

# **EL PASO COUNTY INDIGENT DEFENSE PLAN**

## **Standards And Procedures**

### **for Magistration and the Appointment of Counsel**

**Approved by El Paso County Council of Judges**

**October 31, 2025**

#### ***SECTION 1***

#### **PROMPT MAGISTRATION**

##### **Definitions**

1. “Judges” means all District Court and County Court Judges who preside over criminal cases, including the El Paso County Jail Magistrates.
2. Appointing authority includes all District Court Judges, District Criminal Court Judges, County Court at Law Judges, County Criminal Court at Law Judges and El Paso County Jail Magistrate Court Judges presiding over criminal cases.
3. “Indigent” means a person who is not financially able to employ counsel.
4. “Criminal Justice Coordination Officer” (CJC Officer) means the individual whose duties include taking an application from an arrestee requesting a court-appointed attorney and determining if the arrestee is “indigent.”
5. “Council of Judges’ Office” or “Indigent Defense Coordinator” means the individual whose duties include the appointment of court-appointed attorneys to arrestees who are not financially able to employ counsel.
6. “Videoconference” means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure internet videoconferencing.

##### **Duties of Arresting Officer and Magistrate**

1. The person making the arrest or the person having custody of the person arrested shall, without unnecessary delay, but not later than 48 hours after the person is arrested, take the arrestee before an El Paso County Magistrate or before a magistrate in any county of this state. (The arrestee may be taken before the magistrate in person, or the image of the arrestee may be presented to the magistrate by means of a videoconference). CCP Art. 15.17(a).
2. The magistrate shall inform the arrestee, either in person or through a videoconference, of the following:
  - a. The accusation against the person and of any affidavit filed therewith,
  - b. The right to retain counsel,
  - c. The right to remain silent,

- d. The right to have an attorney present during any interview with peace officers or attorneys representing the state,
- e. The right to terminate the interview at any time,
- f. The right to have an examining trial,
- g. That they are not required to make a statement, and any statement made by them may be used against them,
- h. If they are not a United States Citizen, the right to contact the consulate of the person's native country,
- i. The right to request the appointment of counsel if the person cannot afford counsel,
- j. The procedures for requesting counsel, and
- k. If the arrestee is unable to give bail in the amount required by an order, the right to file a sworn financial affidavit for the magistrate's review.
- l. If the arrestee does not speak and understand the English language or is deaf, the magistrate shall inform the person through a qualified interpreter under CCP Art. 38.30 and 38.31, as appropriate.
- m. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time.

3. The magistrate or trial court judge shall appoint counsel in accordance with Article 1.051. If an indigent defendant is entitled to and requests appointed counsel, a court or the courts' designee (Council of Judges' Office or Indigent Defense Coordinator) shall appoint counsel as soon as possible, but no later than the end of the first working day after the date on which the court or courts' designee receives the defendant's request for appointment of counsel. CCP Art. 1.051(c).
4. A CJC Officer shall interview arrestees to complete a financial affidavit/application for court-appointed attorney during the booking process. If a determination of indigence is made and arrestee requests court-appointed counsel, an Order Appointing Attorney will be issued by the magistrate or trial court judge. CCP Art. 26.04(b) (1).
5. A recording of the communication between the arrestee and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91<sup>st</sup> day after the date on which the recording is made if the person is charged with a misdemeanor; (3) or the 120<sup>th</sup> day after the date on which the recording is made if the person is charged with a felony. Counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction.
6. In each case in which an arrestee is taken before a magistrate as required by Subsection a, a record (*See Forms-Magistrate Warnings*) shall be made of:
  - a. The date and time the magistrate informed the person of the person's right to request appointment of counsel,
  - b. The magistrate asked the person whether the person wants to request appointment of counsel, and
  - c. Whether the person requested appointment of counsel. CCP Art. 15.17(e).

7. A record required under CCP Art. 15.17 (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in El Paso County. CCP Art. 15.17(f).
8. If the magistrate has reason to believe the defendant is not mentally competent, the magistrate shall enter a request for counsel on behalf of the defendant and appoint the El Paso Public Defender's Office.
9. Defendants who did not request an attorney at the time of the magistrate warnings but request one later will be interviewed by a CJC Officer. As an alternative, the trial court or a jail magistrate may make the attorney appointment in court under the "interest of justice" criteria. If the appointment is made by the trial court or the jail magistrate in the interest of justice, the rationale for the appointment must be placed on the record or in Odyssey.

#### Release on Bond of Certain Persons Arrested Without a Warrant

A person arrested without a warrant and who is detained in jail must be released as follows if the person was arrested for a misdemeanor or a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense:

1. Misdemeanor
  - a. On bond, in an amount not to exceed \$5,000, not later than the 24<sup>th</sup> hour after the person's arrest. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond. CCP Art. 17.033(a).
2. Felony
  - a. On bond, in an amount not to exceed \$10,000, not later than the 48<sup>th</sup> hour after the person's arrest. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond. CCP Art. 17.033(b).

