

RULE 24. ALTERNATIVE PLAN FOR THE APPOINTMENT OF COUNSEL TO INDIGENT DEFENDANTS UNDER THE FAIR DEFENSE ACT

24.1. DEFINITIONS

- 24.1.1. *Appointing authority* means the Judges of the County Criminal Courts at Law of Harris County, Texas.
- 24.1.2. *Approved attorney* means an attorney meeting the objective qualifications of this Plan, and approved by a majority of the Judges of these Courts.
- 24.1.3. *Appointment manager* means the person who implements appointment procedures.
- 24.1.4. *A day* means a single day on which an attorney is assigned to appear in a court.
- 24.1.5. *Case* means each cause number, or count in which a defendant is charged with a separate offense. *See* Office of Court Administration, Texas Judicial Counsel Monthly Report Instructions.
- 24.1.6. *Contract* means the agreement between an approved attorney and the Harris County Commissioners Court meeting the requirements established by the Texas Indigent Defense Commission.
- 24.1.7. *Contract Defender Program*. Contract defender program means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.
- 24.1.8. *Contracting Authority*. The contracting authority is the Commissioners Court of Harris County, Texas.
- 24.1.9. *Contractor*. The contractor is an individual attorney licensed to practice law in the State of Texas, meeting the eligibility criteria in this Plan that can be bound by contract.
- 24.1.10. *Criminal Law Hearing Officer* means a judicial officer created by Chapter 54, Subchapter L of the Texas Government Code (§ 54.851 et seq.)
- 24.1.11. *Defendant* means a person accused of a crime or juvenile offense, as those terms are defined by Section 71.001 of the Texas Government Code.
- 24.1.12. *Disposed* means:
 - 24.1.12.1. entry of an order dismissing the case;
 - 24.1.12.2. the defendant has been sentenced after a plea of guilty or no contest;
 - 24.1.12.3. trial on the merits resulting in a verdict;
 - 24.1.12.4. entry of an order granting community supervision;
 - 24.1.12.5. a motion for new trial has been overruled;
 - 24.1.12.6. submission of a brief on appeal;
 - 24.1.12.7. granting or denial of an application for writ of habeas corpus or other extraordinary relief.
- 24.1.13. *Fair Defense Act Management System (FDAMS)*
- 24.1.14. *First-chair counsel* means the attorney in charge of the case.
- 24.1.15. *He or him* refers to a male or female.

- 24.1.16. *Household* means all individuals who are actually dependent on the defendant for financial support.
- 24.1.17. *Indigent* means a person who is not financially able to employ counsel. A person is presumed indigent if the total income derived by that person (and any of his dependents) is equal to or less than 125% of the United States Health and Human Services poverty guidelines applicable to that defendant's family/household.
- 24.1.18. *Itemized Fee Voucher*. The itemized fee voucher shall be in electronic form promulgated by these courts and approved by the Harris County Auditor. It shall include at a minimum all the information necessary for the county auditor or other designated official to complete the expenditure report required to be submitted to the Office of Court Administration by Section 71.0351 (e), Government Code.
- 24.1.19. *Judge* means a Judge of a Harris County Criminal Court at Law.
- 24.1.20. *Judicial Officer* means a Judge of a Harris County Criminal Court at Law, or a Harris County Criminal Law Hearing Officer.
- 24.1.21. *Majority of judges* means not less than: (a) eight of the duly elected and qualified judges of the Harris County Criminal Courts at Law prior to January 1, 2016; or (b) nine of the duly elected and qualified judges of the Harris County Criminal Courts at Law on or after January 1, 2016.
- 24.1.22. *Plan* means the Alternative Plan adopted by the Judges of the County Criminal Courts at Law of Harris County, Texas, on November 5, 2015.
- 24.1.23. *Probable cause* means a reasonable ground, based upon the facts and circumstances, sufficient to warrant a prudent man to believe that the defendant has committed each element of the offense charged and the defendant is culpable, it being understood that if there is a sufficient defense established by testimony or documentation of the arresting agency, then there is no "probable cause".¹
- 24.1.24. *Public Defender* means the Chief Public Defender of the Harris County Public Defender's Office.
- 24.1.25. *Second-chair counsel* means an attorney who is not eligible to be appointed as first-chair counsel, who volunteers for the purpose of gaining experience, knowledge, and competency in the representation of a defendant.
- 24.1.26. *Taken before a magistrate* means either physically bringing the defendant before the judicial officer in person or the image of the arrested person may be presented to the magistrate by means of an electronic broadcast system as provided by TEX CODE CRIM. PROC. ART. 15.17(a).
- 24.1.27. *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.
- 24.1.28. *Working day* means Monday through Friday, except official federal, state, and county holidays.

24.2. PROMPT AND ACCURATE MAGISTRATE PROCEEDINGS.

¹ *Roberson v. Richardson*, Civil Action No. H084-3659, United States District Court For The Southern District of Texas, Houston Division (1987).

- 24.2.1. **DUTY OF ARRESTING OFFICER.** The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a judicial officer without unnecessary delay, but not later than 48 hours after the person is arrested.
- 24.2.1.1. Unless arrested pursuant to an arrest warrant, bench warrant, *capias*, or other order of a magistrate or judge, necessary forms establishing probable cause shall be completed and filed contemporaneous with the arrestee being booked into the Harris County Jail for any misdemeanor punishable by incarceration.
- 24.2.2. **RELEASE OF DEFENDANT ARRESTED WITHOUT WARRANT.** A person arrested for a misdemeanor without a warrant and who is detained in jail must be release not later than the 24th hour after arrest, on a bond in an amount not to exceed \$5,000, if a judicial officer has not determined that probable cause exists to believe that the person committed the offense for which the person is charged.
- 24.2.3. **POSTPONED RELEASE.** If requested by the State of Texas, a judicial officer may postpone the release of the defendant for not more than 72 hours after the defendant's arrest if a probable cause determination has not been made, in compliance with the procedure set forth in ART. 17.033, TEX CODE CRIM. PROC. ARTS.
- 24.2.4. **RECORD OF PROCEEDING.** In each case in which a person arrested is taken before a judicial officer, any combination of an electronic recording, written form, or other documentation memorializing:
- 24.2.4.1. the judicial officer informing the defendant of the defendant's right to request appointment of counsel;
- 24.2.4.2. the judicial officer asking the person whether the person wants to request the appointment of counsel;
- 24.2.4.3. instruction on how to request the appointment of counsel and
- 24.2.4.4. whether the person requested the appointment of counsel.
- 24.2.5. **DEFENDANT BROUGHT BEFORE JUDICIAL OFFICER.** The judicial officer shall determine if the defendant can speak and understand the English language, or if the defendant is deaf or hearing impaired.
- 24.2.6. **INTERPRETER.** If the person does not speak and understand the English language or is deaf, the judicial officer shall in an appropriate manner, and consistent with ARTS. 38.30, and 38.31, TEX. CODE CRIM. PROC. ARTS., communicate with the defendant using an interpreter.
- 24.2.6.1. **TRANSLATE FORMS AND DOCUMENTS.** Interpreters provided at County expense shall provide sight translation of court documents and correspondence associated with the case or proceeding.²
- 24.2.7. **THE HEARING.** The judicial officer shall inform the defendant of the nature of the charge and of any affidavit, if available, filed therewith:
- 24.2.7.1. The officer shall admonish the defendant of:
- 24.2.7.1.1. the right to retain counsel;
- 24.2.7.1.2. the right to remain silent;

