

Upshur District Courts Plan

Preamble

10/15/2010

UPSHUR COUNTY STANDING RULES

FOR TIMELY AND FAIR APPOINTMENT OF COUNSEL

UPSHUR COUNTY, TEXAS

Effective Date - October 15, 2010

Be it remembered that on this date the below signed District Judge for Upshur County, Texas, hereby adopts, orders, establishes and orders published these countywide procedures, rules, and orders for the timely and fair appointment of counsel for indigent accused persons in Upshur County, Texas. This document is the Upshur County District Court Plan to conform with the requirements of Article 71.0351 of the Texas Government Code.

Prompt Magistration

10/23/2015

MAGISTRATE RESPONSIBILITIES

The Justices of the Peace of Upshur County, Texas shall establish and maintain a plan and rotate holding magistrate's hearings each and every morning at 11:00 a.m. Each accused person shall be brought before a magistrate within 48 hours of arrest for proceedings under Article 15.17 of the Code of Criminal Procedure.

At the Magistrate Probable Cause hearing the responsible Justice of the Peace shall:

Admonish the accused of the magistrate and Miranda warnings as provided by law;

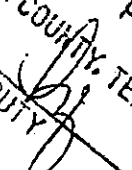
Inform the accused of indigent representation rights;

Make a record of the magistrate warnings and admonitions regarding the right to court appointed counsel for indigent accused persons;

Inform the accused of right to counsel and right to court appointed counsel if indigent;

Inquire as to whether the defendant is requesting court appointed counsel;

Provide defendant with an Affidavit of Indigence and reasonable assistance in completing said forms; and

FILED
KAREN BUNN
DISTRICT CLERK
2016 NOV -2 P 2:44
UPSHUR COUNTY, TEXAS
BY  DEPUTY

In "misdemeanor only" cases, the Justice of the Peace shall also appoint counsel from the approved appointment list for County Court if the accused meets the standards of indigency as set out herein. If the accused is charged with a felony along with misdemeanors, the Justice of the Peace shall promptly deliver the application to the 115th District Court Coordinator for appointment of counsel.

If the accused is charged with a felony and requests court appointed counsel, the Justice of the Peace shall promptly deliver that person's application for appointed counsel to the 115th District Court Coordinator for appointment of counsel.

The magistrate shall record the following:

1. The date and time the accused was arrested and the date and time when he/she was brought before the magistrate.
2. Whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel.
3. Whether the accused requested appointment of counsel The magistrate shall record the following:
before the magistrate.

At the Magistrate's Probable Cause hearing, each defendant shall be provided an opportunity to request court appointed counsel, if indigent. Each requesting defendant shall complete and file a Sworn Application for Court Appointed Attorney (See Exhibit A). The Magistrate will ensure that the defendant receives reasonable assistance in completing the necessary forms for requesting appointment of counsel. If the defendant does not speak and/or understand the English language or is deaf, the Magistrate shall inform the person in a manner consistent with the Texas Code of Criminal Procedure Articles 38.30 and 38.31.

The Magistrate shall IMMEDIATELY transmit the Probable Cause Order, the Affidavit of Indigence, Defendant's Request for Court Appointed Counsel and Order Appointing Counsel to the County Clerk in misdemeanor cases. The County Clerk shall IMMEDIATELY notify the County Judge's Office of the appointment. The magistrate shall immediately transmit the defendant's Request for Court Appointed Counsel in felony cases to the 115th District Court Coordinator. After appointment of counsel in felony cases, the 115th District Court Coordinator shall immediately notify the District Clerk of the appointment. In making court appointments of counsel for indigents the Justices of the Peace shall review the Affidavit of Indigence and such

other information bearing on the financial status of the defendant and make a determination of indigence status and appoint counsel where required by law within 3 working days after receiving the request for court appointed counsel. Further, if a request for a lawyer is made in a felony case, the Justice of the Peace shall promptly have that application delivered to the 115th District Court Coordinator for appointment of counsel within three (3) working days.

For a person arrested on an out-of-county warrant, the magistrate must ask if the person wants to request counsel, inform the person of the procedures for requesting counsel, and ensure the person is provided reasonable assistance in completing the necessary forms for requesting counsel in the county issuing the warrant. [Art. 15.18(a-1), CCP]

Requests for counsel made by persons arrested on out-of-county warrants must be transmitted to the appointing authority of the county issuing the warrant within 24 hours of the request being made. [Art. 15.18(a-1), CCP].