#### Out-of-County Warrants-Article 15.18

1. A person arrested under a warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place, or, to provide more expeditiously to the arrestee the warnings described by Article [15.17](#), before a magistrate in any other county of this state, including the county where the warrant was issued. The magistrate shall take bail, if allowed by law, and, if without jurisdiction, immediately transmit the bond taken to the court having jurisdiction of the offense.
2. If the arrestee is taken before a magistrate (in person or through the means of videoconferencing), of a county other than the county that issued the warrant, the magistrate shall inform the arrestee of the procedures for requesting appointment of counsel and ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person requests the appointment of counsel, the magistrate shall, without unnecessary delay, but not later than 24 hours after the person requested the appointment of counsel, transmit, or cause to be

transmitted, the necessary request forms to a court or the courts' designee authorized under Article [26.04](#) to appoint counsel in the county issuing the warrant.

3. If an indigent defendant is arrested in another county based on an El Paso County warrant, counsel will be appointed within one working day of this county's receipt of the request for counsel. The completed indigence affidavit shall be emailed to [COJAdmin@epcounty.com](mailto:COJAdmin@epcounty.com) at the Council of Judges. The El Paso Council of Judges can be reached at (915) 273-3528.
4. If an indigent defendant is arrested in El Paso County under a warrant issued by another county and the defendant is entitled to and requests appointed counsel, the court, or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county issuing the warrant shall appoint counsel within the guidelines of Article 1.051(c) (1) or (2). CCP 1.051(c-1).
5. If a defendant, arrested on an out-of-county warrant, is still incarcerated in the El Paso County Detention Facility on the 11<sup>th</sup> day after arrest and counsel has not been appointed, a court or the courts' designee shall appoint counsel to represent the defendant in any matter under Chapter 11 or 17, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county. The arresting county may seek reimbursement from the warrant issuing county for actual costs for appointed counsel. CCP 1.051 (c-1).

## **SECTION 2.**

### **INDIGENCE DETERMINATION STANDARDS**

1. Definitions, as used in this section:
  - a. "Indigent" means a person who is not financially able to employ counsel. CCP Art. 1.051(b).
  - b. "Defendant's adjusted gross income" means all income of the defendant and spousal income available to the defendant. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, regular payments from Social Security, strike benefits from union funds, veteran's benefits, training stipends, military family allotments, unemployment compensation, money or periodic receipts from estates or trusts; foster care payments; benefits from a governmental income maintenance program; food or rent received in lieu of wages; money received from the sale or rental of real or personal property. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the accused has no income or less income.
  - c. "Household" means all individuals who are dependent on the defendant for financial support.

- d. “Net household income” means the defendant’s necessary expenses will be subtracted from the defendant’s and spouse’s gross income. The resulting number will be referred to as the defendant’s “net household income.”
- e. “Necessary expenses” should include, but are not limited to, an allowance for rent or mortgage, food/groceries, an allowance for a single car payment, utilities, necessary medical bills, child support, and alimony.
- f. “Liquid assets” shall include, but are not limited to, cash, savings and checking accounts, stocks, bonds, certificates of deposit, dividends, equity in real or personal property, rental properties, any interest in retirement accounts, or any property that can be readily converted to cash, other than assets and property exempt from attachment under state law.
- g. “The cost of obtaining competent private legal representation” includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

2. If the arrestee requests court-appointed counsel at magistration, the arrestee will be interviewed by a CJC Officer. If possible, this interview will take place before release on bond. If the arrestee is released before an indigence affidavit is completed, instructions will be given upon release from the jail to complete the affidavit at 500 E. San Antonio, Lower Level, El Paso, Texas, 79901, at the Criminal Justice Coordination Office. The office may be reached at (915)273-3200, ext. 4021 or at [CJCAssessnIntake.gem@epcountytx.gov](mailto:CJCAssessnIntake.gem@epcountytx.gov). **If the arrestee does not qualify for court appointed counsel after being interviewed by a CJC Officer, the arrestee may only re-apply for counsel with court approval.**
3. A CJC Officer shall interview each arrestee who requests appointment of counsel, and the arrestee will provide, under oath, the necessary information, including supporting documentation (if not in custody) concerning the person’s financial resources. They shall input this information into an affidavit (*See Forms: Application for Court Appointed Attorney, Financial Affidavit*) for the arrestee. The indigence affidavit shall be transmitted to the Council of Judges (COJ) Office or the Indigent Defense Coordinator as soon as possible in order for the COJ Office to be able to appoint an attorney within 24 hours from the time a request for court appointed counsel is made. The financial affidavit shall be transmitted to the jail magistrate for consideration in the setting of the bond along with the bail factors enumerated in CCP Art. 17.15.
4. A defendant is considered indigent if any of the following conditions or factors are present:
  - a. The defendant’s net household income does not exceed 100% of the federal HHS poverty guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register, AND the defendant does not have liquid assets greater than \$2500.
  - b. The defendant is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental facility is sought, or currently incarcerated out of county for El Paso County criminal charges; or

