



COUNTY OF GALVESTON

District Courts
County Courts at Law

Amended

Texas Fair Defense Act - Galveston County Plan Effective January 01, 2003

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**GALVESTON COUNTY PLAN INCLUDING STANDING RULES AND ORDERS
FOR PROCEDURES FOR TIMELY AND FAIR APPOINTMENT OF COUNSEL
FOR INDIGENT ACCUSED PERSONS IN GALVESTON COUNTY, TEXAS,
PURSUANT TO THE TEXAS FAIR DEFENSE ACT.**

EFFECTIVE DATE - JANUARY 01, 2003

Be it remembered that on this date the below signed County Court at Law Judges and District Court Judges for Galveston County, Texas hereby adopts, orders, establishes and orders published these county wide procedures, rules and orders for the timely and fair appointment of counsel for indigent accused persons in Galveston County, Texas. This document is the Galveston County Plan to conform with the requirements of Senate Bill 7 passed by the Texas Legislature and signed into law in 2001.

I.

ARRESTING OFFICER'S RESPONSIBILITY

MONDAY THROUGH FRIDAY

It will be the **responsibility of the arresting agency** to do the following things regarding a defendant arrested without a warrant:

1. See that a Determination of Probable Cause is made by a magistrate by the twenty-fourth (**24th**) hour in misdemeanor cases and by the forty-eighth (**48th**) hour in felony cases.
2. See that a defendant is Magistrated within forty-eight (**48**) hours of their arrest. This includes both misdemeanor and felony arrests without a warrant.
3. See that a magistrate determines whether a defendant requests the appointment of counsel or waives the appointment of counsel.

NOTE: The actual determination of indigency and the appointment of counsel will be made once the defendant is booked into the County Jail and a request for appointment of counsel and pauper's oath are brought before a District or County Court-at-Law Judge.

IMPORTANT: In addition to the standard paperwork required by the Sheriff and District Attorney, No prisoner will be accepted at the Galveston County Jail without the completed STATUTORY WARNING BY MAGISTRATE form; a signed PEACE OFFICERS REQUEST FOR PROBABLE CAUSE FINDING; a SWORN PROBABLE CAUSE AFFIDAVIT, and; FORM #GC-4 signed by the defendant indicating he/she is REQUESTING OR WAIVING APPOINTED COUNSEL.

HOLIDAYS AND WEEKENDS

Weekend hours begin 12:01 a.m. Saturday and end 12 o'clock midnight on Sunday. Holiday weekends are extended to include the official County holiday.

The County will continue to provide a magistrate on official County holidays and weekends. This magistrate will give Magistrate Warnings and make determinations on probable cause.

In order for the arresting agency to take advantage of this service, they must:

1. Book the defendant into the County Jail within eight (8) hours of the defendant's arrest; and
2. Provide the County Jail with the proper paperwork, which includes:
 - a. "Peace Officers Request for Magistrate's Probable Cause Finding";
 - b. Sworn Probable Cause Affidavit;
 - c. Copy of the offense report and any available supplements and statements. A "DA Intake Form" may be used in place of an original offense report, **if it is thorough and complete;**
 - d. Copy of the criminal history [TCIC/NCIC];
 - e. Temporary Commitment;
 - f. "DA Intake Form"
 - g. CJIS Forms
 - h. Magistrate's Warning , completed through line # (1).

PEACE OFFICERS ARE AUTHORIZED TO ADMINISTER OATH

Please note that *Sec. 602.002, Texas Government Code*, allows peace officers described by *Art. 2.12, Code of Criminal Procedure*, to administer oaths when engaged in the performance of the officer's duties and the administration of the oath relates to the officer's duties. Therefore, it is permissible for a peace officer to administer the oath to an affiant in a probable cause affidavit and sworn statement.

ORIGINAL COMPLAINT(S)

Arresting agencies should file the sworn complaint with the Justice of the Peace that has jurisdiction over the case. Tendering the above noted paperwork to the County Jail does not constitute the filing of the charge. This must be done with the Justice of the Peace who has geographical jurisdiction over the offense.

II.

GALVESTON COUNTY SHERIFF'S RESPONSIBILITY

The Sheriff of Galveston County, with the aid of the Office of Justice Administration shall daily identify those individuals who have been booked into the Galveston County Jail during the last twenty-four (24) hours for any misdemeanor or felony offense and shall make that information available to the District Attorney's Office immediately.