Indigence Determination Standards

10/15/2010

PROCEDURES AND FINANCIAL STANDARDS FOR DETERMINING INDIGENCE STATUS

At the Magistrate's Probable Cause hearing, each defendant shall be provided an opportunity to request court appointed counsel, if indigent. Each requesting defendant shall complete and file a Sworn Application for Court Appointed Attorney (See Exhibit A). The Magistrate will ensure that the defendant receives reasonable assistance in completing the necessary forms for requesting appointment of counsel. If the defendant does not speak and/or understand the English language or is deaf, the Magistrate shall inform the person in a manner consistent with the Texas Code of Criminal Procedure Articles 38.30 and 38.31.

The Magistrate shall IMMEDIATELY transmit the Probable Cause Order, the Affidavit of Indigence, Defendant's Request for Court Appointed Counsel and Order Appointing Counsel to the County Clerk in misdemeanor cases. The County Clerk shall IMMEDIATELY notify the County Judge's Office of the appointment. The magistrate shall immediately transmit the defendant's Request for Court Appointed Counsel in felony cases to the 115th District Court Coordinator. After appointment of counsel in felony cases, the 115th District Court Coordinator shall immediately notify the District Clerk of the appointment. In making court appointments of counsel for indigents the Justices of the Peace shall review the Affidavit of Indigence and such other information bearing on the financial status of the defendant and make a determination of indigence status and appoint counsel where required by law within 3 working days after receiving the request for court appointed counsel. Further, if a request for a lawyer is made in a felony case, the Justice of the Peace shall promptly have that application delivered to the 115th District Court Coordinator for appointment of counsel within three (3) working days.

The following standards, along with such other reasonable factors as the Court finds bearing on the financial ability of a defendant to retain counsel, shall be used in determining indigence:

Defendant's income from any and all sources;

Sources of the defendant's income;

Assets of the defendant;

Property owned by the defendant, or in which the defendant has an interest;

Outstanding obligations of the defendant;

Necessary expenses of the defendant;

The number and age of the defendant's legal dependents;

Spousal income available to the defendant; and

Such other reasonable factors as determined by the Judge.

Whether the defendant has posted bail shall not be considered in determining indigency, except to the extent that it reflects on the defendant's financial circumstances.

A person is "indigent" and thus qualifies for appointed counsel in this county if the income of the family total less than 150% of the federal poverty level for the family, or the family's dependents currently receive food stamps, public housing, Temporary Assistance for Needy Families (TANF), or Medicaid, unless the family has net liquid assets work over \$2,500.00 excluding the value of one vehicle (as under current Texas TANF law).

Minimum Attorney Qualifications

10/30/2013

ATTORNEY QUALIFICATIONS

Twice a year, on or before January 1 and July 1, attorneys may apply to be included on one of the Public Appointment Lists. (See Exhibit "C" attached). To be eligible for placement on each list, attorneys must certify under oath to the respective court that he or she has met the following minimum qualifications and that he/she shall personally represent each client to whom he or she is appointed. The minimum qualifications are:

Misdemeanor List:

Currently licensed and in good standing with the State Bar of Texas;

Exhibited proficiency and commitment to providing quality representation to criminal defendants;

Exhibits professionalism and reliability when providing representation to criminal defendants;

Averages 10 hours a year in continuing legal education course relating to criminal defendants;

Have tried to verdict at least two misdemeanor or felony criminal jury trials as lead counsel or as participating second chair counsel in at least 2 misdemeanor jury trials.

Felony List:

Have met qualifications for placement on the Misdemeanor List;

Have tried to verdict at least one felony jury trial as lead counsel or as participating second chair counsel in at least 2 felony jury trials to verdict.

Maintains an office or resides in Upshur County or practices regularly in the 115th District Court.

Felony Appeals List (with the exception of Death Penalty Capital Murder Appeals)

Have met qualifications for placement on the Felony Lists.

Have appealed at least 3 felony convictions.

APPROVAL OF ATTORNEYS BY JUDGES

In addition to meeting the objective qualifications described in Section VII above, an attorney may be placed on the felony appointment list only if the 115th District Judge approves the attorney's placement on the list. At least twice a year, following the submission of attorney applications for the public appointment lists, the District Judge shall evaluate the new applicants for the felony appointment list and the attorneys already on the list.

The 115th District Judge shall on or before January 1 and July 1 of each year, post outside the Upshur County District Clerk's Office the Public Appointment List for the 115th District Court.

If no removals, additions, or modifications in the lists are made by the Judge there will be no need to replace these lists on or before January 1 or July 1 of each year.

RESPONSIBILITY OF COURT APPOINTED COUNSEL

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

Court appointed counsel on the approved list must maintain an office with a telephone which is answered by a receptionist or answering service from 8:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 5:00 p.m. Monday through Friday (except for Upshur County holidays as set out in the official Upshur County calendar approved by the Upshur County Commissioner's Court) and which receptionist or answering service can promptly locate the attorney and notify said attorney of appointment or hearing set. Court appointed counsel on the approved list must maintain a facsimile number to which facsimile may be received 24 hours a day, seven days a week. These numbers shall be included on the "Affidavit of Licensed Attorney Residing or Having an Office for the Practice of Law in Upshur County, Texas" and shall be the official numbers which will be utilized by the court to inform counsel of appointment or court hearings. Any change in these notification numbers must be given in writing to the District Judge in Upshur County prior to the change.