² Rule 5.2, Harris County Limited English Proficiency (LEP) Plan for Court Proceedings required by 42 U.S.C. 2000d, *et seq* (2015).

- 24.2.7.1.3. the right to have an attorney present during any interview with peace officers or attorneys representing the State of Texas;
 - 24.2.7.1.4. the right to terminate an interview at any time;
 - 24.2.7.1.5. the right not to make a statement and that any statement made by the defendant may be used against the defendant.
- 24.2.8. INFORMATION AND EXPLANATION OF THE RIGHT TO COUNSEL.
- 24.2.8.1. The judicial officer shall:
 - 24.2.8.1.1. Inform the defendant of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel in the trial court;
 - 24.2.8.1.2. Inquire as to whether the defendant is requesting that counsel be appointed;
 - 24.2.8.1.3. Clearly note on the magistrate's admonishment form, or Probable Cause for Further Detention form, the defendant's choice viz: to request the appointment of counsel or not to request the appointment of counsel.
 - 24.2.8.2. If the judicial officer has reason to believe the defendant is not mentally competent, the judicial officer shall enter a request for counsel on behalf of the defendant to alert the judge of the court in which the case is pending that counsel with the specialized skills necessary to represent mentally ill, or intellectually disabled should be appointed to the case.
- 24.2.9. DETERMINATION OF PROBABLE CAUSE FOR FURTHER DETENTION. In a case where the individual was arrested without an arrest warrant, bench warrant, or capias, or other order of a magistrate or judge, the judicial officer shall determine whether there is probable cause to believe the person committed the offense stated in the complaint.
- 24.2.10. SETTING BAIL. The judicial officer shall set the amount of bail and consider the defendant for release on a personal bond.³
- 24.2.11. ARREST ON OUT-OF-COUNTY WARRANT. The judicial officer and district clerk shall follow the same procedure for a person arrested on one or more out-of-county warrants.
- 24.2.11.1. If the arrestee requests the appointment of counsel, the judicial officer shall ask the arrestee to complete an affidavit of indigence and financial statement, and shall ensure the arrestee has assistance in completing the forms.
 - 24.2.11.2. The district clerk shall transmit the form to the county issuing the warrant within 24 hours of the request being made.
- 24.2.12. THE MAGISTRATE SHALL RECORD THE FOLLOWING:
- 24.2.12.1. The date and time the defendant was arrested and the date and time when the defendant was brought before the magistrate;
 - 24.2.12.2. Whether the judicial officer informed the defendant of the right to request appointment of counsel, and the procedure for requesting counsel in the trial court; and
 - 24.2.12.3. Whether the defendant requested appointment of counsel.

³ *Roberson v. Richardson*, supra.

24.2.13. **TIMELY TRANSMISSION OF FORMS TO THE TRIAL COURT.** The District Clerk of Harris County, Texas, through a deputy district clerk, shall immediately transmit or cause to be transmitted the magistrate's form or Probable Cause for Further Detention form to the judge of the court in which the case is pending for use the following business day to timely conduct an indigence hearing as requested by the defendant.

24.3. RIGHT TO APPOINTED COUNSEL.

24.3.1. A defendant found to be indigent as that term is used herein, and who requests appointed counsel has the right to counsel:

- 24.3.1.1. in any adversarial judicial proceeding that may result in punishment by confinement;
- 24.3.1.2. in any criminal proceeding before the court if the judge concludes that the interests of justice require representation;
- 24.3.1.3. in a direct appeal to a court of appeals;
- 24.3.1.4. following arrest for violating a condition of community supervision; and
- 24.3.1.5. following arrest on an out-of-county warrant.

24.3.2. The judge of the court may also appoint counsel, in the interests of justice to a person appearing before the court, regardless of the person's financial status.

24.4. DETERMINING INDIGENCE.

24.4.1. Procedures Used to Determine Indigence.

- 24.4.1.1. Indigence is determined by the judge of the court with dispositive jurisdiction. The judge may require the defendant to respond to questions about the defendant's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.
- 24.4.1.2. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in ART.1.051. TEX. CODE CRIM. PROC.

24.4.2. **FINANCIAL STANDARD.** For purposes of appointing counsel, a person is indigent if the person is not financially able to employ counsel.⁴ The standard shall apply to each defendant equally, regardless of whether the defendant is in custody or is released on bail.

24.4.3. **FACTORS FOR DETERMINING INDIGENCE.** A judge shall consider the following factors in determining whether a defendant is indigent:

- 24.4.3.1. defendant's income,
- 24.4.3.2. source(s) of income,
- 24.4.3.3. assets and property owned, or in which the defendant has an interest,
- 24.4.3.4. outstanding obligations,
- 24.4.3.5. necessary expenses,
- 24.4.3.6. the number and ages of dependents, and

⁴ See TEX. CODE CRIM. P. ANN. art. 1.051(b).

- 24.4.3.7. spousal income that is available to the defendant.
- 24.4.4. PRESUMPTIONS.
 - 24.4.4.1. The defendant is presumed to be indigent if his net household income does not exceed 125% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register.
 - 24.4.4.2. 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.
- 24.4.5. USE OF INFORMATION LIMITED. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be used for any purpose other than:
 - 24.4.5.1. Determining if defendant is (or is not) indigent; or
 - 24.4.5.2. Impeaching direct testimony of defendant regarding the defendant's indigence.
- 24.4.6. REVIEW. A defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the defendant, the defendant's attorney, or the attorney representing the state.
 - 24.4.6.1. The defendant's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:
 - 24.4.6.2. Evidence of a material change in the defendant's financial circumstances, as a result of which the defendant does not meet any of the standards for indigence contained in these rules; or
 - 24.4.6.3. Additional information regarding the defendant's financial circumstances that shows that the defendant does not meet any of the standards for indigence contained in these rules.
 - 24.4.6.4. If a defendant previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.
 - 24.4.6.5. If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs, the amount that it finds the defendant is able to pay.

