

# Ethical Billing in Court Appointed Cases

Harris County Indigent Defense Procedures and Billing CLE, September 2015

First and foremost, know the rules and guidelines.

For Harris County District Courts, there are three main documents available at justex.net providing written guidelines for billing any payments:

“Appointed Attorney Fee Schedule effective 09/15/15”

“Appointed Attorney Expense Claim Payment Guidelines effective 08/27/13”

“Standards and Procedures, Appointment of Counsel for Indigent Defendants.”

These documents set forth general fee guidelines and appointed attorney compensation guidelines including the method by which an attorney may appeal a reduction in fees made by a judge. Note that the Guidelines effective 08/27/13 have been modified to become the schedule effective 09/15/15. Each of these documents is attached in whole as this paper includes only select provisions from each document.

## **Standards and Procedures, Appointment of Counsel for Indigent Defendants**

### 10.0 FEE SCHEDULE.

10.1 Each court shall pay appointed attorneys reasonable fees in accordance with a uniform schedule of fees as adopted by the majority of the judges.

10.2 The uniform schedule of fees shall take 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.

10.3 An attorney working under a term appointment shall be paid for work actually performed or for days actually in court.

### 11.0 APPOINTED ATTORNEY COMPENSATION.

11.3 Appointed counsel shall be paid a reasonable attorney's fee for performing the following services:

11.3.1 time spent in court making an appearance on behalf of the defendant as evidenced by docket entry;

11.3.2 time spent in trial;

11.3.3 time spent in a proceeding in which sworn oral testimony is elicited;

11.3.4 reasonable and necessary time spent out of court on the case, supported by any documentation the court requires;

11.3.5 preparation of an appellate brief, preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

11.3.6 preparation of motions for rehearing.

11.5 If the judge disapproves the requested amount, the judge shall make written findings stating the amount of payment approved and the reasons for approving an amount different from the requested amount.

11.6 The attorney whose request for payment has been disapproved or has not been acted upon within 60 days of submission may, by written motion, file an appeal with the presiding judge of the administrative region. The presiding judge may conduct a hearing and forward the results of the hearing to commissioners for court.

**Harris County District Courts Trying Criminal Cases Fair Defense Act Alternative Plan for Appointment of Counsel to Indigent Defendants**

effective 09/15/15 as available at

<http://www.justex.net/JustexDocuments/0/FDAMS/AttorneyFeeSchedule09152015.pdf>

Harris County pays attorneys appointed in district courts either **per hour, per court appearance**, or **per court appearance plus out-of-court hours**.

A term assigned lawyer can be assigned up to five clients a day.

An attorney can accept two individual case assignments per day.

An attorney being paid on the **basis of court appearances** can be **paid for up to four cases per day** for court appearances that occur on or after July 1, 2010. Attorneys can be paid for up to three cases per day for court appearances that occurred prior to July 1, 2010. "Cases" in this context means different defendants or a defendant with cases arising from different transactions, i.e., different offense reports.

Cases paid on an **hourly basis** have no presumptive maximums. Hours are billed in six-minute increments rounded to the nearest such increment. Attorneys are compensated on the basis of time spent working on the case whether that time is in or out of court. The attorney is compensated for only one case at a time. For example, if the attorney is in court on two cases, he allocates his time between those two cases for billing purposes; he does not bill for two cases. **There is no bi-lingual supplement on cases paid on an hourly basis.**

06 Minutes = .1 Hour	36 Minutes = .6 Hour
12 Minutes = .2 Hour	42 Minutes = .7 Hour
18 Minutes = .3 Hour	48 Minutes = .8 Hour
24 Minutes = .4 Hour	54 Minutes = .9 Hour
30 Minutes = .5 Hour	60 Minutes = 1.0 Hour

All **vouchers must be submitted** to the appointing Court **within 21 days** of disposition of the matter or the attorney's withdrawal, unless good cause is shown.

Beginning January 1, 2016, some courts will pay hourly for all individual case assignments. The rates are as follows:

1st degree	\$100 /hr
2nd degree	75 /hr
3rd degree, state jail felonies, motions, contempt	50 /hr.

A request to exceed the presumptive maximum will not be considered except upon written request providing adequate justification.

In an email from Judge Keel wherein those piloting the ViPS system were seeking clarification on Motions To Exceed Presumptive Max dated September 16, 2015, Judge Keel clarified:

“As per the fee schedule, presumptive max may be exceeded upon “written request providing adequate justification.” A written request can take the form of a letter, memo or motion. There will be an opportunity on ViPS to make the request electronically.

We have never required formal motions, but attorneys mostly have filed such motions.”

*Note:* While the 2013 guidelines provided “A request to exceed the presumptive maximum will not be considered except upon *written motion* providing adequate justification”, the newest 2015 guidelines have changed “motion” to “request” – allowing counsel to use a letter, memo, or motion to submit a request to exceed the presumptive maximum. And, the ViPS system allows for electronic attachments, such as the letter, memo, or motion.

