appointment shall be mailed to the defendant's address of record.
 4. The appointed attorney shall ordinarily be notified of the appointment by fax, but any other method of notification deemed expedient by the Court may be used in appropriate circumstances. At the time of the appointment, the attorney shall be informed whether the defendant is or is not in the custody of the Grayson County Sheriff. The appointed attorney is required to contact the defendant and provide proof of such contact to the Court.

VI. Attorney Selection Process

1. Misdemeanor Appointment List
 - a. All attorneys meeting the qualifications for appointment and who have been approved by a majority of the County Court at Law Judges shall be placed on the Misdemeanor Appointment List.
 - b. Application shall be made in writing on a form approved by the Local Administrative County Court at Law Judge (see plan documents).
2. Allocation of Appointments
 - a. Attorneys shall be appointed from the Misdemeanor Appointment List using a system of rotation. Attorneys shall be appointed from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the Court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.
 - b. Appointment by rotation shall not be required in the following circumstances:

- i. An attorney previously appointed to represent an accused/defendant that has a pending misdemeanor case shall also be appointed on any subsequent misdemeanor case(s) that the defendant might have prior to the completion of the initial appointment.
- ii. If an accused/defendant has a pending felony charge/case, then the Court or the Court's designee may appoint the attorney that is representing the accused/defendant on the felony charge/case.
- iii. If the Court or the Court's designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the Court or the Court's designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.

VII. Fee And Expense Payment Process

- 1. Fixed Rate Compensation. Attorneys appointed to represent eligible persons charged or being held by Grayson County on misdemeanor offenses shall be compensated according to the following fee schedule adopted as provided under Article 26.05(b) of the Code of Criminal Procedure:

DISPOSITION	FEE
BY JURY OR NON-JURY TRIAL	\$400 PER HALF-DAY \$750 PER DAY
AGREED PLEA OR DISMISSAL OF CHARGES PRIOR TO JURY SELECTION	\$300
CONCURRENT WITH FELONY PLEA AGREEMENT, REQUIRING ONLY ONE COURT APPEARANCE IN CCL	\$175
AGREED PLEA ON INMATE DOCKET, REQUIRING ONLY ONE CLIENT CONSULTATION AND ONE COURT APPEARANCE	\$175
PREPARING AND FILING BRIEF ON APPEAL	\$1,200 PER APPELLATE BRIEF FILED
PRETRIAL HABEAS CORPUS OR BOND MOTIONS	\$100
REPRESENTATION OF PERSONS CHARGED WITH MULTIPLE MISDEMEANOR OFFENSES	UP TO AN ADDITIONAL \$100
REPRESENTATION OF PERSONS UNABLE TO SPEAK AND UNDERSTAND THE ENGLISH LANGUAGE	UP TO AN ADDITIONAL \$100

- 2. Compensation Above Fixed Rate. Judges may approve payment ABOVE the fixed rate amounts in unusual circumstances or where the fee would be manifestly inappropriate

because of circumstances beyond the control of the appointed counsel. At the time such circumstances become apparent, the attorney must advise the court, in writing, of the circumstances. Such information shall be provided to the presiding judge *ex parte* and *in camera*. At the time the attorney submits application for payment, the attorney must attach a detailed explanation of services performed including the date performed, the time spent on each activity, and a designation of in court or out of court time. If the court determines that compensation above the Fixed Rate is appropriate, the attorney will be compensated at an hourly rate no less than \$50 per hour and no more than \$150 per hour.

3. Reimbursement of Expenses. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth in Article 26.052(f) and (g) or 26.052(h) as applicable. Whenever possible, prior court approval should be obtained before expenses are incurred.
4. Application for Payment.
 - a. Fee Voucher. All requests for payment shall be made using the approved Attorney Fee Voucher form (see plan documents) or such substantially similar voucher as may be approved by the Court. Unless the voucher is submitted to the Court at the plea hearing, the voucher shall be submitted to the Grayson County Clerk's office located at the Justice Center.
 - b. Fixed Rate Compensation. If possible, the attorney should present the Court with a completed Attorney Fee Voucher form upon disposition of the case. In no event shall payment be requested more than 20 days after disposition of the case. Requests for payment submitted more than 20 days after disposition of the case WILL NOT BE APPROVED, except for good cause shown in highly unusual situations that are set forth in writing by the attorney on the voucher form.
 - c. Compensation Above Fixed Rate. At the time the attorney submits application for payment, the attorney must attach a detailed explanation of services performed including the date performed, the time spent on each activity, and a designation of in court or out of court time. When a case is disposed of by agreed plea, the attorney will be compensated at the Fixed Rate, unless at the time of the plea the attorney applies to the Court for compensation above the fixed rate and presents all necessary documentation.
 - d. Partial Payments. Except for good cause shown, no partial payment or advance payment will be made on cases. However, payment for the trial court disposition may be made pending appeal. Payment for services performed on appeal would then be made at the conclusion of all appeals.
 - e. Appeals. Application for payment for preparing and filing briefs on appeal shall be submitted at the conclusion of all appeals. The application for payment shall be submitted to the presiding trial court judge. A copy of each brief prepared shall be submitted with the application for payment.