The Sheriff, through his deputies, shall cause those incarcerated individuals to be taken each day before the duly assigned Magistrate for all felonies and misdemeanors, including weekends and official County holidays. The Sheriff shall cause those incarcerated individuals to be delivered to the proper assigned court or Magistrate as soon as possible, not later than twenty-four (24) hours after arrest on a misdemeanor charge and forty-eight (48) hours for felony charges.

III.

MAGISTRATE RESPONSIBILITIES

Regarding individuals charged with a Felony offense, the District Judges of Galveston County who handle criminal cases, on a rotating basis and by assignment of the Local Administrative Judge for the District Courts of Galveston County, or a Magistrate contracted by the County, shall perform the duties of a magistrate by holding magistrate's hearing every regularly scheduled work day (including official County holidays and weekends) in the Galveston County Jail.

The County Court at Law Judges of Galveston County, on a rotating basis and by assignment from the Local Administrative Judge for the County Courts at Law of Galveston County, or a Magistrate contracted by the County, shall perform the duties of a magistrate by holding magistrate's hearings every regularly scheduled work day (including official County holidays and weekends) in the Galveston County Jail.

During official County holidays and weekends the Magistrate contracted by Galveston County shall daily, on a voluntary and rotating basis, hold magistrate's hearings at the Galveston County Jail as designated by the Local Administrative District Court Judge for all those incarcerated in the Galveston County Jail for any misdemeanor or felony during official County holidays or weekend periods.

At the magistrate's hearing the responsible Magistrate shall comply with Senate Bill 7 by doing the following:

1. Informing accused of the offense for which he/she has been arrested;
2. Make a probable cause determination; **{Form # GC-2}**
3. Admonish the accused of the statutory warning as provided by law;
4. Informing accused of his/her indigent representation rights;
{Form #GC-3}
5. Make a record that the accused was given magistrates and statutory warnings and informed of his/her right to a court appointed attorney if indigent by signing the magistrate warning form;**{Form #GC-3}**
6. Making inquiry as to whether the accused is requesting a court appointed attorney;**{Form #GC-4}**
7. Provide accused with an affidavit of indigency form and reasonable assistance in completing said form, and;**{Form #GC-5}**
8. Making a determination of indigency based upon information received;**{Form #GC-5}**
9. If accused is determined to be indigent then appoint a lawyer pursuant to the approved attorney appointment list plan, or if the magistrate is not authorized to appoint counsel, then transmit or cause to be delivered immediately the request for appointment of attorney, probable cause finding, indigency application and finding of indigency to the Communications Coordinator for delivery to the assigned felony or misdemeanor judge.**{Form #GC-6}**
10. Set the Bond.**{Form #GC-2 or #GC-3}**
11. In the event the defendant does not understand the English language the Magistrate will grant reasonable assistance with the above requirements numbered 1 through 10 in a language that the defendant understands.

IV. PROCEDURES AND FINANCIAL STANDARDS FOR DETERMINING INDIGENCE STATUS

At the magistrate's hearing each accused shall be provided an opportunity to request court appointed counsel, if indigent. Each requesting defendant shall complete a sworn affidavit of indigency form **{Form # GC-5}**. The magistrate will insure that reasonable assistance is available in completing the necessary forms for requesting appointment of counsel.

The magistrate shall then review the information and follow the procedures for determining whether a defendant is indigent, as follows:

1. *Definitions.* As used in this rule:

- (a) "Net household income," means all income of the defendant and spousal income actually 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, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the defendant has no income or lesser income.

b) "Non-exempt assets and property," means cash in hand, stocks and bonds, accounts at financial institutions, and equity in real or personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.

(c) "Household." means all individuals who are actually dependent on the defendant for financial support.

(d) "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. *Financial Standards for Determining Indigence.* The financial standards set forth below shall be used to determine whether a defendant is indigent and shall be applied equally to each defendant in the county.

(a) A defendant is considered indigent if:

(1) the defendant's net household income does not exceed 125% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and

(2) the value of the non-exempt assets and property owned by the defendant:

(i) does not exceed \$2,500.00;

(ii) does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

(iii) does not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.

The income levels in the following table represent 125% of the U.S. Department of Health and Human Services Poverty Guidelines for 2012 as published January 19, 2012:

	125%	175%
1	\$13,962.50	\$19,547.50
2	\$18,912.50	\$26,477.50
3	\$23,862.50	\$33,407.50
4	\$28,812.50	\$40,337.50
5	\$33,762.50	\$47,267.50
6	\$38,712.50	\$54,197.50
7	\$43,662.50	\$61,127.50
8	\$48,612.50	\$68,057.50

For family units with more than eight members, add 3,960 for each additional member in the family when determining 125% of Poverty

(b) A defendant is considered indigent if, at the time of requesting appointed counsel, the defendant or the defendant's dependents have been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.