The bottom line remains. To be paid for amounts that exceed either the per appearance presumption or the out-of-court hourly presumption, you must submit a written request to exceed the presumptive maximum. Where the court is using a strictly hourly billing rate, rather than a per appearance rate, there are no presumptive maximums so written requests are not necessary in those matters.

### **Hourly Billing**

Many criminal lawyers are simply not in the habit of billing hourly. But, with the change in court appointment pay, you will need to start keeping detailed logs of work related to each case. In order to be adequately compensated for work, counsel will need to detail the work done, with some amount of specificity, and then provide a timesheet via the ViPS system to account for all work and generates a voucher.

***Hourly Billing:*** Hourly billing will include both in court and out of court time and can be applied to strict hourly case appointments as well as per court appearance appointment that contain an out-of-court hourly billing. Hourly billing will likely include telephone calls, emails, reviews of

discovery, meetings with prosecutors, meetings with experts and investigators, client meetings, jail visits, legal research, legal filings, court appearances, and all other work performed on behalf of your client. To be properly compensated for this work, you must keep a detailed log of these activities and then add them to the ViPS program.

Travel to the courthouse is not included in the time to be billed; however, traveling to a scene or to interview a witness might be.

As noted in the fee schedule, billing is to be by the tenth of an hour (every 6 minutes).

One of the biggest complaints from writ or appellate lawyers is that trial lawyers do not document enough of their “work.” By creating a detailed log of work performed, you will not only be documenting your work but also your fees.

*Practice Tip:* You may want to consider a time and billing software. There are many on the market that allow you to capture the time you spend working on a particular matter. Many include smart phone features or apps with a stopwatch. They also allow you to enter expenses and receipts. It is anticipated that ViPS will one day allow for electronic entry via an upload of data extracted from a time and billing software.

**Do Not Double Bill Your Time:** Whether or not you use a time and billing software, you will need some sort of method for recording actual time spent on a particular matter or client. You must be careful not to double bill. Double billing occurs where you are, for example, in court on two separate matters for a total of 30 minutes. You cannot bill 30 minutes to each matter. Your 30 minutes of combined work must be apportioned between the two matters. Perhaps you spent 10 minutes on one and 20 minutes on the other. Perhaps you spent 15 minutes on each.

**One Client, Two or More Matters:** Pay attention to clients who have more than one case to which you are appointed. Sometimes those matters arise from the same transaction and thus are treated as one matter for billing purposes. Where the matters arise from separate transactions, you may properly bill for each transaction. Your detailed billing log will need to identify the time spent on each particular matter to be properly compensated for each. The ViPS system will require you to log hourly time (whether in court or out of court) by matter or cause number. Again, be careful not to double bill.

Note: During the ViPS pilot program, an attorney identified a situation where the system was counting two separate matters as one and not allowing separate billing. The county is working hard to identify and correct these issues. Be patient, and please report any such issues that arise so that they software can be corrected to allow proper billing.

### **Expenses**

Receipts must be provided and may not include any “upcharge.” Bill only for actual and reasonable expenses.

Do not expense anything you would be uncomfortable discussing with a grievance panel or judge: It is rumored that lawyers have attempted to expense felt markers for trials, travel to courthouse, and other miscellaneous items to find these expenses “cut” or denied. Likely, rightfully so. Felt markers, pens, paper, and travel to the courthouse are customary business office expenses that are generally not chargeable to a client or court.

Most expenses, including investigators and experts, should be approved prior to expenditure. Often, the motion for payment of an expert will need to be attached to the expert voucher in order to facilitate payment.

Attachment 1  
Standards and Procedures, Appointment of Counsel for Indigent Defendants.

HARRIS COUNTY DISTRICT COURTS  
TRYING CRIMINAL CASES

P15

STANDARDS AND PROCEDURES  
APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

PREAMBLE

WHEREAS, Harris County and the District Courts Trying Criminal Cases in Harris County seek to ensure that indigent defendants continue to receive well-qualified and knowledgeable representation by their appointed counsel; and

WHEREAS, the 77<sup>th</sup> Texas Legislature passed the Fair Defense Act effecting procedures and guidelines for the appointment of counsel for indigent defendants by amending the Texas Code of Criminal Procedure, section 6, article 26.04 to become effective January 1, 2002;

NOW BE IT RESOLVED that the Judges of the District Courts Trying Criminal Cases, by formal action hereby:

- 1) adopt standards for determining indigency;
- 2) establish procedure to compile a public appointment list of attorneys qualified to provide representation to indigent defendants;
- 3) establish a procedure to compile graduated lists of qualified attorneys;
- 4) adopt objective qualifications necessary for an attorney to be included on the list;
- 5) establish appointment procedures that shall ensure appointments are reasonably and impartially allocated among qualified attorneys;

ACCORDINGLY, the Judges of the District Courts Trying Criminal Cases adopt the following plan as the alternative plan for appointing counsel for indigent defendants in the District Courts of Harris County, Texas.

The Judges of the District Courts Trying Criminal Cases also ORDER this plan be incorporated into the local rules of the Judicial District Courts of Harris County District Courts Trying Criminal Cases.