- c. At the time of the application, the defendant, spouse, or children residing with the defendant are eligible to receive any of the following: Food stamps (SNAP), Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income (SSI), or public housing.
- 5. In determining whether a defendant is indigent, even though he/she does not qualify under section 4, the court or court's designee may consider the defendant's income, source of income, assets, liquid assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. If this analysis of net household income results in an amount less than the amount stated in the poverty guidelines for the applicable household size, the defendant will be considered indigent. The court or court's designee may not consider whether the defendant has posted or can post bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection. CCP Art. 26.04 (m).
- 6. The procedures and standards for determining a defendant's indigence shall apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail. The procedures and standards for determining whether a defendant is indigent shall apply to misdemeanors and felonies. CCP Art. 26.04(l).
- 7. A defendant who requests a determination of indigency and appointment of counsel shall:
  - a. Complete, under oath, a questionnaire concerning his/her financial resources; (*See Forms Application for Court Appointed Attorney, Financial Affidavit*)
  - b. Respond, under oath, to an examination regarding his/her financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or
  - c. Complete the questionnaire and respond to examination by the judge or magistrate.CCP Art. 26.04(n).
- 8. 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 indigent status or to impeach the direct testimony of the defendant. The defendant may be prosecuted under Texas Penal Code, Chapter 37. CCP Art. 26.04 (q).
- 9. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in the Code of Criminal Procedure and this Indigent Defense Plan.
- 10. A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel. CCP Art. 26.04 (r).
- 11. A defendant that does not meet any of the standards above shall, nonetheless, be considered indigent if the defendant is unable to retain private counsel without substantial hardship to the defendant or the defendant's dependents. In considering if obtaining private counsel will create a substantial hardship, the magistrate or judge authority shall take into account; (1) the nature of the criminal charge(s); (2) anticipated complexity of the defense; (3) the estimated cost of obtaining competent private legal representation for the matter(s) charged; (4) the amount needed for the support of the defendant and the defendant's dependents; (5) defendant's income; (6) source of income; (7) assets and property owned;

(8) outstanding obligations; (9) unusual, excessive or extraordinary medical expenses; (10) necessary expenses; (11) age or physical infirmity of household members; (12) the number and ages of dependents; and (13) spousal income that is available to the defendant.

12. After the 15.17 hearing, if an arrestee has informed the magistrate that they do not want to request court-appointed counsel, this will be reflected on the Magistrate Warning Form. If after an arrestee is given their magistrate warnings, they decide that they would like to be interviewed after declining court-appointed counsel, they will be referred to a CJC Officer for an interview. If after the magistrate administers the 15.17 warnings, an indigent arrestee decides that they do not want to be interviewed for court-appointed counsel after making the request with the magistrate, they will be referred to a CJC Officer to sign a form reflecting a waiver. (*See Forms- Waiver of Counsel*).
13. An unrepresented non-indigent felony defendant remaining in custody for 14 days shall have his/her status changed to indigent and an attorney shall be appointed by the COJ. An unrepresented non indigent misdemeanor defendant remaining in custody for 7 days shall have his/her status changed to indigent and an attorney shall be appointed by the COJ.
14. A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigence or non-indigence is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination. CCP Art. 26.04 (p).
15. The presumption can be rebutted based on 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, additional information regarding the defendant's financial circumstances that show that the defendant does not meet any of the standards of indigence contained in these rules.
16. If a defendant previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated according to the fee schedule for hours reasonably expended on the case.
17. If the court determines that a defendant has financial resources that enable the defendant 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, if convicted, as court costs the amount that it finds the defendant is able to pay. CCP Art. 26.05(g).
18. Each court in which the case is pending shall conduct a hearing, after due notice, on all reevaluations of indigency and/or material change of financial circumstances according to the law so as not to interfere with an established attorney-client relationship.

## SECTION 3.

### **MINIMUM ATTORNEY STANDARDS**

#### **Public Appointment Lists**

1. Attorneys shall be appointed to represent indigent defendants using a system of rotation described later in this plan from the following public appointment lists:
  - a. Misdemeanor list.
  - b. State Jail Degree/Third Degree Felony list.
  - c. Second Degree and First Degree (non-death) list.
  - d. Murder List and any felony offense involving a death list.
  - e. Capital Murder List established by the Sixth Judicial Administrative Regional Judge as required by CCP art. 26.052(2).
  - f. Appellate list for all misdemeanors and non-death felonies.
  - g. Appellate list for all murder and felonies involving a death.
  - h. Appellate list for all capital murders established by the Sixth Judicial Administrative Regional Judge.
2. Court-appointed counsel to represent a defendant in a motion to revoke probation proceeding or a motion to adjudicate guilt proceeding shall be selected from any of the first three lists outlined above, depending on the level of the offense.
3. Applications to be placed on one or more of the public appointment lists will be considered at the monthly COJ meeting. The Criminal Law Committee will evaluate all the applicants and make a recommendation to the COJ regarding approval or denial.
4. To be eligible for placement on each public appointment list, attorneys must meet the following minimum qualifications:
  - a. An attorney must have an office and physical address in El Paso County, Texas.
  - b. An attorney must have on file with the Council of Judges a completed and notarized application. All the information on the application must be accurate and current. Any changes must be promptly reported to the Council of Judges.
  - c. An attorney must be a licensed, practicing attorney, and in good standing with the State Bar of Texas.
  - d. An attorney must attend any CLE course required by the District and County Judges.
  - e. An attorney must have completed nine hours of CLE in criminal law or procedure in the past year, including carryover from the previous year only. All attorneys must file a CLE affidavit with the Council of Judges each year by the last day of their birth month attesting to the completion of the required CLE. Self-study hours may not be included in meeting the required CLE hours. In lieu of the CLE affidavit, a Criminal Law Board Certified Attorney must show

proof of that certification. Nine CLE hours in criminal law or procedure are required even though the attorney is exempt from taking CLE hours by the State Bar of Texas.