24.5. Establishing Minimum Attorney Qualifications.

- 24.5.1. **QUALIFICATIONS.** To be qualified an attorney must submit a completed application, resume, recent photograph, and signed attorney acknowledgement form. The attorney must also:
 - 24.5.1.1. Have been licensed to practice law for at least one year;
 - 24.5.1.2. Have accumulated a minimum of **10 points** according to the following scale, at least **2 points** of which are from cases tried to verdict as first chair counsel (the attorney shall list the point total in each area with the application):
 - 24.5.1.2.1. **Two points** for each continuous 365-day period in the preceding 3 years as a practicing attorney (up to 3 periods with 5 points maximum);

- 24.5.1.2.2. **Two points** for each successfully completed intensive criminal law training program in the last 3-year period appearing on the courts' list of approved intensive training programs (see Appendix A) (up to 4 points maximum);
- 24.5.1.2.3. **One point** for each criminal case tried to a verdict in county or district court as first-chair counsel (list case styles and cause numbers) (up to 5 points maximum; at least 2 points required);
- 24.5.1.2.4. **One point** for each continuous 120-day period in the preceding 3 years as an intern or legal assistant working under the supervision of a Texas lawyer whose practice was devoted at least 80% to criminal law in county or district courts (up to 3 points maximum);
- 24.5.1.2.5. **One point** for each Texas State Bar approved CLE lecture given by the attorney, with accompanying written materials, on a criminal law topic (provide written materials and list CLE title, date, and location) (up to 2 points maximum);
- 24.5.1.2.6. **One point** for each CLE reporting period in the last 3 years in which the attorney attended at least 40 hours of CLE training related to criminal law (provide annual CLE printouts) (up to 2 points maximum);
- 24.5.1.2.7. **One point** for each law review article authored by the attorney and published by an ABA-accredited law school on a criminal law topic (attach article and citation) (up to 1 point maximum); and
- 24.5.1.2.8. **One-half point** for each criminal case tried to a verdict in county or district court as second-chair counsel (list case styles and cause numbers) (up to 5 points maximum). To claim credit in this subsection, the attorney must have been present during the entire trial, from jury selection through final verdict;
- 24.5.1.3. Demonstrate substantive knowledge of criminal law, criminal procedure, and evidentiary rules applicable to misdemeanor cases by scoring at least 75% on an open-book test written by judicial staff and members of the Public Defender's Office of Harris County, Texas;
- 24.5.1.4. Maintain telephone and fax numbers, as well as a physical location (other than a public building) in which the attorney can conduct confidential meetings and discussions without compromising professionalism and the attorney-client privilege;
- 24.5.1.5. Have attended at least 10 hours of CLE related to criminal law in the year prior to filing an application (submit CLE verification);
- 24.5.1.6. Agree to attend at least 10 hours of CLE related to criminal law annually, including one hour of ethics, and annually submit an affidavit showing compliance with this CLE requirement;
- 24.5.1.7. Agree to attend CLE programs as directed by the Presiding Judge of these courts;
- 24.5.1.8. Agree to submit an affidavit showing compliance with the annual CLE requirements;
- 24.5.1.9. Provide (and keep current) an email address to which the Office of County Court Management may send official notices and correspondence regarding the Plan, including, but not limited to, matters concerning CLE, changes to the Plan and eligibility requirements, notice of removal from the approved list, and other administrative matters;

- 24.5.1.10. Consistently demonstrate commitment to providing effective assistance of counsel and quality representation to criminal defendants;
 - 24.5.1.11. Maintain a demeanor which is professional and conducive to effective representation;
 - 24.5.1.12. Demonstrate effectiveness of advocacy skills including, but not limited to, such items as: voir dire; direct and cross examination; introduction of, objection to, and admissibility of evidence; argument; instructions; and recognition of appellate issues;
 - 24.5.1.13. Communicate effectively with the other parties involved in his cases. The attorney must make thorough use of sentencing laws, seeking imaginative and creative sentencing alternatives;
 - 24.5.1.14. Appear in court punctually and keep the court apprised of his whereabouts;
 - 24.5.1.15. Be cognizant that the manner in which he or she interacts with judicial officers, prosecutors, courtroom personnel, law enforcement personnel, co-counsel, and other members of the justice system contributes to the effective representation of his indigent clients;
 - 24.5.1.16. Be of sound mind;
 - 24.5.1.17. Agree to report to the Texas Indigent Defense Commission, by October 15th of each year, the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in Harris County for adult criminal and juvenile delinquency cases for the prior year (term beginning on October 1st and ending September 30th); and
- 24.5.2. **CONTINUING DUTIES; EXCEPTIONS.** A qualified attorney that has not been removed from the list of qualified attorneys must fulfill the obligations, expectations, and agreements listed in Rule 24.5.1, except that the attorney need not annually:
- 24.5.2.1. Resubmit an application, resume, and photograph; or
 - 24.5.2.2. Retake the competency exam (see Rule 24.5.1.4).
- 24.5.3. **OBLIGATION TO REPORT CERTAIN OCCURRENCES.** A qualified attorney shall notify the presiding judge of these courts not later than 48 hours after any of the following events:
- 24.5.3.1. The attorney's arrest for any state or federal offense punishable by confinement;
 - 24.5.3.2. The attorney's placement on community supervision, diversion, or intervention;
 - 24.5.3.3. Any judicial finding that the attorney provided ineffective assistance of counsel;
 - 24.5.3.4. Disciplinary action by the State Bar of Texas against the attorney, including but not limited to any active or probated suspension; or
 - 24.5.3.5. The attorney enters a plea of guilty or no contest to, or is found guilty of, an offense punishable by confinement.
- 24.5.4. **SPECIALTY COURT PROGRAMS, PUBLIC DEFENDER, DEFENSE SPECIALISTS.**⁵ These categories provide opportunities for lawyers to diversify their practices, to control the

⁵ "Specialist," as used in these Rules, does not refer to any certification through the Texas Board of Legal Specialization.

size of their caseloads, to choose the types of cases they handle, and to have access to adequate resources to properly defend their clients.