Court appointed counsel shall comply with all laws, rules, procedures, and ethical provisions for providing reasonable assistance of counsel to their client.

Court appointed counsel shall maintain a high standard of ethical conduct and always be completely candid with the trial court.

Court appointed counsel shall timely inform their client of matter relating to the preparation, trial and disposition of the case; appellate and writ rights, deadlines, and procedures for proper processing, and such other matters as necessary to provide reasonable assistance of counsel.

Court appointed counsel shall 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.

By October 15 each year each attorney on the Court Appointment Lists for Misdemeanors, Felonies, Felony Appeals and Juveniles shall submit to Upshur County (on a form prescribed by the Texas Indigent Defense Commission) the annual percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under Texas Code of Criminal Procedure Article 26.04 and Title 3 of the Texas Family Code for the preceding year from October 1 through September 30.

Prompt Appointment of Counsel

11/01/2016

PROMPT APPOINTMENT OF COUNSEL

The arresting officer shall ensure that the next morning after arrest at 11:00 a.m. every arrestee shall be brought before a magistrate to hold a probable cause hearing and set bail and inform the accused person of their rights including right to court appointed counsel if indigent.

When an eligible defendant submits the required documents for the appointment of counsel, the request and documents required will be transmitted to the appointing authority (the court or the court's designee) within 24 hours of request.

A. Prompt Appointment of Counsel

i. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the third working day after the date on which the appointing authority receives the defendant's request for court appointed counsel. Working day means Monday through Friday, excluding official state holidays. Counsel must be appointed whether or not a case has been filed in the trial court.

ii. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

iii. If a defendant is released from custody prior to the initial appearance, the forms required to request counsel may be obtained at the Texas Indigent Defense Commission's website at <http://tidc.tamu.edu/public.net/> or from the Court Coordinator at 405 N. Titus, Gilmer, Texas 75644. The defendant may submit these forms to the Court Coordinator at 405 N. Titus, Gilmer, Texas 75644. The court will rule on all requests for counsel submitted in this manner.

iv. Appointment Authority

1. If no case has been filed in the trial court, the appointing authority for felonies is: 115th District Court Coordinator.
2. If the case has been filed in the trial court, the appointing authority is: 115th District Court Coordinator.

Persons arrested in other counties on local warrants must be appointed counsel within 1 working day of receipt of the request in counties with a population of 250,000 or more and within 3 working days of receipt of the request in counties under 250,000. [Art. 1.051(c-1), CCP]

Persons arrested on out-of-county warrants must be appointed counsel if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of the arrest. [Art. 1.051(c-1), CCP]

Procedures for defendants to obtain the necessary forms to request counsel and to submit these forms to the appointing authority at any time after the initiation of adversary judicial proceedings. [1 TAC § 174.51]

B. Defendants Appearing Without Counsel - If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement:

i. The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.

ii. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant:

1. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
2. Waived or has waived the opportunity to retain private counsel.

iii. The attorney representing the state may not:

1. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or

2. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:
 - a. Has been given a reasonable opportunity to retain counsel; or
 - b. Waives or has waived the opportunity to retain private counsel.

C. Waiver of the Right to Counsel

- i. A defendant may voluntarily and intelligently waive the right to counsel.
- ii. A waiver obtained in violation of section IV.B above is presumed invalid.
- iii. If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

"I have been advised this ___ day of ____, 2___, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to

employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)"

iv. A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

Attorney Selection Process

10/8/2014

Attorneys will be selected for appointment on a rotational basis.

APPROVAL OF ATTORNEYS BY JUDGE

In addition to meeting the objective qualifications described in Section VII above, an attorney may be placed on the felony appointment list only if the 115th District Judge approves the attorney's placement on the list. In addition to meeting the objective qualifications described in Section VII above an attorney may be placed on the misdemeanor appointment list only if the Upshur County Judge approves the attorney's placement on the misdemeanor list.

At least twice a year, following the submission of attorney applications for the public appointment lists, the District Judge shall evaluate the new applicants for the felony appointment list and the attorneys already on the list.

At least twice a year, following the submission of attorney applications for the public appointment lists, the Upshur County Judge shall evaluate the new applicants for the Misdemeanor List and the attorneys already on the Misdemeanor List.

The 115th District Judge shall on or before January 1 and July 1 of each year, post outside the Upshur County District Clerk's Office the Public Appointment List for the 115th District Court. The Upshur County Judge shall, on or before January 1 and July 1 of each year, post outside the Upshur County Clerk's Office the Public Appointment List for the Upshur County Court.