- f. An attorney must have a secretary, receptionist, answering service, or a cell phone capable of receiving emails. An attorney must have an active e-mail account that is monitored daily, to receive court appointments and notices regarding procedural changes. The email address must be available 24 hours a day. In addition, an attorney must respond promptly to a phone call or email from the trial court, the Council of Judges or the Indigent Defense Coordinator.
- g. An attorney must promptly notify, in writing, the Council of Judges of any matter that would disqualify the attorney by law, regulation, and rule, or under these guidelines from receiving appointments.
- h. An attorney must maintain the capacity to access and review the El Paso District Attorney's Office and the El Paso County Attorney's Office electronic case filing system.
- i. An attorney must be familiar with the Texas Penal Code, the Texas Code of Criminal Procedure, the Texas Rules of Evidence, the Texas Rules of Appellate Procedure, Texas Disciplinary Rules of Professional Conduct, and the El Paso County Local Rules, including Texas E-Filing.
- j. An attorney must consistently demonstrate commitment to providing effective assistance of counsel and quality representation to criminal defendants.
- k. An attorney must be of sound mind, as well as good moral and ethical character.
- l. An attorney shall consistently demonstrate professionalism, proficiency, and reliability in representing criminal defendants, and in dealing with the courts and opposing counsel; and
- m. An attorney shall submit, by October 15<sup>th</sup> of each year, a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months beginning on October 1<sup>st</sup> and ending on September 30<sup>th</sup>. The report must be submitted through the online form to the Texas Indigent Defense Commission.

#### Public Appointment List Qualifications

“Criminal jury trial” means an adult or juvenile criminal prosecution in which a jury is selected and sworn.

- Requirements for all appointment lists:
- An attorney must be licensed to practice law in the State of Texas.
- An attorney must be in good standing with the State Bar of Texas.
- Attorneys with the requisite qualifications for the Misdemeanor List or the State Jail/Third Degree Felony list shall be placed on the Public Appointment List upon confirmation by the Criminal Law Committee that the attorney has the requisite qualifications. Attorneys who are Board Certified in Criminal Law or Appellate Criminal Law automatically qualify for placement on the corresponding list, regardless of trial or appellate experience requirements.

1. Misdemeanor List

- a. Must have 9 hours of continuing legal education in criminal law prior to being placed on the list and must continue to attend 9 hours of continuing legal education in criminal law each year after being placed on the list.

2. State Jail Felony and Third-Degree Felony List

- a. One year of experience in criminal litigation, and
- b. Experience in two criminal jury trials, including at least one felony jury trial.
- c. Must have 9 hours of continuing legal education in criminal law prior to being placed on the list and must continue to attend 9 hours of continuing legal education in criminal law each year after being placed on the list.

3. Second Degree and First-Degree Felony (Non-Death) List

- a. Three years of experience in criminal litigation, and
- b. Experience as lead or co-counsel in four criminal jury trials, including at least two felony jury trials.
- c. Must have 9 hours of continuing legal education in criminal law prior to being placed on the list and must continue to attend 9 hours of continuing legal education in criminal law each year after being placed on the list.

4. Murder and Any Felony/Misdemeanor Involving a Death List

- a. Four years of experience in criminal litigation, and
- b. Experience as trial counsel in six felony criminal jury trials, served as lead counsel in three felony criminal jury trials and served as lead counsel in two 1<sup>st</sup> degree felony criminal jury trials, and
- c. Must have attended at least 9 hours CLE in criminal law per year for the last three years and must continue to attend 9 hours of continuing legal education in criminal law each year after being placed on the list

5. Appellate List for All Misdemeanors and Non-Death Felonies

- a. One year of experience in criminal litigation, and
- b. Filed two appellate briefs in a criminal or juvenile case.

6. Appellate List for Murder and Any Felony Involving a Death

- a. Two years of experience in criminal litigation, and
- b. Filed four appellate briefs in a criminal or juvenile case.

7. Capital Murder and Capital Murder Appellate List

Must comply with the qualifications and standards adopted by the local selection committee created by the Administrative Regional Judge under CCP Art. 26.052.

Placement on the Public Appointment List

1. In addition to the above qualifications, a majority vote of the District Court Judges presiding over criminal cases is necessary for an attorney to be included on public appointment lists 3 through 7.
2. Judges trying criminal cases will vote “approved” or “not approved” or will designate a proxy vote as to each applicant. In casting his/her vote, each judge shall indicate whether an applicant is competent

to be assigned to the requested appointment list or should be assigned to another category of appointment list. If an applicant is not approved by a majority vote for one category, but the majority of the judges do approve him/her for other appointment categories, the applicant shall be approved for the lesser appointment category. Judges will vote by secret ballot.