- 24.5.4.1. SPECIAL MENTAL HEALTH CASELOAD. An assistant Harris County Public Defender with significant previous experience and specialized training in representing mentally ill and intellectually disabled persons charged with a criminal offense, shall represent a defendant:
 - 24.5.4.1.1. Identified by an algorithm composed of data approved by the judges covered by this Plan in consultation with the chief public defender, indicating a likelihood that mental illness and/or intellectual disability is/are a factor in the defendant's arrest;
 - 24.5.4.1.2. Arrested at least three times during the twelve months prior to the current arrest, with a medical and social history suggesting that court ordered step-down therapy may reduce the probability of future arrests; or,
 - 24.5.4.1.3. Following a finding by a court that the defendant is incompetent.
- 24.5.4.2. MENTAL HEALTH DEFENSE SPECIALIST. Represents a defendant identified using the mental health algorithm; a defendant found incompetent; or a defendant manifesting signs of mental illness when the Public Defender's Office reaches its daily or annual case load cap. The attorney must:
 - 24.5.4.2.1. Meet the general qualifications; and
 - 24.5.4.2.2. Meet at least one of the following three requirements:
 - 24.5.4.2.3. Has previous experience representing mentally ill offenders in Texas;
 - 24.5.4.2.4. Possesses an undergraduate or graduate degree in social work or a related field; and/or
 - 24.5.4.2.5. Attended the four hour Mental Health Defense Specialist seminar sponsored by the Harris County Public Defender's Office.
- 24.5.4.3. APPEALS AND HABEAS CORPUS. The Harris County Public Defender shall represent all persons appealing a judgment or order of these courts. If, because of a conflict, the public defender is unable to represent a defendant on appeal, a judge shall request the names of qualified appellate attorneys from which he or she shall select a name.
 - 24.5.4.3.1. This category provides counsel in cases where the Public Defender's Office has a conflict. The attorney must:
 - 24.5.4.3.1.1. Meet the general qualifications; and
 - 24.5.4.3.1.2. Have been attorney of record in at least five direct appeals and the appeal of adverse rulings in at least two writs of habeas corpus.
- 24.5.4.4. BILINGUAL ATTORNEY. Represents a defendant who does not speak or understand the English language. The attorney must:
 - 24.5.4.4.1. Meet the general qualifications; and
 - 24.5.4.4.2. Demonstrate a Level III proficiency in a foreign language administered by a nationally recognized entity or organization that teaches individuals to read, write, and speak foreign languages through on-site instruction in Harris, County, Texas.

- 24.5.4.5. FUGITIVE DEFENSE SPECIALIST. Represents a person who has been arrested in Harris County, Texas on a warrant from another state or another county in Texas. The attorney must:
 - 24.5.4.5.1. Meet the general qualifications; and
 - 24.5.4.5.2. Have previous experience representing fugitives, The State of Texas, or both, in hearings or writ applications before a judge or magistrate involving defendants held under authority of out-of-state or out-of-county warrants.
- 24.5.4.6. S.O.B.E.R COURT PROGRAM ATTORNEY. Represents a defendant in the S.O.B.E.R Court Specialty program for persons convicted of driving while intoxicated. The attorney must:
 - 24.5.4.6.1. Meet the general qualifications;
 - 24.5.4.6.2. Observe one staffing and review in each S.O.B.E.R. Court;
 - 24.5.4.6.3. Read selected articles on specialty courts, and the role of defense counsel in specialty courts;
 - 24.5.4.6.4. Work under the direction of a S.O.B.E.R. Court mentor attorney, representing program participants for 60 days;
 - 24.5.4.6.5. Agree to attend grant sponsored specialty court training; and
 - 24.5.4.6.6. Agree to an hourly fee for professional services, and which does not include training (except for representation of a client under a mentor); graduations, or other activities.
- 24.5.4.7. VETERAN'S COURT PROGRAM ATTORNEY. Represents a Veteran or current member of the United States armed forces, including a member of the Reserves, National Guard or State Guard, who has been accepted into Veterans Court Program. The attorney must:
 - 24.5.4.7.1. Meet the general qualifications;
 - 24.5.4.7.2. Read selected articles on specialty courts, and the role of defense counsel in specialty courts;
 - 24.5.4.7.3. Observe three dockets (staffing and review);
 - 24.5.4.7.4. Agree to attend grant-sponsored team training; and
 - 24.5.4.7.5. Agree to an hourly fee for professional services, and which does not include training (except for representation of a client under a mentor); graduations, or other activities.
- 24.5.4.8. S.A.F.E. COURT PROGRAM ATTORNEY. Represents a defendant who is charged with prostitution, from the age of 17 years of age through the age of 25 years of age who has been accepted into the S.A.F.E. Court program. The attorney must:
 - 24.5.4.8.1. Meet the general qualifications;
 - 24.5.4.8.2. Read selected articles on specialty courts, and the role of defense counsel in specialty courts;
 - 24.5.4.8.3. Observe three dockets (staffing and review);
 - 24.5.4.8.4. Agree to attend grant sponsored team training; and

- 24.5.4.8.5. Agree to an hourly fee for professional services, and which does not include training (except for representation of a client under a mentor); graduations, or other activities.
- 24.5.5. DEAF OR HEARING IMPAIRED. Represents a defendant who is deaf, or severely hearing impaired. The attorney must:
 - 24.5.5.1. Meet the general qualifications;
 - 24.5.5.2. Have a working knowledge of American Sign Language or other universally accepted sign language; and
 - 24.5.5.3. Possess the willingness to work through a state-licensed interpreter for the deaf and hearing impaired.
- 24.6. APPROVAL OF QUALIFIED ATTORNEYS.** Approval decisions are based on an assessment of the need of the Courts to add attorneys in various categories based on an analysis of current caseloads and projections for the future.
 - 24.6.1. The judges will review qualified applications at their January, May, and September meetings, or as the needs of the courts require.
 - 24.6.2. MAJORITY VOTE FOR APPROVAL. A majority vote (nine votes) of the judges presiding over the County Criminal Courts at Law is necessary to approve an attorney's placement on the list of Attorneys Eligible for Appointment.
 - 24.6.3. ADMINISTRATIVE MEETING. Prior to the first appointment period, each approved attorney shall attend a two hour meeting with the Courts' staff attorney to review the F.D.A.M.S. and V.i.P.S. electronic assignment and payment procedures.
 - 24.6.4. ANNUAL DUTY TO REPORT CLE COMPLIANCE. The annual reporting period begins on November 1st and ends October 31st of the following year.
 - 24.6.5. FORM OF REPORT. CLE hours shall be reported by submitting the State Bar of Texas Minimum Continuing Legal Education annual Verification Report or reports attached to an affidavit attesting to the truth and accuracy of the report(s).
 - 24.6.6. COMPLIANCE. Each attorney is responsible for timely filing the attorney's CLE report and affidavit with the Office of County Court Management, 1201 Franklin Street, 7th Floor, Houston, Texas 77002.
- 24.7. VOLUNTARY AND INVOLUNTARY REMOVAL OF APPROVED ATTORNEY FROM THE LIST OF ELIGIBLE ATTORNEYS AND APPEAL.**
 - 24.7.1. INVOLUNTARY REMOVAL. The judges, by majority vote, may remove an attorney from the approved list if they find the attorney:
 - 24.7.1.1. no longer meets the qualifications under 24.5;
 - 24.7.1.2. is not competent to properly represent indigent defendants in the County Criminal Courts at Law; or
 - 24.7.1.3. intentionally or repeatedly fails to make every reasonable effort to contact a 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.
 - 24.7.2. VOLUNTARY REMOVAL. An attorney may request to be removed from the list of approved attorneys for a limited or indefinite period by making such request in writing, addressed to the Presiding Judge of the County Criminal Courts at Law.