If no removals, additions, or modifications in the lists are made by the Judges there will be no need to replace these lists on or before January 1 or July 1 of each year.

GROUNDS FOR REMOVAL FROM APPOINTMENT LIST

An attorney may be removed from the appointment list if the attorney:

no longer meets the objective qualifications for the list;

has twice or more failed to contact or interview clients in a timely manner as required by Article 26.04(j)(1), Code of Criminal Procedure;

has submitted a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure;

fails to maintain compliance with each of the appointment list guidelines;

has been found by a court to have provided ineffective assistance of counsel;

has violated a rule of professional responsibility;

has been convicted of or received a deferred adjudication for any offense, other than an offense punishable by a fine only;

is under indictment or being formally charged with an offense, other than an offense punishable by a fine only;

has intentionally misrepresented statements on the application for the appointment list; or

is not fully competent to adequately handle the category of cases associated with that list.

has misrepresented information on an Attorney Fee Voucher or Claim for Reimbursement.

An attorney may also be removed from the appointment list for another stated good cause.

If a judge believes that an attorney has violated any of the provisions listed in the paragraph above, the judge may remove said attorney from any appointment list he/she has been placed on.

Fee and Expense Payment Process

10/15/2010

COMPENSATION OF COURT APPOINTED COUNSEL

Court appointed counsel shall receive such reasonable compensation as established by Standing Order of the Upshur County District and County Judges. (See Exhibit "D" attached).

Payment Process: No payment of attorney's fees will be made other than in accordance with the rules set forth below.

i. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered.

ii. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.

1. If a judge disapproves a request for compensation, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.

2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.

APPOINTMENT OF INVESTIGATORS AND EXPERTS FOR INDIGENT DEFENSE

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

Procedure With Prior Court Approval:

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

The type of investigation to be conducted or the type of expert to be retained;

Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and

An itemized list of anticipated expenses for each investigation or each expert.

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

State the reasons for the denial in writing;

Attach the denial to the confidential request; and

Submit the request and denial as a sealed exhibit to the record.

Procedure Without Prior Court Approval:

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

DUTIES OF ATTORNEY SEEKING REVIEW OF TRIAL COURT'S ORDER

An attorney who chooses to appeal the trial court's disapproval of the requested attorney's fees shall file a motion with the Presiding Judge of the Administrative Judicial Region within twenty (20) days of the trial court's signing of an order disapproving the requested court appointed attorney's fee.

The appealing attorney shall set forth in his motion the following information:

The cause number, style and caption of the case;

The type and classification of the offense;

The date the attorney was appointed;

The date the case was disposed;

Whether the case was disposed of by dismissal, plea, bench trial, or jury trial;

The date and length of each court appearance within the nearest one-tenth of an hour, if the attorney is requesting to be compensated based upon an hourly fee;

The date of each office conference or jail conference and the time spent within the nearest one-tenth of an hour;

A copy of any itemization submitted to the trial court for the purpose of payment including a statement of each date a service was rendered, the type of service rendered, the time expended in the rendering of said service, the expenses incurred, and a statement explaining any attached vendor's invoice or expert's services invoice;

Any factors that require unusual effort on the attorney's part to overcome in the representation of the defendant including but not limited to, need for an interpreter, uncharged crimes and Penal Code Section 12.45 issues, multiple defendant, etc.;

The date the fee order, the subject of the motion, was signed;

A detailed statement by the attorney explaining how the trial court's order disapproving the requested court appointed attorney's fee deviated from the county's approved fee schedule adopted under the Texas Fair Defense Act.

The appealing attorney shall attach the following documents to the motion:

A copy of the trial court's order disapproving the requested court appointed attorney's fee, if any; and

A copy of the county's attorney fee schedule adopted pursuant to the Texas Fair Defense Act.

The appealing attorney shall file the original of the motion with the clerk of the court in which the case is pending, and shall file a certified copy of the motion with the Presiding Judge of the Administrative Judicial Region and with the trial court. The Presiding Judge of the Administrative Judicial Region shall abate any ruling on the motion for a period of not less than ten (10) days from the filing of the motion pending an opportunity for further review by the trial court.

After receiving the motion, the trial court may enter a revised payment order within the ten (10) day period following the filing of the motion. The trial court shall file a copy of the revised payment order with the Presiding Judge of the Administrative Judicial Region.

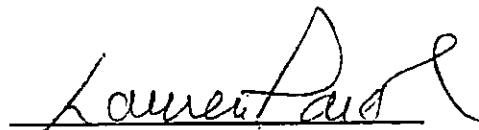
If a revised payment order is entered resolving the dispute to the satisfaction of the appealing attorney, the attorney shall file with the Presiding Judge a notice withdrawing the appeal. The motion will then be deemed moot and no further action will be taken by the Presiding Judge of the Administrative Judicial Region.