**0.0** TERMINOLOGY. As used in these procedures, the following terms and phrases will have the following meanings.

- 0.1 "Judges" or "board of judges" shall mean the District Courts Trying Criminal Cases in Harris County.
- 0.2 The pronoun "he" shall refer to individuals of both genders.

- 0.3 “Master List” shall mean the list of qualified attorneys who have received approval by a majority vote (12 votes) from the board of judges to be included on the graduated list that includes the First Degree List, the Second Degree List, the Third Degree List and the Post-Conviction List.
- 0.4 “HCPD” shall mean the Harris County Public Defender, his Office, or his Designee.

**1.0 FINANCIAL STANDARDS FOR DETERMINING INDIGENCY.** The indigency standards adopted by the judges shall apply to each defendant equally, regardless of whether the defendant is in custody or out on bail.

- 1.1 A judge shall consider the following criteria as incorporated by the form adopted by the board of judges in determining whether a defendant is indigent:
- 1.1.1 the defendant’s income;
  - 1.1.2 source of income;
  - 1.1.3 assets,
  - 1.1.4 property owned,
  - 1.1.5 outstanding obligations,
  - 1.1.6 necessary expenses;
  - 1.1.7 the number and ages of dependents, and
  - 1.1.8 spousal income available to the defendant.
- 1.2 The judge shall not consider whether the defendant has posted bail, except to the extent that it reflects the defendant’s financial circumstances. All defendants on bail who are seeking court appointed counsel shall complete the approved indigency information form and may be required to respond to questions by the court.
- 1.3 A defendant who has been found indigent is presumed indigent for the duration of the proceedings unless there is a material change in the defendant’s financial circumstances.
- 1.4 Procedures for determining indigency:

- 1.4.1 A defendant is considered indigent for purposes of the Act if he is financially unable to hire counsel.
- 1.4.2 To determine whether a defendant is indigent, a judge shall:
  - 1.4.2.1 review the information provided by the defendant and contained in the completed form adopted under 1.1; and
  - 1.4.2.2 if necessary, hold an evidentiary hearing on the record to determine whether defendant is indigent.
- 1.4.3 Using the approved criteria, the judge shall determine whether the defendant is indigent and make findings.
  - 1.4.3.1 The judge shall find defendant indigent and appoint counsel to represent defendant:
    - 1.4.3.1.1 if the judge finds the defendant's financial liabilities are more than his assets, and
    - 1.4.3.1.2 if the judge finds the defendant is financially unable to pay for an attorney qualified to represent the defendant in the offense with which he is charged.
- 1.4.4 There shall be a presumption of indigency if the income of the defendant is below 125 percent of the Federal Poverty Guidelines.

**2.0 WHEN THE RIGHT TO APPOINTED COUNSEL ATTACHES.**

- 2.1 **If the defendant is arrested pursuant to a warrant:**
  - 2.1.1 The detaining authority must present the defendant before the magistrate within 48 hours of arrest.
  - 2.1.2 The magistrate shall: deliver admonishments; inform the defendant of the right to counsel; record whether the defendant requested appointed counsel; and make a finding of probable cause. See Tex. Code Crim. Pro. Art. 15.17(e).
  - 2.1.3 If needed, an interpreter shall assist during the hearing.
  - 2.1.4 If the defendant asks that a lawyer be appointed, the magistrate shall instruct pre-trial services to assist the defendant in filling out

the indigency information forms and request for appointed counsel. The defendant's information and request for counsel shall be transmitted to the court not later than 24 hours after defendant appears before the magistrate. See TEX. CODE CRIM. PRO. Art. 15.17(a).

2.1.5 Pre-trial services shall assist the defendant with completing the indigency information forms.

2.2 **If the defendant is in jail after being arrested without a warrant** for a felony, and the magistrate has not determined probable cause, the defendant must be released on bond, not to exceed \$10,000, not later than 48 hours after arrest.

2.3 If the defendant cannot get a surety for the bond or is unable to deposit money in the amount of bond, the defendant must be released on personal bond.

2.4 If the prosecutor files an application, a magistrate may postpone the release of a defendant for not more than 72 hours after arrest.

2.5 **Prompt Appointment of Counsel.** If adversarial judicial proceedings have been initiated, and if a defendant is entitled to and requests appointed counsel, a court shall appoint counsel as soon as possible, but not later than the end of the first working day after the date on which the court receives the defendant's request for appointment of counsel.

2.6 Persons appearing in court without counsel shall be advised of the right to counsel and procedures for obtaining counsel.

### **3.0 APPOINTMENT OF COUNSEL TO REPRESENT INDIGENT DEFENDANTS.**

#### **General Provisions:**

3.1 The judge of each court shall post in writing in the office of the Court Administrator, the method used by the court to appoint counsel to represent indigent defendants. A court may use any of the alternative methods described below to make appointments.

- 3.2 An attorney assigned to a case under any method shall zealously represent a defendant until the defendant is acquitted, appeals are exhausted, or the court, after entering a finding of good cause on the record, relieves the attorney and/or replaces the attorney with other counsel.
- 3.3 The court is responsible for notifying an appointed attorney of his assignments.
- 3.4 Regardless of its adopted appointment method, the court may make individual case assignments at any time.