- 24.7.3. REINSTATEMENT. An attorney may request reinstatement in the same manner as a request for removal.
- 24.7.4. APPEAL. An approved attorney may appeal his involuntary removal from the list of Attorneys Eligible for Appointment using the following procedure:
 - 24.7.4.1. At any time within 30 days after an attorney receives notice of the attorney's removal from the list of Attorneys Eligible for Appointment, the attorney may give written notice of appeal to the Presiding Judge of the Harris County Criminal Courts at Law.
 - 24.7.4.1.1. For purposes of Rule 24.7.4.1, there exists a rebuttable presumption that the attorney received notice of his removal from the list on the earlier of: (1) the date the Office of Court Management emailed notice to the email address on file for the attorney; or (2) one day after the Office of Court management mailed notice to the mailing address on file for the attorney.
 - 24.7.4.2. Upon receipt of a notice of appeal, the Presiding Judge shall request that a member of the Office of County Court Management verify the accuracy of the vote and subsequent notice to the attorney.
 - 24.7.4.3. If review indicates an error, the Presiding Judge shall direct a member of the Office of County Court Management to make the necessary corrections.
 - 24.7.4.4. Within 14 days receipt of the attorney's notice of appeal, a member of the Office of County Court Management shall notify the applicant of his status as to the list of Attorneys eligible for Appointment.

24.8. REPLACEMENT OF APPROVED COUNSEL FROM A CASE OR CASES.

- 24.8.1. ATTORNEY REQUEST.
 - 24.8.1.1. A lawyer may request permission to withdraw by filing a written motion with the court.
 - 24.8.1.2. The judge presiding over the case may grant the motion for good cause only after finding that the client will not be prejudiced by the substitution.
 - 24.8.1.3. After granting the motion, the judge presiding over the case shall immediately appoint another qualified attorney as provided by these rules.
- 24.8.2. FOR CAUSE. The judge presiding over the case may replace counsel after entering written findings in the record showing good cause and that no prejudice to the defendant will result from the removal, including without limitation:
 - 24.8.2.1. current information about the defendant and charges indicating that counsel of different qualifications is appropriate for the defendant under these rules;
 - 24.8.2.2. a violation of the attorney's professional responsibilities; or
 - 24.8.2.3. a principled reason.⁶
 - 24.8.2.4. A judge, upon learning an indigent defendant was previously represented by a mental health defense specialist, shall appoint that specialist to the new case. The court coordinator shall immediately notify the mental health defense specialist of the appointment.

⁶ *Stotts v. Wiser*, 849 S.W.2d 366 (Tex. Crim. App. 1995).

- 24.8.3. DEFENDANT REQUEST. The appointing judge may substitute counsel if:
- 24.8.3.1. at the conclusion of a trial, the indigent defendant desires to prosecute a direct appeal and requests that the court appoint different counsel; or
 - 24.8.3.2. the defendant shows good cause for replacing appointed counsel, including counsel's persistent or prolonged failure to communicate with the defendant.
- 24.8.4. REPLACEMENT PROCEDURE.
- 24.8.4.1. If, after assignment, an attorney is unable to serve, the presiding judge of the court shall attempt to fill the vacancy with another attorney assigned to the court, or to another court.
 - 24.8.4.2. If another attorney from the list of attorneys assigned to these courts is unavailable, the presiding judge of the court shall fill the vacancy using FDAMS.

24.9. APPOINTMENT OF COUNSEL. The appointing authority is the judge of the court in which the defendant's case is filed.

- 24.9.1. INCARCERATED PERSON. Following the appearance before a judicial officer, a defendant shall be scheduled to appear the next business day before the judge of the court in which the case is pending. Prior to conducting an arraignment proceeding, the judge shall make the inquiries, provide the admonishments, and related information regarding the right to counsel, and the right to self-representation as provided by state and federal law, and appoint counsel if the defendant is indigent for the purposes of receiving counsel.
- 24.9.2. PERSON RELEASED ON BOND. A defendant released on bail before the defendant's appearance described above, shall appear the 7th day following release, or the next business day following the 7th day. Prior to conducting an arraignment proceeding, the judge shall make the inquiries, provide the admonishments, and related information regarding the right to counsel, and the right to self-representation as provided by state and federal law, and appoint counsel if the defendant is indigent for the purposes of receiving counsel.
- 24.9.3. PERSON ARRESTED IN ANOTHER COUNTY ON A HARRIS COUNTY WARRANT. Within 24 hours of receiving notice of a defendant's arrest in another county, the judge of the court that issued the arrest process shall appoint counsel for the defendant.
- 24.9.4. PERSON ARRESTED ON OUT-OF-COUNTY WARRANT IN HARRIS COUNTY. A person arrested on an out-of-county warrant must be appointed counsel on the 11th day following the date the defendant was booked into the Harris County Jail if the person has not been transferred or released to the custody of the county issuing the warrant.
- 24.9.5. OBTAINING REQUEST FOR APPOINTED COUNSEL FORM. The form used to request appointment of counsel and the financial affidavit in support of the request are available to defendants and interested third parties by requesting same from the court coordinator in any county criminal court at law.
- 24.9.6. FILING THE FORM. The completed forms shall be filed with the deputy district clerk in the court where the case is pending.