3. In lieu of the above qualification requirements in each public appointment list, in extraordinary circumstances an attorney may be deemed qualified by a majority of the judges who preside over the type of criminal cases in a particular category.
4. If an attorney does not meet the qualifications to accept cases of a certain degree but would like the judges to consider qualifying him/her for that list under the provision above, he/she can fill out a form called "Application for Exception to Qualifications to Receive Court Appointments," and turn that in with his/her application.
5. Unusual or exceptional experience that demonstrates substantial involvement in criminal law may be substituted for trial or appellate experience on the application form. If claiming this exception, the attorney must provide a detailed explanation of the attorney's experience as an attachment to the application.
6. Every month, following the submission of attorney applications for the public appointment lists, the Criminal Law Committee shall evaluate the applicants for each list and shall make a recommendation to the judges presiding over criminal cases at the monthly COJ meeting. The judges will vote, as needed, on the applications and any exceptions to the qualifications received, as provided in section one above. Once approved, an attorney will be placed on the applicable public appointment lists.
7. A court may appoint an attorney as co-counsel on a misdemeanor or felony case in order for the attorney to obtain jury trial experience. The attorney will receive a flat rate of \$750 for the jury trial. The COJ will only pay for one jury trial appointment utilized for trial experience.

#### Removal from the Public Appointment List or Possible Sanctions

1. An attorney may be sanctioned or removed from one or more of the public appointment lists by vote of a majority of the criminal District and County Court judges for any of the following reasons:
  - a. Failure to meet objective qualifications or not being fully competent to handle the category of cases associated with an appointment list, as determined by the judges. The judges may, in their discretion, remove an attorney from one or more lists, while continuing to approve the attorney for other lists.
  - b. Intentional or repeated failure to make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed.
  - c. Misrepresentation of information or submission of false information on the Application for Court Appointments.
  - d. Submission of a claim for legal services not performed by the attorney. CCP art. 26.05(e).

- e. Request and/or receipt of any money or anything else of value for representing the accused, other than what is paid or anticipated to be paid to them by the county, without approval from the court in writing.
- f. An arrest or formal charge for any offense, excluding traffic tickets. The Council of Judges must be notified by the end of the first business day after the arrest or the formal charge.
- g. A conviction or receipt of deferred adjudication for any offense, excluding traffic tickets.
- h. Failure to disclose to the Council of Judges of an arrest or formal charge for any offense, excluding traffic tickets.
- i. Existence of and failure to address an alcohol or substance abuse problem.
- j. Failure to be in good standing with the State Bar of Texas.
- k. Failure to submit a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begin on October 1<sup>st</sup> and end on September 30<sup>th</sup>, by October 15<sup>th</sup> of each year. The report must be submitted through the online form to the Texas Indigent Defense Commission.
- l. Failure to submit proof of the required nine hours of CLE in criminal law to the Council of Judges by the last day of the attorney's birth month. An attorney will not be appointed to any criminal cases until proof of CLE compliance is tendered to the Council of Judges.
- m. Violation of the rules of professional conduct.
- n. Voluntary removal of the attorney from the appointment list.
- o. Excessive tardiness or excessive failure to appear in court.
- p. For other good cause.

2. The possible sanctions for an attorney violating any of the rules in subsection a include:

- a. Removal from the appointment list(s).
- b. Temporary removal from the appointment list(s).
- c. Requirement of additional CLE.
- d. Requirement of a mentor.
- e. Demotion of the attorney to a lower appointment list.
- f. Written reprimand signed by the Local Administrative Judge.

3. Any judge, for good cause, may raise an issue regarding representation by an attorney or attorney misconduct, at a monthly Council of Judges meeting or at a monthly Criminal Law Committee meeting. Specific and timely allegations must form the basis of the complaint.

4. An attorney removed from the appointment list may reapply to be placed back on the list after one year has passed since their removal from the list, unless the judges hearing criminal cases have removed the attorney for a longer period. The attorney must provide a written description of all the measures taken by the attorney to correct the problem that led to the removal from the appointment list. If an attorney was suspended or sanctioned due to noncompliance with CLE hours, the attorney will be placed back on the appointment lists once proof of CLE is provided to the Council of Judges.

5. An attorney who is court-appointed to represent a defendant charged with capital murder in which the death penalty is sought will be temporarily inactivated on the felony and misdemeanor appointment list starting 30 days before the beginning of voir dire and lasting for the duration of the case.
6. The trial courts shall keep a list of attorneys who do not appear for a hearing. This list will be taken into consideration should an attorney's qualifications be under review by the judges. Failure to appear at the initial hearing may be grounds for appointing new counsel on an individual case.
7. An attorney may request a temporary removal from the public appointment lists from the local administrative judges due to an excessive caseload, schedule, or illness. A temporary removal from the public appointment lists exceeding six months will require the attorney to reapply for placement on the public appointment list.

