

EL PASO CRIMINAL DISTRICT AND COUNTY COURT SCHEDULE OF FEES FOR THE COMPENSATION OF COURT APPOINTED COUNSEL

October 24, 2019

The El Paso District and County Court Judges presiding over criminal cases, in accordance with the requirements of Texas Code of Criminal Procedure Article 26.05, formally adopt the following fee schedule for the compensation of appointed counsel in all misdemeanor and felony cases. The following rates shall apply to any court appointments made after October 24, 2019.

This fee schedule does not include an “opt-out” provision that allows a judge to approve a different rate on a case-by-case basis.

The uniform schedule of fees takes into consideration reasonable and necessary overhead costs, the availability of qualified attorneys, time and labor expended, complexity of the case, and the experience and ability of counsel.

Hourly Rates.

The maximum hourly rates for non-capital felony cases, felony habeas corpus proceedings, and felony probation revocations and other evidentiary hearings are **\$90.00** per hour expended in court and **\$75.00** per hour for time reasonably expended out of court.

The maximum hourly rates for misdemeanor cases, misdemeanor habeas corpus proceedings, and misdemeanor contested probation revocations and other evidentiary hearings are **\$90.00** per hour expended in court and **\$75.00** per hour for time reasonably expended out of court.

The maximum hourly rate for preparation and perfection of an appeal to either the Eighth Court of Appeals or the Texas Court of Criminal Appeals is **\$85.00** per hour. The hourly rate for oral argument before either appellate court is **\$100.00** per hour.

When two attorneys are appointed to represent one defendant, each attorney is entitled to the Presumptive Maximum Reasonable Compensation if the hours spent by each were necessary for an adequate defense. An attorney shall be compensated at the appropriate in court hourly rate for time spent in court commencing with the time the attorney arrived to the court.

Presumptive Maximum Reasonable Compensation for Jury Trials (Completed)

Capital Murder-Death Penalty (First Chair)	\$75,000
Capital Murder-Death Penalty (Second Chair)	\$50,000
Felonies involving a Death	\$20,000
First Degree	\$10,000
Second Degree/Third Degree	\$ 7,500
State Jail Felony	\$ 3,000
Misdemeanors	\$ 2,500

Presumptive Maximum Reasonable Compensation for Cases Resolved without a Completed Jury Trial

Felonies involving a Death	\$15,000
First Degree	\$ 7,500
Second Degree/Third Degree	\$ 5,000
State Jail Felony	\$ 1,500
Misdemeanors	\$ 750

Presumptive Maximum Reasonable Compensation for an Appeal

Capital Murder	\$15,000
Felonies involving a Death	\$10,000
Felony	\$ 5,000
Misdemeanor	\$ 3,000

Payment In Excess of the Case Maximums

Payment of a fee in excess of the case maximums will only be made if the case was complex or extended.

“Extended Case” means a case in which more time is reasonably required for total processing than the average case.

“Complex Case” means a case in which the legal or factual issues are unusual, thus requiring expenditure of more time, skill, and effort than would be required in the average case.

An attorney shall attach a detailed memorandum explaining to the court why the case was extended or complex compared to the average case and that excess payment is necessary to provide fair compensation. In order to approve excess payments, the trial court shall make the following written findings:

- A. The case was extended, complex, or both.
- B. Excess payment is necessary to provide fair compensation. On this issue, the following factors will be considered:
 - i. Responsibilities of the attorney measured by the magnitude and importance of the case.
 - ii. Manner in which the attorney performed his/her duties.
 - iii. The attorney's knowledge, skill, efficiency, and professionalism.
 - iv. Judgment required of and used by the attorney.
 - v. Nature of the attorney's practice and injury to it because of this case.
 - vi. Extraordinary pressure of time or other factors.
 - vii. Any other relevant factors.

If the trial court submits written findings approving excess payment, the District Court Administrative Judge (felonies) or the County Court Administrative Judge (misdemeanors) shall review the voucher and approve or disapprove the excess payment.

Payment of a voucher in a case presided by a visiting judge also requires the approval of the trial court judge or the District Court Administrative Judge in the event the trial court is unavailable.

Death Penalty-First Chair

The maximum hourly rates for pre-trial (before voir dire) are **\$90.00** for time expended in court and **\$75.00** per hour for time reasonably expended out of court.

The maximum hourly rates for voir dire and trial are **\$150.00** for time expended in court and **\$75.00** per hour for time reasonably expended out of court.