**4.0 LISTS OF QUALIFIED ATTORNEYS.**

4.1 **DEATH PENALTY CASES:** Attorneys shall be assigned to death penalty cases at trial and on appeal from the list established by the Second Judicial Administrative Region selection committee in accordance with Tex. Code Crim. P. art. 26.052. Attorneys shall be assigned to writs of habeas corpus in death penalty cases in accordance with Tex. Code Crim. P. art. 11.071.

4.2 **MASTER LIST:** To be considered for placement on the **Master List**, **each** attorney must submit a completed application form and meet the following baseline criteria:

- 4.2.1 Be licensed and in good standing with the State Bar of Texas;
- 4.2.2 Have practiced in the area of criminal law for at least **two (2)** years;
- 4.2.3 Pass the certification test with a score of at least 75 except attorneys already board certified in criminal law or certified in criminal appellate law by the Texas Board of Legal Specialization are exempted from the local certification test;
- 4.2.4 Exhibit proficiency and commitment to providing quality representation to criminal defendants;
- 4.2.5 Demonstrate professionalism and reliability when providing representation to criminal defendants; and

4.2.6 Average **ten (10)** hours a year of continuing legal education courses or other training relating to criminal law.

4.1.6.1 Reporting of continuing legal education activity. An attorneys' annual reporting period shall run from October 31 to October 30. On or before October 31 of each year, attorneys must tender a copy of the State Bar of Texas Minimum Continuing Legal Education Annual Verification Report to the Administrative Offices of the District Courts accompanied by an affidavit verifying that the report is true and correct. If there are errors in or additions to the Verification Report, the attorney may amend the report by submitting any necessary supporting documentation, affidavits, or appendices.

4.2.7 An attorney shall submit by October 15th 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 that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission.

4.3 **GRADUATED LISTS:** Attorneys shall be placed on the Master List in graduated lists of First Degree, Second Degree, Third Degree and Post-Conviction:

4.3.1 **FIRST-DEGREE LIST:** Lawyers on the first-degree list may represent defendants charged with first-degree felonies, any offense listed under TEX. CODE CRIM. PRO. Art. 42.12 § 3g, or any lesser offense. In addition to the baseline criteria, first-degree lawyers must have

4.3.1.1 practiced criminal law for at least **five (5)** years; and

4.3.1.2 tried to verdict at least **eight (8)** felony jury trials as **lead counsel**; and.

Harris County District Courts FDA Standards and Procedures

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4.3.1.3 been accepted as competent to receive first-degree felony appointments by majority vote of the judges.

4.3.2 SECOND-DEGREE LIST: Lawyers on the second-degree list may represent defendants charged with second-degree felonies or any lesser offense. In addition to the baseline criteria, second-degree lawyers must have

4.3.2.1 practiced criminal law for at least **four (4)** years; and

4.3.2.2 have tried to verdict at least **four (4)** felony jury trials as lead counsel.

4.3.3 THIRD-DEGREE LIST: Lawyers on the third degree list may represent defendants charged with third-degree felonies, state jail felonies, motions to revoke probation, and motions to adjudicate guilt. In addition to the baseline criteria, third degree lawyers must have tried to conclusion at least **three (3)** criminal jury trials as lead counsel.

4.3.4 POST-CONVICTION LIST: Lawyers on the Post-Conviction List may be appointed to direct appeals and writs in non-capital cases. In addition to the baseline criteria, Post-Conviction lawyers must:

4.3.4.1 be board certified in criminal law by the Texas Board of Legal Specialization; or

4.3.4.2 have personally authored and filed at least **five (5)** criminal appellate briefs or post-conviction writs; or

4.3.4.3 may submit a writing sample for approval by a committee of the district judges.

4.4 The Harris County Public Defender's Office shall be placed on the Master List and on the Graduated Lists of First Degree, Second Degree, Third Degree and Post Conviction.

## 5.0 COMPILATION OF MASTER LIST.

5.1 Attorney Application and Approval: Attorneys must complete and submit an application for inclusion on the Master List. Attorneys

Harris County District Courts FDA Standards and Procedures

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meeting the baseline criteria and approved by a majority of the judges will be placed on the Master List. An individual who has served at least 48 months as a district court judge trying criminal cases as of December 31, 2008, shall be exempt from taking the certification exam and shall be placed on the master list of attorneys approved to represent defendants charged with first degree felonies upon proper application.