## **SECTION 4.**

### **PROMPT APPOINTMENT OF COUNSEL**

#### Initial Appointment of Counsel

1. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the first working day after the date on which the appointing authority receives the defendant's request for court appointed counsel. Working day means Monday through Friday, excluding El Paso County holidays. Counsel must be appointed regardless of whether a case has been filed in the trial court. CCP Art. 1.051(c).
2. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first. CCP Art. 1.051(j).
3. If a defendant wishes to request counsel prior to the initial appearance, the forms required to request counsel may be obtained at the Texas Indigent Defense Commission's website at <http://tidc.tamu.edu/public.net/> or from the Criminal Justice Coordination Department, 500 E. San Antonio, Rm. LL117, El Paso, Texas 79901 or by phone at (915)273-3200 ext. 4021, or by email at CJCAssessnIntake.gem@epcountytx.gov. The defendant may submit these completed forms to the Criminal Justice Coordination Department.

#### Appointment Authority

1. If a misdemeanor case or felony case is UNFILED, the appointing authority is the Council of Judges' Office, the trial court or the El Paso County Jail Magistrate Court Indigent Defense Coordinator.

2. If the case has been FILED in a trial court, the appointing authority is the Council of Judges' Office, County Court Administration, the trial court, or the El Paso County Jail Magistrate Court Indigent Defense Coordinator.
  - a. Appointments on motions to revoke probation, and motions to adjudicate guilt will be made from a rotational list of qualified attorneys in the same manner as any other misdemeanor or felony case, depending on the classification of the offense.
  - b. At any time, a defendant may appear before the trial judge or a jail magistrate and request a court-appointed attorney, and the trial judge or jail magistrate has the discretion to appoint an attorney to represent the defendant if the defendant is deemed to be indigent. The attorney must be qualified to take the level of offense charged and may be chosen from the next five names on the public appointment lists in the order in which the attorney's name appears on the list, or a request can be made for the system to make an automatic appointment. The public appointment lists are comprised of private attorneys who are approved by the District Court Judges and/or the County Court Judges and the El Paso Public Defender's Office. The judge shall make a finding of good cause on the record or in Odyssey if appointing an attorney out of order, and may appoint any qualified, willing attorney regardless of whether the attorney's name is among the next five names on the appropriate list.
  - c. Before withdrawing as counsel for the defendant after trial or a guilty plea, the appointed attorney shall advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal. If the defendant wishes to pursue an appeal, the appointed trial attorney must assist the defendant in requesting the prompt appointment of replacement counsel or, if replacement counsel is not appointed promptly, file a timely notice of appeal.
  - d. Once these steps have been completed, the court-appointed trial attorney's representation of the defendant is concluded. No motion to withdraw is necessary. The trial court may then appoint a qualified attorney from the appellate list. The trial court may appoint a lawyer from the next five names on the appropriate appellate list in the order in which the attorney's name appears on the list, or a request can be made for the system to make an automatic appointment. The judge shall make a finding of good cause on the record if appointing an attorney out of order, and may appoint any qualified, willing attorney regardless of whether the attorney's name is among the next five names on the appropriate list.
  - e. If a defendant already has a court appointed attorney on a prior pending case, the same attorney will be appointed on any new cases to avoid the appointment of multiple attorneys for one defendant.

#### Defendants Appearing Without Counsel

1. If an indigent defendant who has refused appointed counsel in order to retain private counsel appears without counsel after having been given an opportunity to retain counsel, the court, after giving the defendant a reasonable opportunity to request appointment of counsel, or, if the defendant elects not to

request appointment of counsel, after obtaining a waiver of the right to counsel pursuant to CCP Art. 1.051(f) and (g) may proceed with the matter on 10 days' notice to the defendant of a dispositive setting. CCP Art. 1.051(e).

2. The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel, and the defendant has been given a reasonable opportunity to request appointed counsel. CCP Art. 1.051(f-2).
3. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, after the denial, the defendant:
  - a. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
  - b. Waives or has waived the opportunity to retain private counsel. CCP Art. 1.051(f-2).
4. The attorney representing the state may not:
  - a. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or
  - b. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request, and after the denial, the defendant has been given a reasonable opportunity to retain counsel or waives or has waived the opportunity to retain private counsel. CCP Art. 1.051(f-1).
5. Waiver of the Right to Counsel. A defendant may voluntarily and intelligently waive the right to counsel, but any waiver obtained in violation of CCP Art. 1.051(f-1) or (f-2) is presumed invalid.
6. If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently made, the court shall have the defendant sign a waiver of counsel form and an Order Allowing Self-Representation by Defendant. *See Forms (Self Representation Warnings - Order Allowing Self Representation)*
7. A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide appointed counsel with 10 days to prepare. CCP Art. 1.051(h).
8. The court, or the courts' designee may, without unnecessary delay, appoint new counsel to represent an indigent defendant for whom counsel is appointed if:
  - a. The defendant is subsequently charged in the case with an offense different from the offense with which the defendant was initially charged; and
  - b. Good cause to appoint new counsel is stated on the record as required by CCP Art. 26.04(j) (2) [CCP Art. 1.051(k)].
9. A trial court may appoint any available, qualified attorney to advise a witness when the law requires representation.