24.10. DUTY OF APPOINTED COUNSEL.

- 24.10.1. INITIAL CONTACT. An attorney appointed to represent an indigent defendant shall make every reasonable effort to contact the defendant not later than the end of the first working day and to interview the defendant as soon as practicable.
- 24.10.2. DURATION OF APPOINTMENT.

- 24.10.2.1. Appointed counsel shall zealously represent a defendant until charges are dismissed, the defendant is acquitted, or the attorney is permitted or ordered by the court to withdraw as counsel after a finding of good cause entered on the record.⁷
- 24.10.2.2. On each successive arrest of a defendant previously represented by a mental health defense specialist, or assistant public defender, the judge of the court in which the case is pending shall make every effort to appoint the assistant public defender, or mental health defense specialist who previously represented the defendant.
- 24.10.3. CONDUCT OF COUNSEL. Appointed counsel shall perform the attorney's duty owed to the defendant in accordance with the adopted procedures of this Plan, the requirements of law, and the Texas Disciplinary Rules of Professional Conduct.
- 24.10.4. TIMELY APPEARANCE IN COURT.
 - 24.10.4.1. An attorney assigned to a court shall appear at 8:30 a.m. unless otherwise instructed by the judge presiding.
 - 24.10.4.2. An attorney assigned to a court is subject to temporary reassignment to another court.
 - 24.10.4.3. An attorney shall remain in an assigned court until expressly released by the judge presiding.
 - 24.10.4.4. An attorney failing to appear as provided by this subsection is subject to immediate replacement by the judge presiding.
- 24.10.5. ABSENCE OR CONFLICT. Appointed counsel shall inform the judge presiding when any of the following occurs:
 - 24.10.5.1. counsel is unable to appear to discharge his or her duties according to the published schedule; or
 - 24.10.5.2. counsel cannot represent an indigent defendant because of a legal or ethical conflict.
- 24.10.6. FIRST AND SECOND CHAIR COUNSEL. An attorney appointed to represent a defendant shall not formally or informally associate second-chair counsel without the written approval of the judge presiding. An attorney who provides legal services to an indigent defendant to whom the attorney has not been appointed does so *pro bono*.
 - 24.10.6.1. FIRST-CHAIR COUNSEL
 - 24.10.6.1.1. All motions filed in the case shall be filed in the name of first-chair counsel.
 - 24.10.6.1.2. First-chair counsel shall appear on all matters before the Court and speak for the defendant.
 - 24.10.6.1.3. First-chair counsel may assign tasks to second-chair counsel on behalf of the defendant.
 - 24.10.6.2. SECOND-CHAIR COUNSEL
 - 24.10.6.2.1. Under the direction and in the presence of lead counsel, second-chair counsel may prepare, present, or argue motions, examine witnesses, and participate in a hearing or trial.

⁷ See TEX. CODE CRIM. P. ANN. art. 26.04(j).

- 24.10.6.2.2. Second-chair counsel shall complete and file an attorney of record form with the district clerk. The form shall state on its face that the attorney is second-chair counsel.
 - 24.10.6.2.3. Second-chair counsel is not entitled to compensation from Harris County for work performed while acting in this capacity.
 - 24.10.6.2.4. Second-chair counsel shall be present for the entire trial.
 - 24.10.6.2.5. Only one (1) second-chair counsel is permitted on a case.
 - 24.10.6.3. **SUBSTITUTION BY APPOINTED COUNSEL PROHIBITED.** Only with approval of the judge presiding, may an attorney send another attorney to appear on his behalf. If agreed to by the judge in the court where the case is pending, the attorney making the appearance must be eligible for appointment to represent an indigent defendant in these courts. The attorney shall not be entitled to compensation for his appearance.
- 24.11. THE FAIR, NEUTRAL AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS.** Each assignment shall be randomly and impartially distributed among the list of attorneys eligible for appointment based upon the needs of the courts, an individual attorney's qualifications, and willingness and availability to work during an assignment period.
- 24.11.1. **ATTORNEY CATEGORIES.** An individual attorney may be qualified in more than one category.
 - 24.11.1.1. Speaks only English.
 - 24.11.1.2. Speaks Spanish, or other foreign language.
 - 24.11.1.3. Mental health defense specialist.
 - 24.11.1.4. Appeal and Habeas Corpus.
 - 24.11.1.5. Veteran's Court.
 - 24.11.1.6. S.O.B.E.R Court.
 - 24.11.1.7. American Sign Language.
 - 24.11.1.8. S.A.F.E. Court.
 - 24.11.1.9. Fugitive defense specialist.
 - 24.11.2. **ASSIGNMENT TYPE OR TERM.** An attorney may choose to be available for any single term, or may combine a term and daily assignments during any quarterly appointment period.
 - 24.11.2.1. **DAILY ASSIGNMENT.** One (1) calendar day. Means one day on which a court has a docket.
 - 24.11.2.2. **FOUR (4) WEEK DAY-TERM ASSIGNMENT.** Means four consecutive weeks.
 - 24.11.2.3. **THIRTEEN (13) WEEK TERM ASSIGNMENT.** Means thirteen consecutive weeks.
 - 24.11.2.4. **TWENTY-SIX (26) WEEK TERM ASSIGNMENT.** Means twenty-six consecutive weeks.
 - 24.11.2.5. **FIFTY-TWO (52) WEEK TERM ASSIGNMENT.** Means fifty-two consecutive weeks.

