

**Collin County Courts Plan
Preamble**

**THE COLLIN COUNTY
INDIGENT DEFENSE PLAN**

(As Amended Effective December 1, 2009)

In accordance with the requirements of the Texas Fair Defense Act, Acts 2001, 77th Leg., the County Court at Law Judges of Collin County, Texas hereby adopt the following Local Rules for the appointment of attorneys in misdemeanor criminal cases.

SECTION ONE

THE COMMITTEE ON MISDEMEANOR INDIGENT DEFENSE

1.01 The Collin County Committee on Misdemeanor Indigent Defense

- a. The Collin County Committee on Misdemeanor Indigent Defense, hereafter the "Committee," is established. The Committee consists of the County Court at Law Judges of Collin County, Texas who hear criminal cases.
- b. The Committee shall establish local rules and procedures necessary for Collin County Courts at Law to comply with the Texas Fair Defense Act in misdemeanor criminal cases.
- c. The Committee hereby designates all Justices of the Peace and Municipal Judges and Associate Municipal Judges within Collin County, Texas to appoint counsel at arraignment for indigent defendants with misdemeanor charges.

Prompt Magistration

SECTION TWO

WHEN THE RIGHT TO COUNSEL ATTACHES

2.01 Misdemeanor Arrest Pursuant to a Warrant

- a. If a person is arrested on a misdemeanor charge pursuant to a warrant, the person who has custody of the accused shall present the accused before a magistrate within 48 hours of the time of the accused person's arrest. The magistrate shall deliver the

admonishments contained in article 15.17 Code of Criminal Procedure. The magistrate shall also set bail, unless bail was previously set by the magistrate issuing the warrant. The magistrate shall also inform the accused of her right to counsel and make a finding of probable cause based upon the warrant. If necessary, an interpreter shall assist the accused during the probable cause hearing. If the accused requests an attorney, signs an affidavit of indigency sworn to before the magistrate, and indigency is determined, the magistrate shall appoint counsel for the accused using the master list which is maintained on the County's AS400 System.

2.02 Misdemeanor Arrest Without a Warrant

a. If a person is arrested on a misdemeanor charge without a warrant, the person who has custody of the accused shall present the accused before a magistrate within 48 hours of the time of the accused person's arrest. If the accused person is not brought before a magistrate within 48 hours after the person's arrest, the accused person shall be released on bond, in an amount not to exceed \$5,000.00. If the person is unable to deposit money in the amount of the bond or unable to obtain a surety for the bond, the accused person must be released on personal bond.

b. If the accused person is brought before a magistrate within 48 hours, the magistrate shall deliver the admonishments contained in Article 15.17 Code of Criminal Procedure and sign the Order Finding Probable Cause included in the "Forms" section of this plan. If necessary, an interpreter shall assist the accused during the probable cause hearing. The magistrate shall make a finding of either "no probable cause" or a "finding of probable cause." A finding of probable cause must be based upon a sworn probable cause affidavit setting forth sufficient facts or by incorporating a copy of the offense report. If the magistrate makes a finding of no probable cause, the accused person shall be released from custody. If a magistrate makes a finding of probable cause, the magistrate shall inform the accused person of their right to counsel. If the accused requests an attorney, signs an affidavit of indigency sworn to before the magistrate, and indigency is determined the magistrate shall appoint counsel for the accused, using the master list which is maintained on the County's AS400 System, and notify the accused person's attorney of the appointment by fax or by email. The magistrate, upon a finding of probable cause, shall set reasonable bail.

c. Prompt Appearance Before Magistrate. The law enforcement officer making the arrest and any officer who later has custody of any accused person shall ensure that the person is taken before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested, for proceedings under Article 14.06, Section (a) of the Code of Criminal Procedure.

d. Transmittal of Request for Appointed Counsel. If an arrested person requests appointment of counsel and has completed the necessary forms, the magistrate shall transmit or cause to be transmitted to the appointing judge or person (s) designated by the judges to appoint counsel the forms requesting appointment of counsel. The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but

not later than 48 hours after the person arrested request appointment of counsel, as stated in Article 15.17, Section (a) of the Code of Criminal Procedure.