## SECTION 5.

### ATTORNEY SELECTION PROCESS

1. Whenever a court, or the courts' designee authorized to appoint counsel for indigent defendants in the county determines, for the purpose of a criminal proceeding, that a defendant charged with or appealing a conviction of a felony or a misdemeanor punishable by confinement is indigent, or if the interests of justice require representation of a defendant in a proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to represent the defendant in accordance with the El Paso County Indigent Defense Plan. CCP Art. 26.04(c).
2. In a county with a public defender's office, the court or the courts' designee shall give priority in appointing that office to represent the defendant in the criminal proceeding, including a proceeding in a capital murder case. However, the court is not required to appoint the public defender's office if:
  - a. The court makes a finding of good cause for appointing other counsel, provided that in a capital murder case the court makes a finding of good cause on the record for appointing that counsel.
  - b. The appointment would be contrary to the office's written plan under CCP Art. 26.044 or would violate the maximum allowable caseloads established for the office.
  - c. The office is prohibited from accepting the appointment under CCP Art. 26.044(j).
  - d. A managed assigned counsel program also exists in the county, and an attorney will be appointed under that program. El Paso County public appointment lists are comprised of private attorneys as well as attorneys employed by the El Paso County Public Defender's Office.
  - e. The defendant already has an appointed attorney on a prior pending matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case.
3. Misdemeanor and Non-Capital Felony Cases
  - a. The Council of Judges' Office, County Court Administration, the trial court, or the Indigent Defense Coordinator will identify which of the appointment lists, discussed in "Minimum Attorney Standards", is most appropriate based on the accusations against the defendant and will appoint the attorney whose name is first on the list, unless good cause exists for appointing an attorney out of order. The good cause for the deviation should be reflected in the file.
  - b. Good cause may include but is not limited to the following:
    - i. The defendant requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients' language, if one is available.
    - ii. The defendant already has an appointed attorney on a prior pending case. In that case, if the defendant qualifies for court-appointed counsel, the same attorney will be appointed to any new cases, unless the attorney is not qualified to be appointed on the new case. (If the attorney has been removed from the applicable wheel for failure to complete CLE hours, failure to comply with TIDC reporting requirements or, voluntarily removed himself/herself from the applicable wheels, the same attorney may still be appointed to any new cases). If the attorney on the prior pending case is not qualified to be appointed on the new case because it involves a higher-grade offense than the attorney is qualified for, the Public Defender's Office will be appointed to the new case.

iii. The defendant has retained counsel on a prior pending case. In that case, if the defendant qualifies for court-appointed counsel, the Public Defender's Office will be appointed to any new case.

4. Once appointed, an attorney's name will be moved to the bottom of the appointment list. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.
5. Capital Felony Cases
  - a. The Regional Public Defender for Capital Cases shall be appointed to all capital felony cases unless good cause exists to appoint private counsel. If a co-defendant requests appointment of counsel and is determined to be indigent, the appointing authority shall appoint counsel pursuant to the standards and procedures stated in this Section.
  - b. If private counsel is appointed to a co-defendant rather than the Regional Public Defender for Capital Cases, co-counsel will be appointed using the standards and procedures stated in this Section.
6. The Regional Public Defender for Capital Cases may refuse to accept an appointment if:
  - a. A conflict of interest exists.
  - b. The office has insufficient resources to provide adequate representation.
  - c. The office is incapable of providing representation in accordance with the rules of professional conduct.
  - d. Acceptance of the appointment would violate the maximum allowable caseloads established for the office.
  - e. The office shows other good cause for refusing an appointment.
7. The Council of Judges or the trial court shall immediately contact the attorneys appointed by phone, e-mail, or in person, and notify the attorneys of the appointment and the last known location of the defendant.
8. Judicial Removal from Case. The judge presiding over a criminal case may remove appointed counsel upon entering a written order (*See Forms: Order Removing Appointed Counsel*) showing good cause for such removal, including, without limitation, the following:
  - a. Counsel's failure to appear at a court hearing.
  - b. Counsel's failure to make personal contact with defendant if he/she is incarcerated.
  - c. Counsel's failure to contact a defendant that is out on bond.
  - d. Counsel's failure to comply with the requirements imposed upon counsel by this plan and the Fair Defense Act.
  - e. Current information about the defendant and the charge against the defendant indicates that another qualified attorney is more appropriate for the defendant under these rules.
  - f. In a death penalty case, replacement is required under CCP Art. 26.052(e).
  - g. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties.
  - h. The defendant requests an attorney, other than trial counsel, for appeal; or
  - i. The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

9. Appointment of Replacement Counsel. Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.
10. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.
11. A public appointment list from which an attorney is appointed shall contain the names of qualified attorneys, each of whom:
  - a. applies to be included on the list;
  - b. meets the objective qualifications specified by the judges in the El Paso County Indigent Defense Plan;
  - c. meets applicable qualifications specified by the Texas Indigent Defense Commission; and
  - d. is approved by the judges who established the appointment list. CCP Art. 26.04(d).
12. An appointed attorney shall:
  - a. Make every reasonable effort to personally contact the defendant, if incarcerated, 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. A majority of the judges of the county courts and the district courts who preside over criminal cases may remove from consideration for appointment an attorney who intentionally or repeatedly violates this section.
  - b. Make every reasonable effort to contact the defendant, if out on bond, 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. Reasonable effort includes letters, fax, phone, videoconference, or personal visit. A majority of the judges of the county courts and the district courts who preside over criminal cases may remove from consideration for appointment an attorney who intentionally or repeatedly violates this section.
  - c. Represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted to or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record.
  - d. With respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or, after the entry of a guilty plea where the defendant retains the right to appeal, the attorney shall advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal. If the defendant wishes to pursue an appeal, the attorney shall assist the defendant in requesting the prompt appointment of replacement counsel and if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal.
  - e. Not later than October 15<sup>th</sup> of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information for the preceding fiscal year that describes the percentage of the attorney's practice time that was dedicated to work based on

appointments accepted in the county under CCP Article 26.04 and Title 3, Family Code. The report must be submitted through the online form to the Texas Indigent Defense Commission. CCP Art. 26.04(j).