- 5.2 Voting Will Be By Secret Ballot. Judges will vote “approved” or “not approved” or will designate a proxy vote as to each applicant. In casting his vote each judge shall also indicate whether an applicant is competent to be assigned to the requested appointment category or should be assigned to another category of appointments. If an applicant is not approved by majority vote for one category, but the majority does approve him for other appointment categories, the applicant shall be approved for the lesser appointment category.
- 5.3 Majority Vote for Inclusion: A majority vote (12 votes) of “approved” is necessary for an attorney to be included on the Master List. Blank and tardy ballots will be deemed “not approved” votes.
- 5.4 Placement on Graduated Lists: Applicants approved by a majority of the judges for the Master List will be placed on the graduated lists according to adopted criteria. Judges will make appointments for indigent defendants in non-capital cases only from the graduated lists of approved attorneys.
- 5.5 New Applications: The judges will consider new applications for the Master List in May of each year.
- 5.6 Annual Update: Attorneys shall report any material changes in their information before May 1 of each year. The Master List and graduated lists will be updated annually in May.
- 5.7 Attorney Requests for Classification Review: Attorneys asking the board of judges to reconsider their classification on the graduated lists shall submit a new application. Upon review of the completed

application, the board of judges may 1) upgrade applicant's classification; 2) downgrade applicant's classification; 3) leave applicant's classification unchanged, or 4) remove applicant from the **Master List**.

5.8 Appeals: An applicant may appeal his omission from or placement on the **Master List**. At any time within **thirty (30)** days after an applicant receives (by certified mail) notice of his placement or omission from the Master List, the applicant may give written notice of appeal to the Central Appointment Coordinator. Upon receipt of a notice of appeal, the Central Appointment coordinator shall verify the accuracy of the votes for the applicant and the accuracy of an attorney's omission from or placement on the **Master List**. If review of the votes and **Master List** indicate an error, the Central Appointment Coordinator shall make the necessary corrections or modifications. Within **fourteen (14)** days receipt of applicant's notice of appeal, the Central Appointment Coordinator shall notify the applicant of his status as to the **Master List**.

6.0 REMOVAL FROM OR RECLASSIFICATION OF ATTORNEYS ON THE MASTER LIST. A majority of judges may remove from or reclassify an attorney on the Master List upon a finding of good cause. An attorney may be removed from the list if he intentionally or repeatedly does not fulfill his duties in representing indigent defendants. An attorney may also be removed from the list as outlined in 11.10 or reclassified as outlined in 5.7.

7.0 METHODS OF APPOINTMENT.

7.1 Individual Case Appointment Method. A private attorney, acting as an independent contractor and compensated with public funds, is appointed to provide legal representation and services to an indigent defendant. See also 3.4.

7.2 Term Assignment Method. A private attorney acting as independent contractor and compensated with public funds is assigned to provide legal representation and services to indigent defendants for a specified

period of time lasting more than one week but no more than one year  
Courts utilizing this method must specify applicable qualification  
criteria. **Sixty (60)** days before the beginning of a term assignment, a  
court shall post an announcement of the term appointment and notice of  
the requisite attorney qualifications on the District Courts' website.

- 7.3 Limited Term Assignment Method. A private attorney, acting as an  
independent contractor and compensated with public funds, is appointed  
to provide legal representation to indigent defendants who appear before  
a court for a period of **one (1) day** or **one (1) week**.
- 7.4 Combination Method. Court may use any combination of the approved  
methods to appoint attorneys.

## **8.0 PROCEDURES FOR ATTORNEY ASSIGNMENT.**

- 8.1 Consistent with these adopted procedures, each judge may choose any  
attorney or the HCPD from the Lists of Qualified Attorneys in Section  
4.0 for assignment. The procedures shall take into account (1) the  
availability of the attorney or the HCPD; (2) the individual qualifications  
of the attorney with respect to the nature of the case; (3) a reasonable and  
impartial allocation of appointments among the attorneys qualified to  
accept appointments.
- 8.2 The judges shall select a Central Appointment Coordinator to implement  
the Harris County District Courts' alternative appointment procedures.
- 8.3 ATTORNEY REQUESTS FOR APPOINTMENTS. Attorneys, including the  
HCPD, whose names appear on the Master List of Qualified Attorneys  
shall submit requests to be considered for appointments to the Central  
Appointment Coordinator by way of computer in the District Court  
Administrative Office or through the Internet. An attorney, including the  
HCPD, may access the sign-up program by entering his bar card number.  
Before the system will accept the request, the attorney must enter a  
current telephone and/or pager number and, when applicable, an updated  
address and contact information. All requests must include the

following information: (1) Name and bar card number; (2) Telephone, pager, and fax numbers and e-mail address (if available); (3) Specific dates available; (4) Types of assignments sought (individual case assignments, daily or weekly limited term assignments).

8.4 Time for Requesting Appointments: An attorney, including the HCPD, may request assignments between 8:15 a.m. Monday and 3 p.m. Thursday of each week. Attorneys may submit assignment requests for no more than **four (4)** weeks at a time. The HCPD may submit requests consistent with the office's workload capacity.

8.5 Restrictions:

8.5.1 Attorneys may not accept overlapping term or limited term assignments at the trial level. They may accept appellate term assignments that overlap with trial level limited term assignments.

8.5.2 Acceptance of a limited term assignment shall preclude an attorney from accepting a non-capital individual case trial level assignment during the limited term.

8.5.3 Acceptance of a term assignment at the trial level shall preclude an attorney from accepting any other assignments during that term, except for capital case and appellate assignments.

8.5.4 Under a term or limited term assignment, an attorney may be appointed to defend no more than **five (5)** defendants a day in new cases.

8.5.5 Attorneys who are not employed by the HCPD may not accept more than **two (2)** individual case assignments in one day.