(c) A defendant is considered indigent if the defendant:

- (1) is currently serving a sentence in a correctional institution, is currently held in custody, is currently residing in a public mental health facility, or is the subject of a proceeding in which admission or commitment to such a mental health facility is sought; and
- (2) has no non-exempt assets or property in excess of the amounts specified in paragraph 2.

(d) A defendant who does not meet any of the financial standards above shall nevertheless be determined indigent if the defendant is otherwise unable to retain private counsel without substantial hardship to the defendant or the defendant's dependents, taking into account the nature of the criminal charge(s), the anticipated complexity of the defense, the estimated cost of obtaining competent private legal representation for the matter charged, and the amount needed for the support of the defendant and the defendant's dependents.

3. *Appointing Counsel for Partially Indigent Defendants*

(a) A defendant determined to be partially indigent shall be eligible for appointment of counsel only upon payment to the county of an appointment fee of \$100 if charged with one or more misdemeanors or \$200 if charged with one or more felonies. If a defendant determined to be partially indigent pleads or is found guilty, the court may order the

defendant to comply with a payment schedule to reimburse the county for all indigent defense costs in the case.

(b) A defendant shall be considered partially indigent if the defendant does not meet any of the standards for indigence set forth in paragraph 2 and:

(1) The defendant's net household income is greater than 125% but does not exceed 175% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and

(2) The value of the non-exempt assets and property owned by the defendant:

(i) Does not exceed \$2,500.00;

(ii) Does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

(iii) Does not exceed double the estimated cost of obtaining private legal representation on the offense(s) with which the defendant is charged.

4. Factors Not to be Considered.

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

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

5. Procedures for Determining Indigence.

(a) As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, the Magistrate shall provide each arrested person who wants to request appointment of counsel with a form approved by the judges on which the arrested person will provide under oath the necessary information concerning the person's financial resources and will indicate that the person requests appointment of counsel. The Magistrate shall provide the arrested person reasonable assistance in completing the form.

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

(c) The appointing judge or person(s) designated by the judges to appoint

counsel will determine whether the person meets the financial standards for indigence in paragraph 2. The determination will be recorded on the form requesting appointment of counsel and the form will be filed with the other orders in the case.

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

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

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

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

6. *Payment by Defendant.*

A court that finds that a criminal defendant has financial resources to offset, in part or in whole, the costs of legal services provided under this Part may order the defendant to pay the county that portion of the costs of legal services provided that it finds on the record that the defendant is able to pay.

Upon a determination of indigency, the Magistrate shall sign the form indicating the accused is indigent and shall immediately appoint an attorney pursuant to the approved attorney appointment list plan, or if the Magistrate is not authorized to appoint counsel, then transmit or cause to be delivered immediately to the Communications Coordinator the request for appointment of lawyer form, finding of probable cause form, indigency application form, including finding of indigency. The Communications Coordinator shall deliver the received information to the assigned misdemeanor or felony Judge no later than the next working day.

V.
CRIMINAL COURTS BOARD

The Criminal Courts Board is composed of the Judges of the 10th, 56th, 122nd, 212th, 306th and 405th District Courts and the Judges of County Court at Law numbers 1, 2 and 3. The Board, by majority vote, will elect a chairperson and vice-chairperson who will assume that position on January 1, 2002 and serve a term of two (2) years. The chairperson shall preside at all Board meetings and hearings, unless the chairperson is absent in which case the vice-chairperson shall preside, and announce any Board decisions. The Board may periodically adopt policies, procedures and guidelines to implement the plan and guarantee effective representation to all indigent felony offenders. If any new District Court or County Court at Law handling criminal cases shall be created by due process of law then the Judge of the newly created court shall be an automatic member of the Criminal Courts Board.

The Criminal Courts Board shall meet at least once every two (2) months, but may meet monthly at the discretion of the chairman. The presence of five (5) Judges constitutes a quorum and no vote on any matter may be taken if less than five (5) Judges are in attendance at a duly posted meeting. No motion or matter may be passed nor change implemented without a majority vote of the quorum in attendance at any duly posted meeting, except that any amendment to the Galveston County Plan must be approved by 2/3 or more of the Judges who are members of the Criminal Courts Board.