- 24.11.3. ANNUAL CALENDAR. In December of each year, the calendar for the succeeding year will be published to attorneys eligible to receive appointments via email, and by posting on the website of the Office of County Court Management.
- 24.11.4. FAIR DEFENSE ACT MANAGEMENT SYSTEM (FDAMS). This software application was created by the Administrative Office of the District Courts in Harris County. It matches eligible attorneys with the needs of an individual court and creates a list of approved attorneys with the requested qualifications, from which a judge must select one or more, but may not reject the list and repeat the process.
 - 24.11.4.1. DAILY ASSIGNMENT. When submitting a request for an attorney, the court shall designate the date of the assignment and any special qualifications *e.g.*, “bilingual” and “a mental health defense specialist” which it may require.
 - 24.11.4.1.1. PROCEDURE. The computer shall provide to the court ten randomly selected names per request. A court may submit two daily assignment requests at the same time, provided the requests contain different qualifications. A court may not submit another request until at least one attorney has been assigned from one or two pending lists and the remaining names from that list have been returned to the attorney pool.
 - 24.11.4.2. TERM ASSIGNMENT. The computer program shall equally divide the pool of attorneys available for limited term assignments among the requesting courts. The program shall provide the randomly selected names to the requesting court beginning at 9:00 a.m. on Monday of the selection week.
 - 24.11.4.2.1. The court shall make at least one term assignment from the provided names promptly, and return the remainder to the pool available for use by other courts.
 - 24.11.4.2.2. In the event the selected attorney becomes unavailable, or an additional attorney is required, the court may submit an additional request. The computer shall provide the court with no more than six (6) randomly selected names from the remaining pool of available approved attorneys.
 - 24.11.5. DETERMINING ANNUAL CASELOAD LIMITS. There are many factors that play a role in determining caseload limits in any given jurisdiction. The most striking example is the computer, and its effect on case processing as well as attorney time and work product.
 - 24.11.5.1. This Plan uses the power of computers to: (1) match attorneys’ and courts’ work needs and schedules as well as ensuring that appointments are random and non-discriminatory; (2) expedite the payment of appointed counsel; and (3) schedule multiple cases on the same day, thus allowing the attorney to handle multiple cases each day rather than just one or two cases.
 - 24.11.5.2. Likewise, computing power enables lawyers to: (1) do on-line research; (2) access organizational brief banks; (3) produce template motions; (4) obtain continuing legal education without losing traditional workdays; and (5) track their time easily.
 - 24.11.6. ANNUAL CASELOAD LIMITS. Caseload limits are:
 - 24.11.6.1. Class B or A misdemeanors pending in Harris County, Texas: Up to 600 cases, of which:
 - 24.11.6.1.1. Up to 350 can involve mentally ill or incompetent defendants; and
 - 24.11.6.1.2. Up to 125 can involve defendants in the following specialty areas:

- 24.11.6.1.2.1. Appeals;
 - 24.11.6.1.2.2. Habeas corpus applications;
 - 24.11.6.1.2.3. Defendants in the S.O.B.E.R. Court program;
 - 24.11.6.1.2.4. Defendants in the Veteran's Court program; or
 - 24.11.6.1.2.5. Defendants in the S.A.F.E. Court program.
- 24.11.7. DAILY CASELOAD LIMITS. An attorney shall not receive more than five new clients per day.

24.12. FEE AND EXPENSE PAYMENT PROCESS.

- 24.12.1. FEE SCHEDULE. Appointed counsel shall be compensated for all time reasonably necessary to adequately represent the defendant according to the following fee schedule, and as set forth in his or her contract for indigent defense services with Harris County, Texas.⁸
- 24.12.2. DAILY FLAT FEE RATE. To receive the daily rate, an attorney shall:
- 24.12.2.1. appear for docket call at the time and place designated by the judge of the assigned court;
 - 24.12.2.2. accept appointments in that court or any other county court to which the attorney may be assigned on that day;
 - 24.12.2.3. remain available to the judges of the County Criminal Courts at Law until the courts' morning docket call is concluded, or the attorney is released by the judge of the court to which the lawyer is assigned; and
 - 24.12.2.4. provide professional services, including the resetting of cases, first to appointed cases in the County Criminal Courts at Law.
- 24.12.3. HOURLY RATE.
- 24.12.3.1. Out-of-Court — \$25/hr. to \$50/hr.
 - 24.12.3.2. Out of Court (Mental Health Caseload) — \$50/hr.
 - 24.12.3.3. Motions, Hearings — \$50/hr. to \$90/hr.
 - 24.12.3.4. Trial (includes competency or sanity) — \$60/hr. to \$90/hr.
 - 24.12.3.5. Mental Health Defense Specialist — \$90/hr.
 - 24.12.3.6. Specialty Court — \$125/hr.
 - 24.12.3.7. Hourly rates shall be paid for performing the appropriate statutory services defined in TEX. CODE CRIM. PROC. ANN. art. 26.05(a), based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel.
- 24.12.4. FLAT FEE SCHEDULE.
- 24.12.4.1. Term & Daily Assignments — \$250 per docket
 - 24.12.4.2. Term and Daily Assignment Foreign Language Certified — \$300 per docket

⁸ See TEX. ADMIN C. TITLE 1, PART 8, SUBCHAPTER B §§174.10 et seq.

- 24.12.4.3. Individual non-issue claims: \$50 per case per day, and may not exceed \$100.00 per day total, for all County Criminal Courts at Law combined.
- 24.12.4.4. Non-Issue or Plea (concurrent with weekly or daily assignment) — No fee
- 24.12.4.5. Appeal & Extraordinary Writs — \$750.00
- 24.12.4.6. Petition For Discretionary Review — \$350.00
- 24.12.4.7. Oral Argument Before Court of Criminal Appeals — \$250.00
- 24.12.5. EXPENSES.
 - 24.12.5.1. Reasonable and Necessary Expenses
 - 24.12.5.1.1. The County will reimburse appointed attorneys for reasonable and necessary expenses including investigation and mental health and expert witnesses incurred on behalf of an indigent client with and without prior approval as provided by TEX. CODE CRIM. PROC. ANN. arts. 26.05(d) and 26.052(f), (g), and (h).
 - 24.12.5.2. Out-of-county travel expenses will be reimbursed with prior approval, using county rates and policies.
 - 24.12.5.3. Counsel shall submit the original invoice or receipt, along with any request for reimbursement.
- 24.12.6. INVESTIGATORS — \$40 per hour standard rate.
- 24.12.7. CONCURRENT PAYMENTS.
 - 24.12.7.1. An attorney engaged in a weekly or daily assignment shall not be compensated for a non-issue or plea appearance that occurs on the same day the attorney is assigned to a court pursuant to a quarterly assignment.
 - 24.12.7.2. An attorney is entitled to payment for out-of-court-hours, a motion hearing at which testimony is taken, trial, or professional services performed in a Specialty Court Program on the same day the attorney is paid for a daily or weekly term assignment.
- 24.12.8. ADDITIONAL COMPENSATION.
 - 24.12.8.1. An attorney appointed to represent an indigent defendant shall not accept additional compensation for professional services performed on behalf of the defendant, as a result of the appointment, in any form from any source other than Harris County, Texas.
- 24.12.9. JUDICIAL DETERMINATION OF ATTORNEY COMPENSATION.
 - 24.12.9.1. The following procedures apply to the review and approval of attorney's fees:
 - 24.12.9.1.1. Appointed counsel shall request payment on a form approved by the judges of the County Criminal Courts at Law and the County Auditor. Counsel shall submit the request for payment to the presiding judge in the court. The payment request shall list all services performed by the attorney on behalf of the defendant.
 - 24.12.9.1.2. The judge shall either approve the amount requested or enter written findings stating the amount the judge approves and each reason for approving an amount differing from the requested amount.