8.6 Duties of Newly Appointed Attorney: Each appointed attorney, including the HCPD, shall make every reasonable effort to contact the defendant no later than the end of the first working day after the appointment and to interview the defendant as soon as practicable.

- 8.7 Attorney Requests for Individual Case Assignments. Attorneys, including the HCPD, requesting individual case assignments shall submit their requests to the Central Appointment Coordinator.
- 8.8 Attorney Requests for Term Assignments: Attorneys requesting term assignment shall submit their requests to be appointed to the Central Appointment Coordinator no later than 3:00 p.m. on the first Thursday in December for consideration for assignment for the term beginning January of the following year.
- 8.9 Attorney Requests for Limited Term Assignments: Attorneys requesting limited term assignments shall submit their applications to the Central Appointment Coordinator no later than 3:00 p.m. Thursday for assignment consideration.

**9.0 COURT ASSIGNMENT OF ATTORNEYS.**

- 9.1 Individual Case Assignments: When submitting a request for an attorney, the court's request shall designate: (1) the ranking of the attorney needed; (2) the date of the assignment; (3) any special requests (bilingual, etc.).

The computer shall provide to the court ten randomly selected names, including the HCPD as appropriate, per request. A court requesting an attorney for individual case assignment may submit two requests at a time provided that the requests specify different criteria. A court may not submit another request until at least one attorney has been assigned from one of the one or two pending-lists and the remaining names from that list have been returned to the attorney pool. See also 3.4. The HCPD shall be placed in the automated system as many times as necessary to achieve adequate workload for the HCPD without exceeding its available resources.

- 9.2 Term Assignments: Beginning at 3:30 pm on the first Thursday of December, courts may submit requests for attorneys available for term

assignments. Courts may make assignments from among the available attorneys who meet the court's criteria for term appointments.

9.3 Limited Term Assignments: Courts may submit requests for attorneys available for limited term assignments at any time prior to 3:00 p.m. on Thursday of each week. Courts shall designate the term and date of the assignment.

9.3.1 The computer program shall equally divide the pool of attorneys available for limited term assignments among the requesting courts. The program shall provide the randomly selected names to the requesting courts beginning at 3:30 p.m. on Thursday.

9.3.2 The Court shall make at least one limited term assignment from the provided names and promptly, but not later than noon on Wednesday, return the remainder to the pool available for limited term assignments.

9.3.3 In the event the selected attorney becomes unavailable, or an additional attorney is needed, the court may submit an additional request. The computer shall provide the court with no more than **six (6)** randomly selected names from the remaining pool of available attorneys after noon on Wednesday.

## **10.0 FEE SCHEDULE.**

10.1 Each court shall pay appointed attorneys reasonable fees in accordance with a uniform schedule of fees as adopted by the majority of the judges.

10.2 The uniform schedule of fees shall take 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.

10.3 An attorney working under a term appointment shall be paid for work actually performed or for days actually in court.

10.4 The HCPD shall be compensated in accordance with its budget as set by Harris County Commissioners Court.

Harris County District Courts FDA Standards and Procedures

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**11.0 APPOINTED ATTORNEY COMPENSATION.**


- 11.1 Appointed counsel shall be compensated for all work on behalf of a defendant, including habeas corpus proceedings, appellate work, and motions for rehearing.
- 11.2 Compensation shall be based on:
  - 11.2.1 the time and labor required;
  - 11.2.2 the complexity of the case, and
  - 11.2.3 the experience and ability of counsel.
- 11.3 Appointed counsel shall be paid a reasonable attorney's fee for performing the following services:
  - 11.3.1 time spent in court making an appearance on behalf of the defendant as evidenced by docket entry;
  - 11.3.2 time spent in trial;
  - 11.3.3 time spent in a proceeding in which sworn oral testimony is elicited;
  - 11.3.4 reasonable and necessary time spent out of court on the case, supported by any documentation the court requires;
  - 11.3.5 preparation of an appellate brief, preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and
  - 11.3.6 preparation of motions for rehearing.
- 11.4 An attorney shall not be paid until the attorney submits a complete, itemized form detailing services performed to the judge presiding over the proceedings and the judge approves the payment.
- 11.5 If the judge disapproves the requested amount, the judge shall make written findings stating the amount of payment approved and the reasons for approving an amount different from the requested amount.
- 11.6 The attorney whose request for payment has been disapproved or has not been acted upon within 60 days of submission may, by written motion, file an appeal with the presiding judge of the administrative region. The

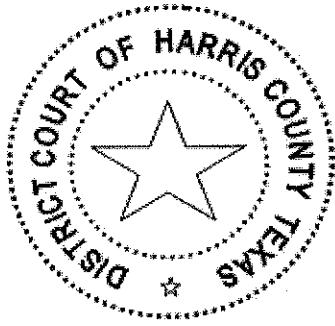
presiding judge may conduct a hearing and forward the results of the hearing to commissioners for court.