VI.
COMMUNICATIONS COORDINATOR

A Communications Coordinator will be approved for employment by the Criminal Courts Board. The Communications Coordinator shall act under the immediate supervision of the Director of the Office of Justice Administration for Galveston County.

The duties of the Communications Coordinator shall include:

1. Maintain and update the list of qualified attorneys;
2. Investigate and track attorney qualifications;
3. Manage Magistrate hearing procedures on a regular basis and during weekends and official County holidays;
4. Insure that the Criminal Courts are following the Court Appointed Attorney - Indigent Representation plan set out herein;
5. Maintain the rotation schedule of appointed attorneys;
6. Coordinate with the Office of Court Administration;
7. Notify the Local Administrative District Court Judge and Local Administrative County Court at Law Judge of any non-compliance with the policies and standards of the Texas Indigent Defense Commission;
8. Assist in the County Reporting Plan and the obtaining of Technical Report Grants from the State of Texas, and;
9. Perform all other duties designated by the Criminal Courts Board.
10. Receive and forward to the Criminal Courts Board complaints toward court appointed attorneys.

VII.
REQUIREMENTS FOR CONSIDERATION OF
APPOINTMENT BY CRIMINAL COURT

Only attorneys who make application will be considered for appointment on felony and misdemeanor cases.

Application forms were mailed to all members of the Galveston County Bar Association prior to November 03, 2001. Notices were prominently posted outside all criminal courtrooms in the Galveston County Courthouse informing interested attorneys to pick up an application form from the Office of Justice Administration/Law Library.

Any attorney who, during a calendar year, desires to participate as an appointed attorney for indigent defendants may secure an application from the Office of Justice Administration/Law Library and complete and return that application to the Office of Justice Administration. Once that application is received, it shall be brought before the Criminal Courts Board at their next regularly scheduled meeting for consideration. If the application is approved by a majority vote of Judges, then that attorney's name will be added to the approved appointed list to handle those cases for which the attorney has qualified and been approved to handle by the Criminal Courts Board.

Any attorney who is currently on the approved list for appointment of counsel for indigent defendants and who feels that by experience and education he/she has become qualified to receive appointment for higher grade offenses which he/she was previously not approved to handle, may make application to the Criminal Courts Board for a re-evaluation of their qualifications and standing on the list. The application for re-evaluation shall be considered at the next regularly scheduled meeting of the Criminal Courts Board.

VIII.
QUALIFICATIONS FOR ATTORNEYS TO RECEIVE
COURT APPOINTMENTS IN CRIMINAL CASES

A. Basic Requirements For All Attorneys:

1. Qualified member of State Bar of Texas;
2. A person of good moral character;
3. The Attorney shall maintain a law office or primary residence in Galveston County, Texas.
4. The Attorney shall provide Justice Administration with the geographic location by city and county of the physical address of their law office or residence in which they shall meet with clients and which shall be provided to clients in the initial appointment letter.
5. The Attorney shall provide Justice Administration with the telephone Number to disclose to clients in the initial appointment letter.

6. The Attorney will maintain a secretary, receptionist, answering service, daily monitored answering machine, or voice mail system.
7. The Attorney must maintain a functioning fax machine on dedicated telephone line and e-mail address, both available 24 hours a day and monitored on a daily basis.
8. An "Office" is the commercial location where the attorney conducts law practice. The Office does not include a post office address or public building, such as a library or restaurant.
9. Complete a minimum of ten (10) hours of certified C.L.E. credits annually in criminal law. No self-study hours will be counted. Continuing legal education activity completed within a one-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirement for the initial year.

Continuing legal education activity completed during any reporting period in excess of the minimum ten-hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one year only.

Completion of the required ten (10) hours will be certified to the Office of Justice Administration on the date of original application and on or before the 1st day of December thereafter by filing a sworn annual certification form with the Office of Justice Administration **{Form #GC-7}**; or is currently certified in criminal law by the Texas Board of Legal Specialization.

B.

Capital Murder Where Death Penalty Is Sought by State:

Except in those cases where a legal conflict exists, the court shall appoint the West Texas Regional Public Defender for all death-eligible capital Cases.

In cases where a legal conflict prohibits appointment to the West Texas Regional Public Defender, the following attorney qualifications shall apply:

1st CHAIR:

1. On the approved list of attorneys qualified for capital murder appointment as maintained by the 2nd Administrative Judicial Region of the State of Texas.

2nd CHAIR:

1. At least five (05) years experience in criminal litigation and tried to verdict at least eight (08) felony cases before a jury for offenses punishable as 1st or 2nd degree felonies, or;

2. On the approved list of attorneys qualified for capital murder appointment as 2nd Chair as maintained by the 2nd Administrative Judicial Region of the State of Texas.