Indigence Determination Standards
SECTION THREE

3.01 Definitions. As used in this rule:

a. **“Total income”** shall include all income of the defendant and spousal income available to the defendant. In the case of a juvenile defendant, the child’s parents or other person determined responsible for the support of the child income shall be considered. Total income shall include wages, salaries, tips, taxable interest, dividends, capital gains, business income, IRA distributions, pensions and annuities, rental real estate, royalties, partnerships, S corporations, trusts, etc., farm income, unemployment compensation, Social Security benefits, and other income. Unless there has been a substantial change in income, total income will be determined from line 22 of the most recent U.S. Individual Income Tax Return – 1040 or line 4 of form 1040EZ.

b. **“Household size”** shall be determined by the number of dependants claimed on the most recent U.S. Individual Income Tax Return 1040 or 1040EZ. If a U.S. Individual Income Tax Return has not been filed, household size shall mean all individuals who are dependent on the defendant for financial support.

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

3.02 Financial Considerations

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

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

125 % of the Federal Poverty Level (2009)

	Income
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<u>Size of Family Unit</u>	<u>Annually</u>	<u>Monthly</u>
1	\$13,538	\$1,128
2	\$18,213	\$1,518
3	\$22,888	\$1,907
4	\$27,563	\$2,297
5	\$32,238	\$2,686
6	\$36,913	\$3,076
7	\$41,588	\$3,466
8	\$46,263	\$3,855

Each additional household member; add \$7,480 (annual) or \$623 (monthly)

SOURCE: Federal Register, Vol. 74, No. 14, January 23, 2009, pp. 4199-4202

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

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

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

3.03 Other Considerations

A defendant is considered indigent if the defendant:

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

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

3.04 Factors Not to be Considered

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

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

c. A defendant shall not be denied the appointed of counsel merely because the person is employed.

3.05 Procedures for Determining Indigence.

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

b. The form requesting appointment of counsel and containing the information concerning the arrested person's financial resources will be transmitted to the appointing judge or person(s) designated by the judges to determine indigency.

c. The appointing judge or person(s) designated by the judges to appoint counsel will determine whether the person meets the financial standards for indigence in Rule 3.02. The determination will be recorded on the form requesting appointment of counsel and the form will be filed with the other orders in the case.

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

e. A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigence or to impeach the direct testimony of the defendant regarding the defendant's indigence.

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

financial circumstances occurs. Counsel shall notify the Court if a material change occurs. Release from custody or change of employment status are changes which shall be brought to the attention of the Court within 14 days.

g. A defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court proceeding based on evidence of a material change in the defendant's financial circumstances. A defendant's status as indigent or not indigent also may be reviewed in a formal hearing at any stage of a court proceeding based on additional information regarding financial circumstances, subject to the presumption. If a defendant previously determined to be indigent subsequently is determined not to be indigent, the attorney shall be compensated by the county in accordance with these Rules for time reasonably expended on the case.

h. Contingent on the employment of an indigency investigator. The judges shall designate an investigator(s) to review and audit requests for indigency. A copy of the request form shall be transmitted to the indigency investigator for investigation and review. Income verification and determination will be completed no later than the end of the first working day after the date on which the indigency investigator receives the defendant's request for appointment of counsel. The defendant will be notified of the outcome of the determination.

3.06 Partial Indigency

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

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

3.07 Reimbursement

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

Minimum Attorney Qualifications

SECTION FOUR

4.01. Residency Requirement and Objective Competency Standards

a. To be eligible to receive appointments in misdemeanor cases, an attorney must:

1. Either reside in and maintain her principal office in Collin County; or
2. Demonstrate that the majority of her criminal law practice is based in Collin County, Texas courts by showing that as to the total number of criminal cases pending in a court-of-record in which she appeared in and served as the attorney-of-record during the twelve months preceding her application, that at least eighty percent of those cases were cases pending in a court-of-record in Collin County, Texas. In addition, an attorney seeking to remain on the list of attorneys eligible to receive appointments shall, not later than December 31 in every year after the year the attorney initially became qualified to accept appointments, file an affidavit listing the criminal cases in which she appeared in and served as the attorney-of-record during the previous twelve month period, eighty percent of which must have been in cases pending in a court-of-record in Collin County, Texas.