If the trial court's revised payment order does not fully resolve the issue to the satisfaction of the appealing attorney, the attorney shall, within five (5) days of the signing of the trial court's revised payment order, file with the Presiding Judge of the Administrative Judicial Region and the trial court a notice stating that the matter remains subject to contest. The attorney shall attach a copy of the trial court's revised payment order to said notice. The trial court shall, within five (5) days of the filing of the notice of contest, file written findings that set forth in detail the reason(s) for disapproving the requested attorney's fee. The findings should substantially comply with the form attached as Exhibit "F".

If the trial court does not enter a revised payment order, the trial court shall, within five (5) days of the filing of the motion, file written findings that set forth in detail the reason(s) for disapproving the requested attorney's fee. The findings should substantially comply with the form attached as Exhibit "F".

If the Presiding Judge of the Administrative Judicial Region has not received notice of a resolution of the appeal prior to the expiration of ten (10) days from the filing of the motion, the Presiding Judge shall rule on the motion in accordance with the provisions of 26.05(c), Texas Code of Criminal Procedure. The Presiding Judge shall sign an order that substantially conforms to the form order attached as Exhibit "G".

SIGNED THIS THE 7th DAY OF NOVEMBER, 2016.

A handwritten signature in cursive script, reading "Lauren Parish", written over a horizontal line.

DISTRICT JUDGE LAUREN PARISH

EXHIBIT "A"
APPLICATION FOR COURT APPOINTED ATTORNEY

THIS FORM SHALL BE COMPLETED UNDER OATH

Name: _____ Age: _____ Phone: _____

Address: _____
 Street City State Zip

Usual Occupation: _____ Current place of employment: _____

Address of Employment: _____ Supervisor: _____

Wages: \$ _____ per _____ (Hour, week, 2 weeks, monthly, or other)

Annual income last year: \$ _____ Highest grade attained in school _____

List college, vocational or technical training: _____

Spouse's name: _____ Age: _____ Occupation: _____

Address: _____ Phone: _____

Spouse's current place of employment: _____

Address of Employment: _____

Spouse's Supervisor: _____

Wages: \$ _____ per _____ (hour, week, 2 weeks, monthly or other)

List any home and/or other real estate: _____

List all motor vehicles owned: _____

List all bank accounts: _____

List all bonds, stock, securities or investments: _____

List all personal property: _____

(Firearms, boats, stereos, TV refrigerators, etc.)

List all other income whatsoever: _____

(Social security, pensions, oil and gas income, welfare, food stamps, etc.)

List the following monthly expenses, if applicable:

Rent or house payment _____ Car payment: _____

Electric: _____ Gas: _____ Water: _____ Phone: _____

Groceries: _____ Clothing: _____ Other: _____

List all other debts and financial obligations: _____

What charges are pending against you? _____

Felony or Misdemeanor: _____

I have accurately and truthfully completed the above application for court appointed attorney and swear to said application's truth and accuracy under penalty of §37.02 or 37.03 of the Texas Penal Code for any misrepresentation of the facts contained herein.

-----Further, on this the _____ day of _____, _____, I have been advised by the 115th District Court of my right to representation of counsel in the trial of the charge(s) pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the Court to appoint counsel for me.

(Defendant signature) (Date)

ORDER APPOINTING ATTORNEY

Upon determination by the Court that this defendant is too poor to employ counsel, the Court hereby appoints _____, a practicing attorney in Upshur County to defend Defendant. Attorney's phone number is: _____

Judge: _____
Date: _____

EXHIBIT "C"

ATTORNEY APPLICATION FOR INCLUSION ON PUBLIC APPOINTMENT LIST

AFFIDAVIT OF LICENSED ATTORNEY
RESIDING OR HAVING AN OFFICE FOR THE PRACTICE
OF LAW IN UPSHUR COUNTY, TEXAS

THE STATE OF TEXAS §

COUNTY OF UPSHUR §

I, _____, State Bar of Texas Number _____ do hereby file this affidavit in compliance with the Upshur Standing Rules and Orders for Procedures for Timely and Fair Appointment of Counsel in Upshur County, Texas, and do solemnly swear or affirm that the below information is true and correct. Should any change in this information occur, I understand that I must within 30 days of such change file an Amended Affidavit with the 115th District Court in Gilmer, Texas.

I have checked below all applicable provisions and have completed the requested information below with full, complete, and true answers.