C. Capital Murder Where Death Penalty Is Not Sought by State of Texas:

1. Board certified in criminal law, or;
2. At least five (05) years experience in criminal litigation and tried to verdict at least eight (08) felony cases, excluding State Jail felonies.

First Degree Felonies:

1. Board certified in criminal law, who are therefore qualified to handle all 1st degree felonies and any lesser offenses for purposes of this plan, or;
2. Have at least four (04) years prior experience in criminal litigation, and;
3. Tried to verdict at least five (05) felony jury trials, and;

D. Second Degree Felonies:

1. Have at least three (03) years experience in criminal litigation, and;
2. Prior experience in three (03) or more felony jury trials as lead counsel.

E. Third Degree Felonies and State Jail Felonies:

1. Have at least one (01) year prior experience in criminal litigation, and;
2. Prior experience as lead counsel in at least three (03) criminal jury trials, excluding Class C misdemeanors.

F. Misdemeanors – Individual Appointments:

1. Meet basic requirements for all attorneys, and;
2. Be familiar with the docket call procedures for County Courts at Law numbers 1, 2 and 3.

G. Misdemeanors – Jail Docket Term Assignment:

1. Meet basic requirements for all attorneys, and;
2. Be familiar with the docket call procedures for County Courts at Law numbers 1, 2 and 3, and;
3. Have two (2) years prior experience in criminal law.

H. Appellate Appointments:

Capital Murder - Death Penalty

Except in those cases where a legal conflict exists, the court shall appoint the West Texas Regional Public Defender for all death-eligible capital Cases.

In cases where a legal conflict prohibits appointment to the West Texas Regional Public Defender, the following attorney qualifications shall apply:

The Attorney Must Be on the approved list of attorneys qualified for capital murder appointment as maintained by the 2nd Administrative Judicial Region of the State of Texas.

Capital Murder - No Death Penalty

1. Board certified in criminal law, or;
2. Have personally authored at least five (05) criminal appellate briefs.

First and Second Degree Felonies

1. At least three (03) years experience in criminal litigation or appellate practice and at least two (02) appellate briefs filed in criminal cases.

Third Degree Felonies, State Jail Felonies and Misdemeanors

1. Two (02) years prior experience in criminal litigation and at least one (01) brief filed in a criminal or juvenile case, or;
2. Otherwise deemed qualified by a majority vote of Judges handling criminal cases.

IX.
GRADUATED LISTS

Attorneys who complete and submit an application for inclusion on the appointment list for representation of indigent defendants and who meet the basic requirements for attorneys shall be placed on a graduated list based on experience and qualifications as set out in Section VIII.

The Graduated List shall be as follows:

A. Death Penalty Cases

Except in those cases where a legal conflict exists, the court shall appoint the West Texas Regional Public Defender for all death-eligible capital Cases.

In cases where a legal conflict prohibits appointment to the West Texas Regional Public Defender, the following attorney qualifications shall apply:

1st CHAIR:

2. On the approved list of attorneys qualified for capital murder appointment as maintained by the 2nd Administrative Judicial Region of the State of Texas.

2nd CHAIR:

3. At least five (05) years experience in criminal litigation and tried to verdict at least eight (08) felony cases before a jury for offenses punishable as 1st or 2nd degree felonies, or;

B. Capital List - Non Death Penalty

There will be no list compiled for appointment to capital murder cases where the death penalty is not sought. Attorneys assigned for capital murder cases where the death penalty is not sought shall be made on a case by case basis without regard to any rotation among attorneys, and the appointing Court shall consider availability, experience and qualifications as set out under Section VIII C.

C. First Degree List

Attorneys on the first degree list may represent defendants charged with first degree felonies, or any lesser offense, including writs, criminal contempt and motions involving DNA matters.

D. Second Degree List

Attorneys on the second degree list may represent defendants charged with second degree felonies, or any lesser offense, including writs, criminal contempt and motion involving DNA matters.

E. Third Degree List

Attorneys 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, and any County Court at Law criminal matters, including writs, criminal contempt and motions involving DNA matters.

F. Misdemeanor Lists

Attorneys on the misdemeanor lists may represent defendants charged with Class A or Class B misdemeanors in the County Courts at Law of Galveston County.

G. Appeals - Capital Murder - Death Penalty

There will be no list compiled for appointment to capital murder appeals where the death penalty is imposed, and appointments shall be made on a case by case basis considering availability, experience and qualifications.