b. To be on the list of approved attorneys for misdemeanor appointments, an attorney must meet one of the three following criteria:

1. Board Certification in Criminal Law by the Texas Board of Legal Specialization; or
2. Completion of at least two years of law practice with at least three misdemeanor jury trials (which may be second chair) during the attorney's career and completion of at least sixteen hours of criminal law continuing legal education in the twenty-four month period preceding application; or
3. Demonstrate competence using other criteria to be approved by the Committee including, but not limited to, years of legal experience, board certification in areas of law other than criminal law, number of civil and jury trials completed, number of hours of criminal law CLE and professional reputation for handling criminal cases.

4.02. Creation Of Master List Of Attorneys

a. An attorney who wishes to be included in the master list of attorneys from which court appointments are made must submit a written application to the Committee, a copy of which is included in the "Forms" section of this plan, to the County Clerk's Office.

b. The Committee shall meet periodically to review attorney applications. A majority of the Committee, by a secret vote, is required to approve an attorney's application for inclusion on the master list. If an application is rejected for placement on the master list, the attorney may reapply after ninety days. The master list shall be posted in the County Clerk's office and is a public record.

c. The Collin County Information Technology Department shall be responsible for writing and maintaining the computer software necessary to utilize the master list. The Collin County Clerk shall be responsible for updating the master list with changes, additions and deletions provided to the Clerk by the Committee.

d. Attorneys shall initially be listed alphabetically on the master list. As new attorneys are approved, they shall be placed at the bottom of the list.

Prompt Appointment of Counsel

SECTION FIVE

Counsel shall be appointed as soon as possible, but not later than the end of the first working day after the date on which the appointing judge or person(s) designated by the judges to appoint counsel receives an eligible defendant's request for counsel, as stated in Article 1.051, Section (c) of the Code of Criminal Procedure.

DUTIES OF APPOINTED COUNSEL

5.01 Professional Representation

- a. An attorney who is appointed from the master list shall personally represent the accused or withdraw from the case, after first obtaining permission from the court. An attorney must exercise the same degree of professionalism and responsibility with an appointed client as they would with a client who has retained them.
- b. An attorney who is appointed from the master list shall make every reasonable effort possible to contact her client not later than the end of the first working day after receiving notice of the appointment. The attorney must interview the defendant as soon as practicable. An attorney who receives appointments from the master list must personally appear with their client at all settings and must inform the accused that her presence is also required at all settings. Any member of the Committee may immediately remove an attorney who intentionally or repeatedly fails to fulfill her obligations to their client from the master list. Upon such event, the Committee shall review the matter at its next scheduled meeting. Unless a majority of the Committee votes in favor of adding the attorney's name to the master list, the attorney's name shall not be added.
- c. An attorney who is appointed to a case shall continue representing the accused until the accused is acquitted, a plea has become final, all appeals are exhausted, or the court makes a finding of good cause on the record permitting the attorney to withdraw and substitute other counsel.
- d. An attorney who applies for court appointments under the Plan must designate either a telephone fax number or email address for the purpose of receiving notices of appointments. A court that appoints an attorney may use either the attorney's telephone fax number or email address to notify the attorney of her appointment or court hearings. Any changes in the attorney's telephone numbers or email address must be promptly given in writing to the County Clerk for updating the master list.
- e. An attorney whose name is placed on the master list shall annually complete at least eight hours of criminal law continuing legal education and shall send a letter to the

County Clerk no later than December 30 of each year verifying to the Clerk that the attorney's CLE requirements have been complied with for that calendar year.

f. An attorney whose name is placed on the master list shall immediately notify the Collin County Clerk in writing if their law license is suspended or revoked, in which case the attorney's name shall be removed by the Clerk from the master list. An attorney, once removed from the master list because of suspension or revocation, must reapply to the Committee to have their name added to the master list.

g. An attorney who receives appointments from the master list shall timely and truthfully submit requests for payment to the court with jurisdiction in the matter.

h. An attorney whose name is included on the master list for appointments must notify the County Clerk in writing of any vacation plans, seminars, protracted trials, etc. where the attorney will be unavailable to accept appointments during a period of more than four calendar days.