- 11.7 Non-capital counsel shall be reimbursed for reasonable and necessary expenses, including expenses for investigation, mental health and other experts.
- 11.8 Expenses incurred with prior court approval shall be reimbursed in the same manner provided for in the Code of Criminal Procedures for capital cases.
- 11.9 Expenses incurred without prior court approval shall be reimbursed in the same manner as provided in capital cases under Article 26.052(h) of the Code of Criminal Procedure.
- 11.10 A majority of the judges who established the qualified attorney list 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. An attorney may also be removed from the list as outlined in 6.0.
- 11.11 The HCPD's compensation and expenses shall be paid from the HCPD's budget as set by Commissioners Court.

**The Standards and Procedures for Appointment of Counsel for Indigent Defendants** were adopted by two-thirds vote of the Judges of the District Courts Trying Criminal Cases in Harris County on October 16, 2001, and incorporates changes suggested by the Presiding Judge of the Second Administrative Judicial Region. The plan was amended July 10, 2002, September 4, 2002, December 3, 2003, February 4, 2004, November 3, 2004, January 5, 2005, June 8, 2005, November 15, 2005, July 25, 2008, December 3, 2008, September 2, 2009, January 12, 2011, July 15, 2011, December 6, 2011, December 5, 2012 and December 4, 2013.

Signed: December 4, 2013

  
\_\_\_\_\_  
SUSAN BROWN,  
Administrative Judge, Criminal Division



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this December 19, 2013

Certified Document Number: 58819622 Total Pages: 15

*Chris Daniel*

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

Attachment 2  
Appointed Attorney Fee Schedule effective 09/15/15



**HARRIS COUNTY DISTRICT COURTS TRYING CRIMINAL CASES  
FAIR DEFENSE ACT  
ALTERNATIVE PLAN FOR APPOINTMENT OF COUNSEL TO INDIGENT DEFENDANTS**

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**FEE SCHEDULE**

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**Attorney's Fees**

Harris County pays attorneys appointed in district courts either per hour, per court appearance, or per court appearance plus out-of-court hours.

**Trial Level Assignment and Payment Limitations**

A term assigned lawyer can be assigned up to five clients a day. A term assigned lawyer cannot accept any other trial level appointments for the period of the term. Any cases reset beyond the term of the attorney's assignment will be paid on an individual case assignment basis. The presumptive maximum number of non-trial settings beyond the term assignment is four.

An attorney should not sign on as a limited term attorney in one court when he has an appointed matter in another court on the same day, except that an appointed trial setting in one court will not prevent an attorney from accepting a limited term appointment in another court on the same day.

An attorney appointed to be the limited term attorney in one court who is called to trial in another court should immediately notify the first court that he will not be available the rest of the week.

An attorney can accept two individual case assignments per day.

An attorney being paid on the basis of court appearances can be paid for up to four cases per day for court appearances that occur on or after July 1, 2010. Attorneys can be paid for up to three cases per day for court appearances that occurred prior to July 1, 2010. "Cases" in this context means different defendants or a defendant with cases arising from different transactions, i.e., different offense reports.

Two or more cases tried in a single proceeding are paid as a single case.

Two or more cases tried in one proceeding are paid as one appeal.

The attorney's pay rate is based on his certification level and the level of the offense charged, without consideration of enhancements. If the offense level drops, the attorney will be paid at the higher rate for the entire course of the representation.

Appointed attorneys and attorneys seeking public funds for investigative or expert assistance must submit a voucher to the appointing Court in the format specified by the Harris County District Courts Administrative Office, including registering to submit vouchers electronically. Appointed attorneys and attorneys seeking public funds for investigative or expert assistance must follow all procedures for payment required by the Harris County Auditor.

All vouchers must be submitted to the appointing Court within 21 days of disposition of the matter or the attorney's withdrawal, unless good cause is shown.

### **Hourly**

Cases paid on an hourly basis have no presumptive maximums. Hours are billed in six-minute increments rounded to the nearest such increment. Attorneys are compensated on the basis of time spent working on the case whether that time is in or out of court. The attorney is compensated for only one case at a time. For example, if the attorney is in court on two cases, he allocates his time between those two cases for billing purposes; he does not bill for two cases. There is no bi-lingual supplement on cases paid on an hourly basis.

All district courts pay hourly for capitals, post-conviction proceedings, and argument in the Court of Criminal Appeals.

The rates are as follows:

#### **\$150/hour**

Capital First Chair

#### **\$125/hour**

Capital Second Chair

#### **\$100/hour**

11.071 Writ of Habeas Corpus  
Capital Appeal  
Capital Motion for New Trial  
Capital Petition for Discretionary Review  
Capital New Brief after PDR Granted  
Capital Court of Appeals Oral Argument  
Court of Criminal Appeals Oral Argument

#### **\$75/hour**

DNA Motion  
11.07 Writ of Habeas Corpus  
Non-Capital Appeal  
Non-Capital Motion for New Trial  
Non-Capital Petition for Discretionary Review  
Non-Capital New Brief after PDR Granted  
Non-Capital Court of Appeals Oral Argument

Beginning January 1, 2016, some courts will pay hourly for all individual case assignments. The rates are as follows:

1st degree	\$100
2nd degree	75
3rd degree, state jails felonies, motions, contempt	50