H. Appeals - Capital Murder - Non Death Penalty

Attorneys on this list may represent on appeal those defendants with capital murder convictions where the death penalty was not sought , or any lesser offense. Attorney assignment for the appeal of capital murder cases shall be made on a case by case basis without regard to any rotation among attorneys, and the appointing Court shall consider availability, experience and qualifications.

I. Appeals - First and Second Degree Felonies

Attorneys on the first and second degree appellate appointment list may represent defendants on appeal convicted of a first degree felony, or any lesser offense, including writs and criminal contempt.

J. Appeals - Third Degree Felonies, State Jail Felonies and Misdemeanors

Attorneys on the Third Degree Felonies, State Jail Felonies and Misdemeanors appellate appointment list may represent defendants convicted of third degree felonies, state jail felonies and any County Court at Law criminal matters, including writs and criminal contempt.

X.

**COMPILATION OF MASTER LIST
WHICH INCLUDES GRADUATED LIST**

Attorney placement on the Master List, which includes the Graduated List, will be initially determined by a majority vote of the Judges named in Section V to comprise the Criminal Courts Board. The Judges shall meet to consider, vote and compile the initial Master List, including the Graduated List, after December 03, 2001, but before January 01, 2002.

A majority vote of Judges is required for an attorney to be included on the Master List and a majority of Judges must agree that the attorney meets the adopted criteria for placement on the appropriate level of the graduated list.

If one or more Judges vote "Abstain" then the application shall be deemed approved if a majority of the Judges who did not "Abstain" vote "Approved" on the application.

After the initial Master List, including Graduated List, has been compiled and posted attorneys shall report any material changes in their information and qualifications to the Office of Justice Administration by November 1st of each year.

Any new applications or requests to be upgraded on the Graduated List shall be governed by the procedures set out in Section VII.

XI.

REMOVAL OF ATTORNEYS FROM THE MASTER LIST

Annual Review

The Criminal Courts Board will conduct an annual performance review of all attorneys on the Master List on or before March 1st of each year. The performance review may include, but is not limited to: initial contact and communication with client; maintenance of communication tools (current fax, phone and mailing address) allowing both the Court and Justice Administration to contact the attorney; knowledge and application of the law; proper trial procedures; ability of the attorney to

effectively represent the indigent defendant in the court room before a Judge or jury; whether the attorney regularly or routinely presents claim vouchers to the Courts for work done in the representation of indigent defendants where the amounts claimed are in excess of the usual and normal fees claimed by attorneys on the Master List of similar ability and experience for representation of indigent defendants charged with the same level or type of offense and performing the same type of legal procedures and representation, and; keeping scheduled court appearances. A majority of the judges who hear cases at the level to which the attorney is assigned shall determine if the attorney will: remain on the Master List at the same level; remain on the Master List at a lower level, or; be removed from the Master List.

Complaints

Attorneys, who fail to conduct themselves in a professional and/or ethical manner, including the submission of claims for legal services not performed by the attorney, may be subject to removal from the appointment list.

The Communications Coordinator upon receipt of any charges, complaints or concerns, in writing and signed by the concerned party, referencing an attorney on the Galveston County Indigent Appointment list will schedule a closed and confidential hearing before the Criminal Courts Board.

The Communications coordinator will notify the attorney in writing of the scheduled meeting and inform the attorney of the grounds that form the basis of the charges/concerns. A copy of any charges/concerns will be made available to the attorney in question. The notice shall list the time of the Criminal Courts Board meeting and give the attorney the opportunity to respond to the issue in writing, in person, or both.

The Criminal Courts Board shall determine, by a majority vote of the required quorum of judges present, if the attorney will:

1. remain on the Master List at the same level
2. remain on the Master List at a lower level, or
3. be removed from Master List

In addition, the Criminal Courts Board may by a majority vote of the required quorum of judges present impose other remedial measures including, but not limited to, suspension.

An attorney that has been removed from the Indigent Appointment List, moved to a lower level on the Indigent Appointment List, or has received any other remedial step, may apply to be placed on the Criminal Courts Board regularly scheduled meeting agenda for reconsideration after 180 days. The Criminal Courts Board may return the attorney to the appointment list at the original or lowered level by a majority vote of the required quorum of judges present.

XII.
PROCEDURE FOR ATTORNEY ASSIGNMENT

If a defendant is in jail and adversarial judicial proceedings have been initiated against the defendant then the Judge of the District Court or County Court at Law shall appoint an attorney not later than the end of the first working day after the Court or it's designee receives the request for appointed counsel.

