

**LOCAL RULES OF ORANGE COUNTY**  
**FOR THE TIMELY AND FAIR APPOINTMENT OF COUNSEL**  
**FOR INDIGENT DEFENDANTS BY ORANGE COUNTY COURTS**  
**EXERCISING FELONY AND MISDEMEANOR JURISDICTION**

The undersigned Judges of District Courts, the County Court at Law, and the County Court, all of Orange County, Texas, jointly adopt the following local rules pursuant to Article 26.04 of the Code of Criminal Procedure. These rules provide for timely and fair appointment of counsel for indigent defendants in Orange County arrested for or charged with a felony or a misdemeanor punishable by confinement. Any references to "the Judges" shall mean the Judges of the above courts who shall by majority action promulgate, amend, or enforce such rules and procedures.

**I. Determination of Indigence**

**A. Factors in determining indigence:**

1. the defendant's income;
2. the source of the defendant's income;
3. assets and property owned by the defendant;
4. the defendant's outstanding obligations, expenses and debts;
5. the number and ages of the defendant's children;
6. income of the defendant's spouse if that income is available to the

defendant; and

7. whether the defendant has posted or is capable of posting bail, to the

extent that it reflects the defendant's financial circumstances as measured by the above listed factors.

**B. Procedure for determining indigence:**

1. Each arrested person will be taken before a magistrate for an Article 15.17 hearing without unnecessary delay and no later than 48 hours after arrest.

2. at the time of the Article 15.17 hearing:

(a) A "record" shall be made showing:

1. That the magistrate informed the person of the right to request appointed counsel if the person cannot afford counsel;

2. That the magistrate asked the person whether he or she wanted to request counsel;

3. Whether the person requested counsel;

The "record" may consist of a written document or an electronic recording .

(b) The magistrate shall inform the person of the procedures for requesting appointment of counsel.

(c)The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of

counsel is provided to the person at that time.

## **11. Public Appointment List**

### **A. Qualifications of Appointed Attorneys:**

1 Trial appointments (through appeal)

(a) a minimum of two (2) years of criminal experience or three (3) criminal jury trials, provided however the Judges may waive this by majority vote if the attorney is associated with an attorney who meets this qualification and who is available for consultation and assistance to the appointed attorney;

(b) must never have been found to have provided ineffective representation by an appellate court or a Bar disciplinary committee OR if so, receive a waiver from the Judges by majority vote.

(c) maintain an office in Orange County, Texas with a telephone which is normally answered by a receptionist or answering service from 9:00 a.m. to noon, and from 1:30 p.m. to 5:00 p.m., Monday through Friday (except for County holidays as approved by Orange

County Commissioners Court.) The receptionist or answering service must have the capability to promptly locate the attorney to notify the attorney of appointment and hearing settings.

(d) maintain a fax number to which faxes can normally be received 24 hours a day, Monday through Friday. The fax number must be included on the attorney's application to be placed on the Public Appointment List and shall be the official numbers which will be utilized to notify counsel of appointment and of hearing settings. Any changes in the fax number must be given to the District Court Administrator prior to the change.

(e) must receive approval from the Judges by majority vote.

## 2. Death Penalty Capital Cases

Only attorney approved to provide representation in Capital cases will be appointed in cases where the State seeks the death penalty.

### **B. Second Chair:**

Attorneys who do not meet the qualifications for appointment may volunteer to serve as Second Chair counsel. Second Chair attorneys may volunteer to assist attorneys on the list in order to gain experience and meet the appointment qualifications. Second Chair attorneys may perform any task as long as it is done under the supervision of an attorney on the list. The Courts will make no payment to any Second Chair attorney.

### **C. Establishment and Maintenance of List:**

Appointments will be made to the Public Appointment List by majority vote of the Judges.

### **D. Removal from list:**

Appointed attorneys who fail to promptly and professionally follow all of the rules and procedures adopted by the Judges may be removed from the qualified list by majority vote of the Judges. Removed attorneys may reapply for approval after being removed. Before removal, the attorney must receive notice and have the opportunity to be heard by the Judges. Such hearing will be closed and confidential.

### **III. Appointment of Counsel**

**A.** The following persons are designated as the Judges designees for the purpose of appointing counsel for indigent defendants in Orange County:

- a. Court Coordinator, 128th District Court
- b. Court Coordinator, 163rd District Court
- c. Court Coordinator, 260th District Court
- d. Court Coordinator, Orange County Court at Law
- e. Administrative Secretary, Office of Orange County Judge
- f. Office of the Court Administrator, Orange County
- g. Office of Pretrial Release, Orange County

**B.** The magistrate must transmit the defendant's request for counsel to Office of the Court Administrator, Orange County, within 24 hours, or by the first working day after the request is signed, whichever is longer. The Office of the Court Administrator will handle the request as follows:

1. If the defendant is charged by indictment or at least one docketed

misdemeanor, a Judge or the Office of the Court Administrator, will make a determination of indigence and will appoint counsel for persons determined to be indigent as soon as possible, but always within the third working day after the request for counsel is received.