Attorney Selection Process

SECTION SIX

DUTIES OF APPOINTING COURT

6.01 Appointment of Counsel

a. A Court, or its designee, upon a proper showing of indigency under the standards set forth herein, shall appoint an attorney from the master list. The list shall be made available to all Collin County courts making criminal appointments, or their designees. The master list shall be maintained on the County's computer system. For magistrates making appointments as another court's designee, the master list will be available over the internet. After making an appointment, the appointing magistrate may fax notice of the appointment to the attorney or send notice by email. The original of the order appointing the attorney shall be forwarded to County Clerk.

b. In making an appointment, the appointing judge shall select an attorney from among the names of the next five attorneys that appear on the master list. In cases involving motions to adjudicate or motions to revoke, the accused's prior court appointed attorney, if any, shall be appointed, if that person's identity is known. If an accused person does not speak English, an attorney who speaks a language the accused can understand must be appointed.

c. If a court does not appoint one of the five attorneys next up on the master list, the court must state good cause on the record for the deviation. Good cause may include, but is not limited to, conflict of interest, attorney unavailability, request by the accused that the attorney not be appointed, inconvenience to the accused, prior representation by an attorney with knowledge of the facts in the pending case and other similar good cause. Attorneys whose names are among the five names next up on the master list, but who are not selected based upon a showing of good cause, shall have their names placed back at the top of the list.

d. Once an attorney has been appointed to an accused person, the Court may not remove the attorney unless a motion to withdraw or substitute is filed and granted, with notice to the accused. If an attorney has been appointed to represent an accused, and an appeal is filed from the accused's conviction, the original attorney shall be appointed for the purposes of appeal. If an accused receives probation or deferred adjudication, the accused's appointed attorney continues as his attorney in any subsequent revocation proceeding and must be appointed for that purpose.

Fee and Expense Payment Process

SECTION SEVEN

Counsel shall be reimbursed for reasonable and necessary expenses, including expenses or investigation and for mental health and other experts. Expenses incurred with and without prior court approval shall be reimbursed, according to the procedures set forth below. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.

INVESTIGATIVE AND EXPERT WITNESSES

7.01 Procedure with Prior Court Approval

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

- (1) the type of investigation to be conducted or the type of expert to be retained;
- (2) specific facts that suggest the investigation will result in admissible evidence or that the services of an expert as are reasonably necessary to assist in the preparation of a potential defense; and
- (3) an itemized list of anticipated expenses for each investigation or each expert.

b. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- (1) state the reasons for the denial in writing;
- (2) attach the denial to the confidential request; and
- (3) submit the request and denial as a sealed exhibit to the record.

7.02 Procedure Without Prior Court Approval

Appointed counsel may incur investigative or expert witnesses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

PAYMENTS TO COURT APPOINTED ATTORNEYS

7.03 Hourly or Fixed Rates

a. Counsel shall be paid an hourly rate of between \$75.00 and \$125.00 for services performed under the Plan, not to exceed:

1. \$350.00 for a plea or dismissal;
2. \$2,500.00 for the trial of any case, including a motion for new trial; and
3. \$2,500.00 for the appeal of any case, including motions for rehearing.

b. In unusually difficult, complex or time consuming cases, an attorney may request a fee which exceeds the foregoing schedule.

Plan Documents

Collin County Court Affidavit of Indigence.doc (11/30/2009 1:55:09 PM) [view](#)

Collin County Court Annual Renewal Application to Receive Court Appointments.doc (11/30/2009 3:54:23 PM) [view](#)

Collin County Court Attorney Application for Appointment.pdf (11/30/2009 3:45:10 PM) [view](#)

Collin County Court Attorney Fee Voucher.pdf (11/30/2009 1:58:40 PM) [view](#)

Collin County Court Magistrates Warning Form.doc (11/30/2009 2:46:49 PM) [view](#)

Collin County Court Order Finding Probable Cause.doc (11/30/2009 1:25:07 PM) [view](#)