A. District Courts

1. Individual Case Appointment

When an indigent defendant comes before the District Court Judge and requests the appointment of an attorney or when the District Court Judge receives a request for appointment of an attorney from a defendant who has been determined by the Judge or a Magistrate to be indigent, then that Judge shall immediately appoint an attorney from the Master List whose placement on the Graduated List qualifies that attorney to handle the class of criminal offense with which the defendant is currently charged. The appointing District Judge shall appoint an attorney from within the next five (5) names up on the Master List of those qualified to handle the level of offense involved. However, once an attorney's name reaches the top of the appointment list for the level of offense that the attorney is qualified to handle, that attorney may not be bypassed for appointment more than two (2) times before appointment is mandatory, except for conflict of interest or other good cause shown. The District Court Judge who fails to make the mandatory appointment is required to make a written finding of conflict of interest or other good cause before appointment of another attorney.

2. Limited Term Assignment

A District Court Judge who has been assigned jail docket duty for consecutive two (2) or three (3) week periods shall appoint no less than one (1) no more than two (2) attorneys from the Master List for a period not to exceed one (1) week. Said attorneys shall appear before the Court daily during the regularly scheduled jail docket to provide representation for indigent defendants who request appointment of counsel. At least one (1) of the attorneys appointed for the one (1) week term shall be qualified and approved to the 1st Degree Felonies List. The appointing Judge shall appoint the attorneys for the week from within the next three (3) names up on the Master List and Graduated List with the understanding that at least one attorney appointed for the week must come from within the next three (3) names up on the 1st Degree Felonies List. The same attorney may not participate as a jail docket attorney for felony cases more than once during a three (3) month period in any District Court of Galveston County.

B. County Courts at Law

1. Individual Case Appointment

When an indigent defendant comes before the County Court at Law Judge and requests the appointment of an attorney or when the County Court at Law Judge

receives a request for appointment of an attorney from a defendant who has been determined by the Judge or a Magistrate to be indigent, then that Judge shall immediately appoint an attorney from the Master List who is qualified to handle misdemeanors. The appointing County Court at Law Judge shall appoint an attorney from within the next five (5) names up on the Master List of those qualified to handle misdemeanors. However, once an attorney's name reaches the top of the appointment list for the level of offense that the attorney is qualified to handle, that attorney may not be bypassed for appointment more than two (2) times before appointment is mandatory, except for conflict of interest or other good cause shown. The County Court at Law Judge who fails to make the mandatory appointment is required to make a written finding of conflict of interest or other good cause before appointment of another attorney.

2. Limited Term Assignment

A County Court at Law Judge who has been assigned jail docket duty for a one (1) week period shall appoint two (2) attorneys from the Master List of those qualified to handle misdemeanor jail docket cases. The appointment shall be for a period of one (1) week and the appointed attorney shall appear before the Court daily during the regularly scheduled jail docket to provide representation for indigent defendants who request appointment of counsel. The appointing Judge shall appoint the attorneys for a one (1) week period and the appointment must come from within the next three (3) names up on the appointment Master List of those approved to handle misdemeanor cases. The same attorney may not participate as a jail docket attorney for misdemeanor cases more than once during a three (3) month period.

C. Judicial Economy

If an attorney is previously appointed to represent an indigent defendant on a pending, unresolved case and the indigent defendant is subsequently charged with any new offense or offenses, then the appointing Court may appoint the same attorney previously appointed to represent that indigent defendant instead of appointing from the attorneys next up on the Master List. However, if the new charge or charges against the indigent defendant are of a higher grade or level and the previously appointed attorney is not qualified to handle the higher level of offense charged, then new qualified counsel shall be appointed from the Master List as set out herein to represent the indigent defendant on all charges pending against the defendant. If an attorney is withdrawn due to the rules of judicial economy before the 1st setting, the attorney may submit a voucher in an amount not to exceed \$65.00 to cover costs and overhead.

XIII.

RESPONSIBILITIES OF COURT APPOINTED ATTORNEYS

Court appointed attorneys shall make every reasonable effort to contact the indigent defendant not later than the end of the first working day after notification of appointment is received and to interview the defendant as soon as practicable.