13. Once appointed, except for the El Paso County Public Defender's Office, an attorney's name will be moved to the bottom of the appointment list. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.
14. The El Paso County Public Defender's Office will receive no more than 50% of cases for each category of offense. The District Court and County Court Judges may, from time to time, adjust the percentage of cases received by the El Paso County Public Defender's Office, but the percentage shall not be more than 50% of all the cases. The Public Defender's Office may refuse to accept an appointment to a case if:
  - a. A conflict of interest exists.
  - b. The office has insufficient resources to provide adequate representation.
  - c. The office is incapable of providing representation in accordance with the rules of professional conduct.
  - d. It would violate the maximum allowed caseload limits set by the office; or
  - e. The office shows good cause for refusing appointments.
15. An attorney appointed to a case that does not appear or notify the court by 9:30 a.m. the following morning may be removed from the case and go back to the bottom of the list. Excessive tardiness or failures to appear may result in removal from the case and the public appointment list if it impedes the administration of justice.

## **SECTION 6.**

### ***FEE AND EXPENSE PAYMENT PROCESS***

1. Court-appointed counsel, other than an attorney with the Public Defender's Office, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services:
  - a. Time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited.
  - b. Reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires.
  - c. Preparation of an appellate brief and preparation and presentation of oral argument to the Eighth Court of Appeals Court or the Court of Criminal Appeals.
  - d. Preparation of a motion for rehearing.

- e. Preparation of a petition for discretionary review to the Court of Criminal Appeals and if necessary, preparation of a brief in the Court of Criminal Appeals and preparation and presentation of oral argument in the Court of Criminal Appeals.
2. Court-appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the District Courts, Criminal District Courts, County Courts at Law, and County Criminal Courts at Law that preside over criminal cases in El Paso County. A copy of the schedule shall be sent to the El Paso County Commissioners Court.
3. The El Paso County fee schedule does not include an opt-out provision that allows a judge to approve a different rate on a case-by-case basis.
4. An attorney shall submit only one misdemeanor voucher if the defendant has multiple misdemeanor cases. An attorney shall submit only one felony voucher if the defendant has multiple felony cases. If related cases are tried, pleaded, or appealed together, only one voucher may be submitted. A lawyer seeking reimbursement for the same work done for each case must specify the detailed and distinct work done by cause. A lawyer shall include any amount that has already been requested or paid on a defendant's other cases on every voucher submitted.
5. The 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 or email expenses, supplies, equipment, rent, repairs, utilities, insurance, advertising, taxes, Texas e-filing fees, or CLE. *See Forms: El Paso County Indigent Defense Plan Schedule of Fees*
6. The following items will not be paid: receiving the court appointment, opening or closing a case file on an appointed case, filling out the voucher, delivering dismissal to the defendant, faxing/emailing documents, receiving settings or faxes, requesting PORTAL access; printing documents from PORTAL, calendaring hearings, setting up appointments, reminding defendants of upcoming court hearings, and e-filing documents.
7. Any legal research hours more than three hours in a misdemeanor case and six hours in a felony case 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.
8. 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 transcripts only if prior court approval has been obtained; (c) photographs and media submitted as exhibits at trial; (d) other expenses required to adequately defend the case only if prior court approval has been obtained.

9. An appointed attorney shall submit a fee voucher to the trial court for services rendered. 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). Vouchers older than 90 days require an explanation for the untimeliness prior to approval.
10. Each fee schedule adopted shall state reasonable fixed maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings.
11. Appointed counsel in a non-capital 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. However, prior court approval should be obtained before expenses for investigation and for mental health and other experts are incurred.
12. Investigators must attach the court order to the payment voucher. Prior to submitting a voucher, an expert/investigator must verify to the court that a report or work product has been tendered to current defense counsel. 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.
  - a. The request for expenses must state the type of investigation to be conducted or the type of expert to be retained, 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 an itemized list of anticipated expenses for each investigation and/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 state the reasons for the denial in writing, attach the denial to the confidential request, and submit the request and denial as a sealed exhibit to the record. CCP art. 26.05(d)

- c. 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.

Expenses incurred without prior approval shall be reimbursed if expenses are reasonably necessary and reasonably incurred. CCP arts. 26.05(d) and 26.052(h)

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.

Court appointed attorneys, investigators, and all appointed experts have a responsibility to turn in their voucher within 90 days after disposition of the case. Disposition of the criminal case includes an order of withdrawal or substitution, a plea of guilty or true, a trial verdict, a revocation of supervision or an adjudication of guilt, or a dismissal. Interim vouchers may be paid by the trial court at its discretion.