VIII. Completion Of Assignment And Discharge Of Court Appointed Attorney

Except as provided herein, attorneys are appointed to represent an indigent defendant until the defendant is acquitted, appeals are exhausted, or the Court, after entering a finding of good cause on the record, relieves the attorney and/or replaces the attorney with other counsel. In addition, the assignment shall be considered complete and the attorney shall be discharged in the following circumstances:

- a. Plea Agreement. The appointment shall be completed upon disposition of all charges by an agreed plea which includes a waiver of right to appeal.
- b. Theft By Check Pretrial Diversion. If a defendant and the State negotiate and execute a Pre-Trial Diversion Agreement, the appointment shall be completed and the attorney shall be discharged upon approval of the agreement by the court. Defendant shall be permitted to re-apply for court appointed counsel or the court may re-appoint counsel at any time during the term of the agreement.
- c. Habeas Corpus/Bond Reduction/Release from Custody. If the appointment is made while the defendant is in custody and the defendant posts bond and is released, or the defendant is released on a habeas corpus order or other order which reduces the defendant's bail, and a charge has not been filed against the defendant, the court appointment shall be completed and the attorney discharged. Defendant shall be permitted to re-apply for court appointed counsel or the court may re-appoint counsel at any time thereafter.
- d. Upon Defendant's Failure to Appear. If the indigent defendant who has posted bond fails to appear for a scheduled court hearing at any time during the pendency of the criminal action, the court appointment shall be completed and the appointed attorney shall be eligible for discharge. Such discharge shall be granted under this provision on the filing of the attorney's appropriate Motion to Withdraw. Such discharge shall be effective under the court's Order no earlier than the 30th day following the date of the hearing at which the defendant failed to appear. Such defendant shall be permitted to re-apply for court appointed counsel or the court may re-appoint counsel at any time thereafter. The discharged attorney shall submit an Attorney Fee Voucher for services rendered prior to the date of discharge. Fees paid to any attorney withdrawing under this section shall be taxed as costs.

IX. Procedures For Removal Of Attorneys From The Misdemeanor-Appointment List

1. Grounds for Removal. An attorney may be removed from the appointment list if the attorney:
 - a. Has twice or more failed to contact or interview clients in a timely manner as required by Article 26.04(j)(1), Code of Criminal Procedure;
 - b. Has submitted a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure;

- c. Fails to maintain compliance with each of the appointment list guidelines;
 - d. Has been found by a court to have provided ineffective assistance of counsel;
 - e. Has violated a rule of professional responsibility;
 - f. Has been convicted of or received a deferred adjudication for any offense, other than an offense punishable by a fine only;
 - g. Is under indictment or being formally charged with an offense, other than an offense punishable by a fine only;
 - h. Has intentionally misrepresented statements on the application for the appointment list;
 - i. Fails to comply with the CLE provisions of this Plan; or
 - j. Other good cause shown.
2. Referral. If a judge believes that an attorney has violated any of the provisions listed in the paragraph above, the judge may refer an attorney to the board of judges for removal from the appointment list. The referral must be in writing and shall clearly state the grounds that form the basis of the referral. No disciplinary action with respect to the attorney being retained or removed from the appointment list may be made without such a referral.
3. Notification/Hearing. Upon receiving an attorney referral, the board of judges shall notify the attorney in writing of the referral and inform the attorney of the grounds that form the basis of the referral. The notice shall also inform the attorney of the time and place the board of judges will meet to discuss the referral and give the attorney an opportunity to respond to the referral in writing or in person or both.
4. Action. After the board of judges meets and gives the attorney an opportunity to be heard, the board of judges shall determine whether the attorney should:
- a. remain on the appointment list at the same level;
 - b. move to an appointment list for indigent defendants charged with less serious offenses; or
 - c. be removed from the appointment list altogether.
5. Additional. The attorney may be removed from the appointment list or moved to an appointment list for indigent defendants charged with less serious offenses by a majority vote of the judges present. In addition, the majority of the judges may also vote to require the attorney to take other rehabilitative measures. Removals from any list may be probated. For removal or probated removals, the judges ordering the removal may require the completion of rehabilitative measures as a condition of probation or reapplication. An order of removal shall state the earliest date at which the attorney may apply for reinstatement. An attorney who was removed from an appointment list under (1)(f.) or (1)(g) herein above shall be immediately reinstated upon providing proof that the charges were dismissed or that the attorney was acquitted, unless other grounds for removal that would prohibit reinstatement exist. The decision of the board of judges is final and may not be appealed.

X. Rules For The Appeal Of A Trial Court's Disapproval Of Requested Court-Appointed Attorney's Fee

1. Appeals of a trial court's disapproval of requested court-appointed attorney fees are governed by Article 26.05(c), Code of Criminal Procedure and the Rules promulgated by the Council of Judges of the First Administrative Judicial Region, which rules are available at www.txcourts.gov/1ajr

Plan Documents

Grayson County Court Affidavit of Indigence.doc [view](#)

Grayson County Court Attorney Application for Appointment.doc [view](#)

Grayson County Court Notice of Appointment.doc [view](#)

Grayson County Court Attorney Fee Schedule.doc [view](#)

Grayson County Court Attorney Fee Voucher.doc [view](#)

Grayson County Court Attorney Reporting Form.doc [view](#)

Grayson County Court Adult Magistrate Warning Form.doc [view](#)

Grayson County Court Order on Motion to Review Disapproval of Requested Court Appointed Attorney's Fee.doc [view](#)

Grayson County Court Trial Court's Written Findings Regarding Requested Court Appointed Attorney's Fee.doc [view](#)

Signed on this 1st day of November, 2017.

James Corey Henderson

Judge Presiding, Honorable Judge Henderson
County Court At Law No. 1

Carol M. Siebman

Judge Presiding, Honorable Judge Siebman
County Court At Law No. 2