Court appointed attorneys on the Master List must maintain an office with a phone which is answered by a receptionist or answering service from 8:00 a.m. until 12:00 noon and from 1:00 p.m. until 5:00 p.m., Monday through Friday (except for Galveston County official holidays as designated by the Galveston County Commissioner's Court) and which receptionist or answering service can promptly locate the attorney and notify said attorney of the appointment or hearing setting. All attorneys on the approved Master List must maintain a FAX number and e-mail address to which faxes or e-mail may be received twenty-four (24) hours a day, seven days a week. Any change in their notification numbers or e-mail address must be given in writing to the Communications Coordinator at the Office of Justice Administration for Galveston County within twenty-four (24) hours of any change.

A court appointed attorney shall represent a defendant until the defendant is either acquitted, the case dismissed, enters into a plea bargain agreement and final judgment is entered, or; if convicted by a Court or Judge, until appeals are exhausted or waived, or; the Court, after entering a finding of good cause on the record, relieves the attorney or replaces the attorney with other counsel.

XIV. FEE SCHEDULE

The appointing Court shall pay the appointed attorney a reasonable fee in accordance with a uniform schedule of fees as adopted by the majority of Judges and attached hereto as **Exhibit #1**.

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

An attorney working under a limited term assignment shall only be paid for work actually performed and according to a uniform schedule of payment for limited term appointments as adopted by a majority of Judges and attached hereto as **Exhibit #1**.

XV. APPOINTMENT OF INVESTIGATORS AND EXPERTS FOR INDIGENT DEFENSE

Appointment and reimbursement for reasonable and necessary investigation, mental health and other experts shall be as provided by law and only upon written motion and prior approval by the trial Judge for such appointment and anticipated reimbursement.

XVI.
REQUEST FOR PAYMENT OF
ATTORNEY'S FEES AND EXPENSES

Each attorney shall present a signed voucher or claim for attorney fees and expenses using the approved form(s) attached as **{Form #GC-8}** and **{Form #GC-12}**. The claim form shall include a statement of the nature of the charge, the services performed, the dates of such performance, the actual time spent on each date and the amount requested for payment of attorney's fees and expenses.

The signed claim form shall be submitted to the trial Judge as follows:

- A. No later than sixty (60) days after disposition of a case by plea, modification of probation, or dismissal.
- B. Within sixty (60) days after disposition of a case by bench trial, including motions to revoke probation, except if a motion for new trial or rehearing is timely filed, then no later than the next working day after the motion for new trial or rehearing is ruled upon, if denied or overruled.
- C. Within sixty (60) days of the date a verdict in a jury trial is received and accepted by the Court, or; if a motion for new trial is timely filed, then no later than the next working day after the motion for new trial is ruled upon, if denied or overruled.
- D. On appeals, no later than the fifteenth (15th) day after the mandate is returned by the appellate Court.

Vouchers for indigent attorney fees not timely submitted will be considered waived, the services performed Pro Bono, and the request for attorney's fees shall not be paid.

If the trial Judge disapproves the requested amount of payment, the Judge shall make written findings stating the amount of payment approved and the reasons for approving an amount different from the requested amount. The attorney whose request for payment has been disapproved or reduced may, by written motion, file an appeal with the Presiding Judge of the 2nd Administrative Region.

An inexperienced attorney who desires to gain experience in criminal matters in order to be placed on the appointment list or to advance on the Graduated List may petition the Court to allow the attorney to sit as second chair on a felony or misdemeanor trial. Upon approval of the Court the attorney may participate in the trial as a second chair attorney; however, the attorney will not be compensated by the Court and will perform any legal services as second chair on a Pro Bono basis in order to gain experience and knowledge as to criminal matters.

XVII.
LIST UPDATE

The Criminal Courts Board shall annually update and reform the list of eligible court appointed attorneys consistent with the provisions of Article VII and shall post the updated list outside the Galveston County District Clerk's Office and outside the Galveston County Clerk's Office no later than December 31st of each year hereafter.

XVIII.

**LOCAL ADMINISTRATIVE JUDGE'S
REPORTING COMPLIANCE**

The above set out standing rules and order was adopted by unanimous vote of the below-signed Judges and is effective beginning May 31st, 2012.

ORDERED this the 31st Day of May, 2012.

Judge David Garner
10th District Court

Judge Lonnie Cox
56th District Court

Judge John Ellisor
122nd District Court
Local Administrative District Court Judge

Judge Susan Criss
212th District Court

Judge Janis L. Yarbrough
306th District Court

Judge Wayne Mallia
405th District Court

Judge John H. Grady
County Court at Law #1
Local Administrative County Court at Law Judge

Judge Barbara E. Roberts
County Court at Law #2

Judge Christopher Dupuy
County Court at Law #3