- I understand that my name **WILL BE CONSIDERED FOR INCLUSION** on the list of licensed attorneys eligible for court appointments in Upshur County, Texas, and I state, under oath or affirmation that I am a: (check all that apply)
- I currently reside in Upshur County.
- I currently maintain a law office in Upshur County, Texas.
- I have been approved on a prior court appointment list by the 115th District Court.
- I have averaged 10 hours of continuing legal education courses relating to criminal defendants for the past 2 years (Attach proof).
- I have completed 10 hours of continuing legal education courses relating to criminal defendants in the 12 months preceding this application. (Attach proof).
- I have tried to verdict 2 or more MISDEMEANOR JURY TRIALS to verdict.
- I have acted as participating second chair counsel in 2 or more MISDEMEANOR JURY TRIALS to verdict.

- () I have tried to verdict 1 or more FELONY JURY TRIALS as lead counsel.
- () I have acted as participating second chair counsel in 2 or more felony jury trials to verdict.
- () I have appealed 2 or more felony convictions.
- () I am currently certified in Criminal Law by the Texas Board of Legal Specialization.
- () I have at least 3 years experience in juvenile or criminal litigation.
- () I have tried 3 or more juvenile cases or felony criminal cases to a jury verdict as lead counsel.
- () I have completed at least 6 hours of continuing legal education pertaining to juvenile law in the 12 months preceding this application (Attach proof).
- () I am currently certified in Juvenile Law by the Texas Board of Legal Specialization.

Please describe your formal educational background including high school, college, graduate programs, law school, etc. Please state degrees earned and dates those degrees were earned.

I was licensed to practice law by the Texas Supreme Court on _____
month / year

- I am currently a licensed attorney in good standing with the State of Texas and the Texas Supreme Court.
- I am also currently a licensed attorney in good standing to practice law in the State of _____.
- I have been admitted to practice law in the U.S. Federal District Courts for the Eastern District of Texas.
- I have been admitted to practice law in the U.S. Federal Courts for the _____ District of the State of _____.
- I have been admitted to practice law before the U.S. Fifth Circuit Court of Appeals.
- I have been admitted to practice law before the U.S. _____ Circuit Court of Appeals.
- I have been admitted to practice law before the United States Supreme Court.

V.

ETHICS AND PRIOR SANCTION HISTORY DISCLOSURE

I certify, under oath, that I: (check only those that are true and correct)

- Have completed ten (10) hours of Criminal Law C.L.E. in the past twelve (12) months.
- Have completed 6 hours of C. L. E. pertaining to juvenile law in the past twelve (12) months.
- Have not been sanctioned by the State Bar of Texas for any ethical violation.

For purposes of this inquiry, "Sanctioned" is defined as disbarment, probation, public reprimand, suspended, fined, or such other State Bar of Texas sanction that is of public record.

- Have not been found by a trial judge and/or appellate court to have provided ineffective assistance of counsel.

- () Will comply with the State Bar Rules for Professional conduct.
- () Will comply with The Texas Lawyer's Creed - A Mandate for Professionalism.
- () Will obtain copies and keep myself informed of the local rules of procedure for Upshur County, Texas.
- () I will update the court on an annual basis regarding my continuing legal education in criminal and/or juvenile law.

**VI.
CERTIFICATION**

I certify, under oath, that I have received, read, and understand the Upshur County Standing Rules for Timely and Fair Appointment of Counsel for Indigent Accused Persons in Upshur County, Texas, effective January 1, 2005 and will comply with said plan, rules and orders.

I certify, under oath, that I shall maintain an office with a telephone which is answered by a receptionist or answering service from 8:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 5:00 p.m. Monday through Friday (except for Upshur County holidays as set out in the official Upshur County calendar approved by the Upshur County Commissioner's Court) and which receptionist or answering service can promptly locate the attorney and notify said attorney of appointment or hearing setting. Further, I maintain a facsimile number to which facsimiles may be received 24 hours a day, seven day a week. These numbers are as follows:

Office Receptionist _____
 Office Answering Service _____
 Facsimile _____

I will give written notice of any change in these notification numbers to the 115th District Judge and Upshur County Judge prior to the change.

I acknowledge that I shall make every reasonable effort to contact any accused person I am appointed to represent by the end of the first working day following notification of my appointment.

I acknowledge that I shall interview said accused person as soon as practicable.

I certify, under oath, that I will zealously represent my client but always within the bounds of the law and legal ethics of Texas.

I certify, under oath, that I, personally shall represent and appear on behalf of my client.

I understand that I must timely submit by bill for:

1. Indigent legal representation on the date a case is disposed of by a plea or bench trial; or
2. Indigent legal representation within 15 days of the date of judgment in a jury trial; or
3. Indigent appeal representation within 15 days of the date a mandate is returned on appeal.

I understand and acknowledge that failure to comply with these time requirements shall result in my waiver of right for such compensation and my services will have been performed PRO BONO unless good cause is shown.

I understand that I have a continuing duty to file an Amended Affidavit within 30 days of the date any of the above information changes.