The maximum hourly rates for a motion for new trial, appeals and writs are **\$150.00** for time expended in court and **\$100.00** per hour for time reasonably expended out of court for the first chair.

Death Penalty-Second Chair

The maximum hourly rates for pre-trial (before voir dire) are **\$90.00** for time expended in court and **\$75.00** per hour for time reasonably expended out of court.

The maximum hourly rates for voir dire and trial are **\$125.00** for time expended in court and **\$75.00** per hour for time reasonably expended out of court.

The maximum hourly rates for a motion for new trial, appeals and writs are **\$125.00** for time expended in court and **\$100.00** per hour for time reasonably expended out of court for the first chair.

Payment of Expenses.

Appointed counsel in a noncapital case, appointed to represent a defendant shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Prior court approval shall be obtained before expenses for investigation and for mental health and other experts are incurred.

Expert/Investigator Expenses with Prior Court Approval

Investigators must attach the court order to the payment voucher. The defense attorney must verify investigative services were provided by signing the investigator payment voucher. If the payment voucher exceeds the amount approved by the trial court, another motion for the overage must be tendered to the court and the overage will not be paid unless the overage payment voucher is accompanied by another court order. The County Auditor shall not pay an investigator payment voucher unless it is

approved by the defense attorney and the court order is attached to voucher. The investigator voucher must be submitted within 45 days after the disposition date.

The request for expenses must state the below, as applicable:

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

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

1. State the reasons for the denial in writing;
2. Attach the denial to the confidential request; and
3. Submit the request and denial as a sealed exhibit to the record. CCP art. 26.05(d)

A majority of the judges of the district and county courts trying criminal cases in the county may remove an investigator from consideration for appointment if, after a hearing, it is shown that the investigator submitted a claim for services not performed by the investigator.

Procedure with Prior Court Approval

Appointed Counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request may be sealed upon a motion by the attorney and order signed by the court. The request for expenses must state the below, as applicable:

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

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

1. State the reasons for the denial in writing;
2. Attach the denial to the confidential request; and
3. Submit the request and denial as a sealed exhibit to the record. CCP art. 26.05(d)

The El Paso County Auditor will not pay any attorney or investigator who is not on the approved list at the time of the appointment.

Reimbursement of Expenses

According to Article 26.05(c) of the Code of Criminal Procedure, this fee schedule takes into consideration reasonable and necessary overhead costs. Overhead costs that are included in the fee schedule and may not be additionally claimed on a voucher include but are not limited to: facsimile expenses, parking, supplies, equipment, rent, repairs, utilities, insurance, advertising, taxes, CLE expenses, or Texas E-filing fees.

The following are the only kinds of expenses which will be reimbursed if a proper request for reimbursement is made:

- A. Travel expenses for the attorney, witnesses, experts, and/or investigators, only if prior court approval has been obtained.
- B. A court reporter's fee for depositions only if prior court approval has been obtained.
- C. Long distance telephone calls.
- D. Copying.
- E. Photographs.

- F. Legal research up to three hours in a misdemeanor case and six hours in a felony will be paid. Any legal research hours in excess of the three or six hours will only be paid if an ex parte memorandum addressing the issue and the need for further legal research is attached to the attorney voucher. This ex parte memorandum may be sealed upon the motion of the attorney and order signed by the court.
- G. Other expenses required to adequately defend the case only if prior court approval has been obtained.
- H. Mileage reimbursement to and from Jail Annex, destination points to and from Jail Annex must be listed.

Jail Visits at the Jail Annex can be reimbursed as out of court time OR by mileage reimbursement, but not both.

An attorney's time spent traveling outside El Paso County, Texas, when such travel is necessary for an adequate defense or to adequately prosecute an appeal, shall be compensated at the appropriate out of court rate with the following limitations:

Only the hours actually spent in transit shall be compensated.

Removal from the Wheel

A majority of the judges of the district and county courts trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

Denial of Voucher

The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove the requested amount of payment. If the trial Judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the Commissioners Court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county. CCP Art. 26.05(c).

All vouchers exceeding 45 days must include an explanation for the tardiness and shall be submitted to the trial court for approval.

Court appointed attorneys, investigators, and all experts have a responsibility to turn in their voucher within 45 days after disposition of the case. Disposition of the criminal case includes a plea of guilty, a trial verdict, a dismissal or the defendant not appearing for a court hearing.