2. If the person is released from custody prior to appointment of counsel, appointment is not required until the defendant's first court appearance.

### C. Partial Indigence:

If the Court determines that the defendant is capable of paying some but not all of the cost for representation, the Court shall order the defendant to pay a designated amount weekly, bi-weekly, or monthly into the registry of the court. At

the conclusion of the case, of the Court assesses court appointed attorney fees against the defendant, the money in the registry of the court will be paid to the court appointed attorney and deducted from the fee award ultimately paid to the appointed counsel. Any excess in the registry of the court may be applied to fines, fees, costs and restitution, or may be returned to the defendant, at the discretion of the Court. A defendant under a partial payment order may be held in contempt for failure to make payment as ordered if the Court determines that the defendant was financially capable of making such payments.

**D.** Appointments will be made from the Public Appointment List using a system of rotation in the order in which the attorney's name appears on the list, unless the Court makes a finding of good cause on the record for appointing an attorney out of order.

#### **IV. Duties of Appointed Counsel**

**A.** The appointed attorney must make every reasonable effort to contact the defendant

by the end of the first working day after the date on which the attorney is appointed, and must interview the defendant as soon as practicable after the appointment.

**B.** The appointed attorney must comply with all laws, rules, procedures and ethical provisions for providing effective assistance of counsel to the defendant.

**C.** The appointed attorney shall timely inform the defendant of all matters relating to the preparation, trial and disposition of the case, plea offers, appellate and writ rights, deadlines and such other matters necessary to provide effective assistance of counsel.

**D.** The appointed attorney shall represent the defendant until the charges are dismissed, the defendant is acquitted, appeals are exhausted or the attorney is relieved of duties by the Court or replaced by other counsel after a finding of good cause is entered on the record.

#### **V. Compensation of Appointed Counsel**

**A.** All fee payment requests must be itemized by appointed counsel on forms approved by the Judges. All requests shall be submitted to the Judge presiding over the case for review and approval, and the District Court Administrator will submit the approved request to the County Auditor for payment.

**B.** Appointed counsel in felony cases shall be compensated on a fee basis in accordance with the uniform schedule of fees as follows:

1. Disposition by plea or dismissal

a. Single case \$450.00

b. \$55.00 per additional case

2. MTRP/MTIG

a. Plea of true, dismissal or amendment of terms \$275.00

b. \$55.00 per additional case

3. Contested hearing, jury trial, bench trial:

a. \$250.00 per half day court time

b. \$55.00 per hour for preparation time

4. Appeal

a. \$850.00 for appeal of one case

b. \$1200 for appeal of multiple cases on the same defendant

5. Any claim in excess of 15 hours billed must be authorized in advance by the court.



**C.** Appointed counsel in misdemeanor cases shall be compensated on a fee basis in accordance with the uniform schedule of fees as followed:

1. Disposition by plea or dismissal

a. Single case \$150.00

b. \$50.00 for one or more additional cases

2. MTRP/MTIG

a. Plea of true, dismissal or amendment of terms \$150.00

b. \$50.00 for one or more additional cases.

3. Contested hearing

a. \$50.00 per hour, not to exceed \$175.00 per half day

b. \$50.00 per hour for preparation time, not to exceed six (6) hours

4. Jury or bench trials

a. \$175.00 per half day

b. \$50.00 per hour for trial preparation not to exceed six (6) hours

5. Appeal

a. \$850.00 for appeal of one case

b. \$1200.00 for appeal of multiple cases on same defendant

**D.** Sufficient documentation must be provided with fee payment requests based in whole or in part on hourly compensation or expense reimbursement. Fee claims **MUST** be

submitted by counsel at time of sentencing/disposition, or the standard rate will be applied by the court. If counsel requests leave to submit a late fee claim, counsel will have five (5) working days after the sentencing/disposition, or the standard rate will be applied by the Court.

**Approved by the Judges, on December 12, 2001.**

**These rules shall be published as required by law.**

---

**Judge Pat Clark**  
**128th District Court**

---

**Judge Buddie Hahn**  
**260th District Court**

---

**Judge Dennis Powell**  
**163rd District Court**

---

**Judge Michael Shuff**  
**County Court at Law**

---

**Judge Carl Thibodeaux**  
**County Judge**