I hereby, have been sworn upon oath, depose, state and certify that the above information is true and correct.

Witness my signature on this the ____ day of _____, 20__.

AFFIANT

Print Name: _____

Subscribed and Sworn to Before Me this the ____ day of _____,
20__.

NOTARY PUBLIC/PERSON AUTHORIZED
TO ADMINISTER OATHS

Print Name: _____

Capacity: _____

EXHIBIT "D"

**SCHEDULE OF 115TH DISTRICT COURT APPOINTED
ATTORNEY FEES**

Pursuant to Article 26.05(b), Texas Code of Criminal Procedure, the 115th District Court Judge hereby adopts this schedule of fees for the compensation of court appointed attorneys named on the 115th District Court Public Appointment List. It is ORDERED that compensation for attorney's fees and expenses, submitted to the Court on the prescribed Attorney Fee Voucher, shall be on a case-by-case basis as determined by the Judge. It is further ORDERED that total compensation for appointed counsel services and expenses shall not exceed the following, unless the Court finds exceptional circumstances or that good cause for exceeding said total amount exists:

FLAT FEES

Guilty Plea	\$450.00
Motions to Revoke	\$450.00
Guilty Plea - Multiple Cases	\$600.00
Dismissal of Filed Case	\$250.00
Indictment Quashed	\$250.00
Pre-trial representation where case never filed	\$150.00

**I. FELONY CASES ("Not guilty" or "Not true" pleas)
(Including Juvenile Cases Based on Charges of Felony Grade Laws
and Felony Appellate Work)**

- A. Compensation for time spent by counsel out of court shall not be less than FIFTY-FIVE DOLLARS AND NO CENTS (\$55.00) per hour nor more than SIXTY-FIVE DOLLARS AND NO CENTS (\$65.00) per hour.
- B. Compensation for time spent in court shall not be less than SIXTY-FIVE DOLLARS AND NO CENTS (\$65.00) per hour nor more than SEVENTY FIVE DOLLARS AND NO CENTS (\$75.00) per hour.

II. CAPITAL CASE COMPENSATION

In a capital case, in which the state seeks the death penalty, the rates for the lead attorneys services (first chair) shall be double the hourly rate provided above for non-capital felony attorney's fees.

Any co-counsel (second or third chair) appointed by the Court shall be paid at the same rate as for non-capital felony cases under this order.

In capital cases, in which the state seeks the death penalty, the rates for the appeal attorney services shall be double the hourly rate provided above for non-capital felony attorney fees.

**III: REIMBURSEMENT FOR REASONABLE EXPENSES FOR
PURPOSES OF INVESTIGATION AND EXPERT TESTIMONY**

- A. In capital and non-capital felony criminal cases appointed counsel will be reimbursed for reasonable expenses that are incurred upon motion and application. Whenever possible prior court approval should be obtained before expenses are incurred.

Reasonable expenses after motion and application may include expenses incurred or expected to be incurred for investigation and expert testimony, and will be in addition to the total compensation referred to in Section I of this Order. Said fees shall not exceed FIVE HUNDRED DOLLARS (\$500.00) in total expert fees unless otherwise approved by the Court.

- B. In capital felony criminal cases appointed counsel will be reimbursed for reasonable expenses that are incurred provided court approval has been granted upon motion and application. Reasonable expenses after motion and application may include expenses incurred or expected to be incurred for investigation and expert testimony, and will be in addition to the total compensation referred to in Section II of this Order.
- C. **Appointed counsel may incur investigative or expert expenses without prior approval of the court on presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonable incurred. Unreasonable or unnecessary expenses will not be approved.**

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

Request for payment of fees and/or expenses shall be submitted to the Court on the prescribed Attorney Fee Voucher. The voucher shall be submitted to the Court on the date of disposition of a case by plea or bench trial, within fifteen days of the date of

verdict in a jury trial, or within fifteen days of the date the mandate is returned on appeal.

Request for payment of fees and/or expenses submitted to the Court after the dates listed above shall not be paid unless good cause is shown. Fees and/or expenses shall be paid only upon the termination of court appointed counsel's representation.

When the trial judge disapproves the amounts requested under an Attorney Fee

-3-

Voucher, court appointed counsel and the Trial Court shall follow Section 25.05(c), Texas Code of Criminal Procedure.