- 24.12.9.1.3. An attorney whose request for payment is disapproved or not acted upon within 60 days may appeal the disapproval by filing a motion with the Presiding Judge of the Second Administrative Judicial Region.⁹
- 24.12.9.1.4. Upon receipt, the auditor shall forward the order to the Office of County Court Management for review by the Presiding Judge or Court Manager.
- 24.12.10. ACCOUNTING OF ATTORNEY HOURS. To be entitled to payment, appointed counsel shall provide the following information:
 - 24.12.10.1. HOURLY RATE.
 - 24.12.10.1.1. STANDARD. Time must be itemized in tenths of one-hour (60 minute) increments on a form approved under the Plan.
 - 24.12.10.1.2. ITEMIZATION. Counsel must prepare and maintain time records for each appointed client showing the date of service, nature of service rendered, and hours worked.
 - 24.12.10.2. FLAT FEE RATE. The date and type of service performed.
- 24.12.11. SUBMISSION OF FEE VOUCHER.
 - 24.12.11.1. An attorney, expert, or private investigator shall submit a fee claim on a form approved by the Judges of the County Criminal Courts at Law, and the Harris County Auditor.
 - 24.12.11.2. An attorney assigned to a court for a term shall submit one fee voucher per week listing each case number to which he was appointed on each day of the week at the conclusion of the docket on the business day of that week.
 - 24.12.11.3. An attorney assigned to work more than one day but less than five (5) days shall submit a fee voucher listing each case number to which he was appointed on each day of the week that he was assigned at the conclusion of the docket on the last business day of that week.
 - 24.12.11.4. Fee vouchers for individual cases shall be submitted upon disposition of the case, e.g. dismissal, plea, or trial.
 - 24.12.11.5. To receive compensation, an attorney must submit a fee voucher to the appointing judge not later than the 30th day after the date the case is disposed.
 - 24.12.11.6. The instructions on the Weekly/Daily Assignments, and Individual Non-Term Appointment Fee Claims are incorporated herein as a part of this Alternative Plan.
 - 24.12.11.7. An attorney is responsible for correctly completing and timely filing a fee voucher meeting the requirements of law, the Harris County Auditor, and this Plan.
 - 24.12.11.8. The presiding judge of a court may withdraw an order directing the Harris County Auditor to pay a previously approved claim for attorney fees, reimbursement, expert witness fees, or other litigation-related expenses, if the claimant fails to correct a claim returned by the county auditor.
- 24.12.12. PAYMENT BY COUNTY AUDITOR. The Harris County Auditor shall only pay a claim submitted by an attorney whose name appears on the list of approved attorneys assigned to a county criminal court at law during a term or date assigned by FDAMS. The Office of County Court Management shall provide the County Auditor's Office with a current

⁹ See TEX. CODE CRIM. P. ANN. art. 26.05(c).

list of attorneys certified to accept appointments. The Auditor shall send a claim submitted by an attorney who is not on the list of certified attorneys to the Court Manager.

- 24.12.12.1. REASONABLE AND NECESSARY EXPENSES. The County will reimburse appointed attorneys for reasonable and necessary expenses, including investigation and mental health and expert witnesses, incurred on behalf of an indigent client as provided under TEX. CODE CRIM. PROC. ANN. arts. 26.05(d) and 26.052(f), (g), and (h).
- 24.12.12.2. ORIGINAL INVOICE OR RECEIPT. Counsel shall submit the original invoice or receipt along with any request for reimbursement.
- 24.12.12.3. SYSTEM PERSON NUMBER (SPN). To ensure accuracy in the tracking and reporting of fees paid to attorneys and others under this Plan, the Auditor shall amend the current attorney fee voucher to include a space for the Justice Information Management System Person Number of the individual seeking payment of county funds.

24.13. CONTRACT DEFENDER PROGRAM.

- 24.13.1. In all term assignments the appointing authority shall follow the Texas Indigent Defense Commission Contract Defender Program Rules, as published in The Texas Administrative Code, Title I, Part 8, Chapter 174 sub chapter B, Part II, as set out below:

II. APPLICATION OF STANDARDS AND CONTRACTING PROCEDURES

§174.11. Application of Subchapter. This Subchapter applies to all contract defender programs. This Subchapter does not apply to public defender programs established and governed by Chapter 26, Code of Criminal Procedure.

§174.12. Application Process. The appointing authority shall solicit and select contractors in accordance with the procedure governing alternative appointment programs contained in Article 26.04, Code of Criminal Procedure.

- (a) Notification. The notification of the opportunity to apply (NOA) to be a contractor shall be distributed in a manner that reasonably covers all practicing members of the bar within the county or other region designated by the appointing authority. The notification shall inform attorneys of all requirements for submitting applications.
- (b) Opportunity to Respond. All potential contractors shall have the same opportunity to respond to the NOA and be considered for the award of a contract.
- (c) Application. All applications must be submitted in writing and shall be maintained by the appointing authority or contracting authority in accordance with the Texas State Library and Archives Commission Retention Schedule for Local Records- Local Schedule GR.

§174.13. Application Review Process. Following the review of all applications the appointing authority shall by a majority vote select contractor(s), specify the types of cases each contractor is qualified to handle, and authorize the contracting authority to enter into a contract. The attorneys associated with the selected contractor(s) must meet the attorney qualification requirements contained in the

indigent defense procedures adopted pursuant to Article 26.04, Code of Criminal Procedure. If the contract does not exclude capital cases in which the death penalty is sought, the attorneys associated with the selected contractor(s) must also meet the attorney qualifications set by the regional selection committee and be approved by the regional selection committee to represent clients in capital cases. The appointing authority shall consider at least the following factors when evaluating applications:

- (a) Experience and qualifications of the applicant;
- (b) Applicant's past performance in representing defendants in criminal cases;
- (c) Applicant's disciplinary history with the state bar;
- (d) Applicant's ability to comply with the terms of the contract; and
- (e) Cost of the services under the contract.

§174.14. Awarding the Contract. In accordance with Article 26.04(h), Code of Criminal Procedure, the contracting authority may approve the recommended contractor(s) and enter into a contract for services. The contracting authority shall enter into a contract only if it complies with these standards and all applicable law governing professional services contracts entered into by counties. A contract shall not be awarded solely on the basis of cost.