**Per Court Appearance**

For all other cases, all district courts pay per court appearance or per court appearance plus out-of-court hours with presumptive maximums. The courts may appoint and pay the attorney on the basis of an individual case assignment or a term assignment. The rates are as follows:

<b><u>Individual Case Assignment</u></b>	<b><u>Daily Rate / Presumptive Max</u></b>	<b><u>Out of Court / Presumptive Max</u></b>
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**Non-Trial**

First Degree	\$225 / \$1125	\$85 (per hour) / \$1700
Second Degree	\$175 / \$875	\$60 (per hour) / \$600
Third Degree		
State Jail Felony	\$125 / \$625	\$40 (per hour) / \$400
Motion to Revoke Probation		
Motion to Adjudicate Guilt		
Contempt		

**Trial**

First Degree	\$500
Second Degree	\$400
Third Degree	
State Jail Felony	\$300
Motion to Revoke Probation	
Motion to Adjudicate Guilt	

<b><u>Term Assignments (Daily, Weekly, Term)</u></b>	<b>Daily</b>	<b>Presumptive Max For Weekly/Term</b>
First Degree	\$395	\$1975
Second Degree	\$350	\$1750
Third Degree		
State Jail Felony	\$315	\$1575
Motion to Revoke Probation		
Motion to Adjudicate Guilt		

A request to exceed the presumptive maximum will not be considered except upon written request providing adequate justification.

**Investigators and Experts**

Investigators on non-capitals are paid at a uniform rate of \$40/hour at a maximum of \$600 per case, unless good cause shown. For capital cases, investigators are paid \$75/hour.

Investigators and experts must be licensed in accordance with applicable State law.

Experts are paid on a case-by-case basis per Harris County guidelines.

Bills submitted by investigators and experts must document the dates and time spent on the case and must be sworn to or affirmed as accurate. The following oath would suffice: "I swear or affirm that the attached invoice accurately documents the time that I spent on this case."

Investigators and Experts seeking direct payment must follow all procedures for payment required by the Harris County Auditor, including submitting a vendor identification number on invoices.

**Travel and Expenses**

Paid per Harris County guidelines. Receipts must be provided.

Attachment 3  
Appointed Attorney Expense Claim Payment Guidelines effective 08/27/13



HARRIS COUNTY DISTRICT COURTS TRYING  
CRIMINAL CASES  
ATTORNEY EXPENSE CLAIM PAYMENT GUIDELINES

Appointment

The level of offense charged, exclusive of enhancements, controls the level of appointment and payment.

If a lawyer is appointed to a case that becomes a higher level than the attorney is certified to accept, he will be paid according to his certified level. Alternatively, he can withdraw.

Vouchers

Submit all attorney fee vouchers on one defendant at the same time upon disposition of the case or when the attorney withdraws.

Individual Case Assignments

An attorney can be paid for up to four cases per day for court appearances that occur on or subsequent to July 1, 2010. Attorneys can be paid for up to three cases per day for court appearances that occurred prior to July 1, 2010. An attorney will not be paid for two or three cases tried in a single proceeding; he will be paid for one trial.

“Four cases” means four different defendants or a defendant with four cases arising from different transactions, i.e., different offense reports. “Four cases” means, for example, a motion to adjudicate and three new felonies, even if the motion to adjudicate is based on one or more of the new felonies.

Limited Term Assignments

A limited term attorney who has to reset cases beyond the term of his assignment will thereafter be paid for those cases on an individual case assignment basis. The presumptive maximum number of non-trial settings beyond the term assignment is four.

An attorney should not sign on as a limited term attorney in one court when he has an appointed matter in another court on the same day, except that an appointed trial setting

in one court will not prevent an attorney from accepting a limited term appointment in another court on the same day.

An attorney appointed to be the limited term attorney in one court who is called to trial in another court should immediately notify the first court that he will not be available the rest of the week.

#### PSI Hearings

\$350/day regardless of whether testimony is taken.

#### Bilingual Supplement

An attorney who has to communicate with his client or witnesses in a language other than English shall receive a \$50/day supplement for each court appearance where the bilingual skill was used.

#### Exceeding the Presumptive Maximum

A request to exceed the presumptive maximum will not be considered except upon written motion providing adequate justification.

#### Appeals

The presumptive maximum paid for appeals includes hours spent preparing a motion for new trial. An appearance to present a motion for new trial to the court is not paid as a court appearance.

A hearing with live testimony on a motion for new trial is paid \$350/day.

Multiple cases tried in one proceeding are paid as one appeal. Issues unique to one case requiring additional hours may justify a request to exceed the presumptive maximum.

#### Investigators and Experts

Investigators and Mitigation Specialists are paid at a uniform rate of \$40.00/hour. The fees are submitted in the Investigation Field of the Expense Claim Forms.

Investigators and experts must be licensed in accordance with applicable State law.

Bills submitted by investigators and experts must document the dates and hours spent on the case and must be sworn to or affirmed to as accurate. The following oath would suffice: "I swear or affirm that the attached invoice accurately documents the time that I spent on this case."