Attorney Fee Voucher

EXHIBIT E

1. Jurisdiction <input type="checkbox"/> District <input type="checkbox"/> County <input checked="" type="checkbox"/> County Court at Law Court # _____		2. County _____	3. Cause Number _____ _____ _____	Offense _____ _____ _____	4. Proceedings <input type="checkbox"/> Trial-Jury <input type="checkbox"/> Trial-Court <input type="checkbox"/> Plea-Open <input type="checkbox"/> Plea-Bargain <input type="checkbox"/> Other _____
5. In the case of: State of Texas v					
6. Case Level <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Juvenile <input type="checkbox"/> Appeal <input type="checkbox"/> Capital Case <input type="checkbox"/> Revocation - Felony <input type="checkbox"/> Revocation - Misdemeanor <input type="checkbox"/> No Charges Filed <input type="checkbox"/> Other _____					
7. Attorney (Full Name) _____			9. Attorney Address (Include Law Firm Name if Applicable) _____ _____		10. Telephone _____
8. State Bar Number _____	8a. Tax ID Number _____				11. Fax _____
12. Flat Fee - Court Appointed Services					12a. Total Flat Fee \$ _____
13.	In Court Services		Hours	Dates	13a. Total In Court Compensation. \$ _____
	_____		_____	_____	
	Rate per Hour =	Total hours	_____	_____	
14.	Out of Court Services		Hours	Dates	14a. Total Out of Court Compensation. \$ _____
	_____		_____	_____	
	Rate per Hour =	Total hours	_____	_____	
15.	Investigator			Amount	15a. Total Investigator Expenses \$ _____
16.	Expert Witness			Amount	16a. Total Expert Witness Expenses \$ _____
17.	Other Litigation Expenses			Amount	17a. Total Other Litigation Expenses \$ _____
18. Time Period of service Rendered: From _____ Date to _____ Date					
19. Additional Comments _____ _____					20. Total Compensation and Expenses Claimed \$ _____
21. Attorney Certification - I, the undersigned attorney, certify that the above information is true and correct and in accordance with the laws of the State of Texas. The compensation and expenses claimed were reasonable and necessary to provide effective assistance of counsel.					
<input type="checkbox"/> Final Payment <input type="checkbox"/> Partial Payment					
_____ Signature					_____ Date
22. SIGNATURE OF PRESIDING JUDGE:					Amount Approved:
Reason(s) for Denial or Variation					

EXHIBIT "F"

NO. _____

THE STATE OF TEXAS

§
§
§
§
§

IN THE _____ COURT

VS.

OF

_____ COUNTY, TEXAS

TRIAL COURT'S WRITTEN FINDINGS
REGARDING REQUESTED COURT APPOINTED ATTORNEY'S FEE

On this _____ day of _____, 200____, the Court, after reviewing the above styled and numbered case, finds that the requested amount of payment by _____ in the amount of \$ _____ is not reasonable and therefore is disapproved for the following reason(s).

- _____ The Court finds that the requested fees exceed the Court's approved fee schedule.
- _____ The Court finds that the attorney has failed to provide to the Court an itemized document setting forth billable attorney's hours and/or expenses.
- _____ The Court finds that the attorney has submitted an hourly rate that exceeds the rate established by the fee schedule.
- _____ The Court finds that the attorney has submitted an itemized statement that records unauthorized expenses, to wit: _____
- _____ The Court finds that the time and labor required, the lack of novelty and difficulty of the questions involved and the skill requisite to properly perform the legal services do not justify the requested fee.
- _____ The Court finds that the requested payment exceeds the fee customarily charged in the locality for similar legal services.
- _____ The Court finds that the nature and length of the professional relationship with the client does not justify the requested fee.
- _____ The Court finds that the requested payment of fees as submitted by the attorney is not supported for the following reasons: _____
- _____ Other: _____

The Court finds that an attorney's fee in the amount of \$ _____ should be paid to said attorney as fair and just compensation for the attorney's fee in the case.

SIGNED the _____ day of _____, 200____.

JUDGE PRESIDING

EXHIBIT "G"

NO. _____

THE STATE OF TEXAS

§
§
§
§
§

IN THE _____ COURT

VS.

OF

_____ COUNTY, TEXAS

ORDER ON MOTION TO REVIEW DISAPPROVAL OF
REQUESTED COURT APPOINTED ATTORNEY'S FEE

On this day, came on for consideration the Motion to Review the Disapproval of the Requested Attorney's fee filed by _____, court appointed counsel for the Defendant in the above entitled and numbered cause. After considering the motion and other documents filed, the following order is rendered.

IT IS ORDER that motion is GRANTED/DENIED.

IT IS FURTHER ORDERED THAT _____ shall be paid a reasonable attorney's fee of \$ _____.

IT IS FURTHER ORDERED that the order for payment signed by the trial court on _____ is AFFIRMED.

The District Clerk of Upshur County, Texas, shall certify this order to the Commissioners Court of Upshur County, Texas, for its observance and, if applicable, furnish a copy of this order to the County Auditor not later than the 45th day after the date an application for payment of a fee is submitted, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county. Art. 26.05(c), Texas Code of Criminal Procedure.

SIGNED on this the _____ day of _____, 200_____.

PRESIDING JUDGE
Administrative Judicial Region