

FORT BEND COUNTY PLAN AND INTERIM LOCAL RULES FOR MAGISTRATE HEARINGS AND APPOINTMENT OF ATTORNEYS FOR INDIGENT DEFENDANTS

The following plan and interim local rules shall apply to the magistrate and probable cause hearings and the setting of bonds. These local rules and this plan are designed to comply with the provisions of SB 7 as set forth in the Texas Code of Criminal Procedure. In the event that the Task Force on Indigent Defense contemplated by SB 7 provides for requirements not contemplated by this plan and these local rules, these local rules shall be amended at the first opportunity. These local rules are in addition to any local rules that are presently applicable and where there is a conflict, if any, between these local rules and local rules that address the following matters these local rules and the Texas Code of Criminal Procedure shall apply.

I. MAGISTRATE AND PROBABLE CAUSE HEARINGS

1. At the time of the magistrate and probable cause hearings the arresting officer for each arrestee, shall have filed, at the time of booking into the jail, a typewritten, concise probable cause affidavit with such additional information (offense report, etc.) as necessary for the magistrate to make the appropriate judgement. "Arrestee" is defined herein as a person who is arrested without an indictment or information having been filed. **No one shall be booked into jail without the filed probable cause affidavit.** Affidavits for warrant arrests must be faxed or delivered to the jail upon arrest from the arresting agency.

1.1 A Magistrate conducting magistrate and probable cause hearings as provided for in these rules shall be a Judge, Associate Judge or an assigned Judge designated by the Administrative Judge of Fort Bend County in order to ensure consistent compliance with SB7, local rules and the Texas Code of Criminal Procedure.

2. The morning after arrest, at a time established by the magistrate, every felony and misdemeanor arrestee shall be brought to the magistrate jail courtroom or other designated courtroom for a magistrate to hold a probable cause hearing, set bail and determine the need for court appointed counsel. During the weekends the magistrate shall hold magistrate and probable cause hearings at 11:00 am or at some other time as instructed by the magistrate, the jail being advised of the time in advance. The jail shall have all the arrestee's and the files and papers ready for review by the Magistrate at the jail courtroom or other designated courtroom prior to the magistrate's arrival.

3. The pretrial services department of Fort Bend County CSCD shall interview each arrestee prior to the magistrate hearing and shall provide to the magistrate the following information:

- i. Financial information regarding the arrestee's available income from all sources including but not limited to spouse and contributions from family members.
- ii. Arrestees expenses including but not limited to living expenses, child support and

alimony obligations, child care, medical expenses and transportation expenses.

- iii. Assets including but no limited to cash, savings and checking accounts, stocks, bonds, certificates of deposit, equity in real estate and personnel property.
- iv. Whether the arrestee is conversant in English or another language or deaf and the language of the arrestee if the defendant is a non- English speaker. The pretrial services department, upon learning that an arrestee is deaf or unable to communicate in English shall arrange for a qualified interpreter to be present when the arrestee is taken before the magistrate.
- v Whether there is reason to believe that the arrestee committed to the custody of the Sheriff has a mental illness or is a person with mental retardation. The Sheriff, for any arrestee committed to his custody, shall notify the pretrial services department upon arrest but not later than 72 hours afer receiving evidence or a statement that may establish reasonable cause to believe that an arrestee has a mental illness or is a person with mental retardation and such information shall be provided to the Magistrate in accordance with the provisions of Art. 16.22, Texas Code of Criminal Procedure.

4. At the magistrate probable cause hearing, the responsible judge shall make a record of and comply with the provisions of SB 7 and the requirements of the Texas Code of Criminal Procedure for:

- A. The requirements of Art. 15.17 Texas Code of Criminal Procedure
- B. Notification of indigent representation rights
- C. Making of record of the magistrate warnings
- D. Notification of attorney rights
- E. Inquiry as to whether the defendant is requesting court appointed counsel
- F. Providing defendant with an affidavit of indigence and reasonable assistance in completing said forms
- G. Referral to the appropriate designated Judge for appointment of counsel and reference to an appropriate local mental health or mental retardation authority, as required by Art. 16.22 (a) Texas Code of Criminal Procedure, if required.

The making of a record is satisfied by the use of forms approved by the Board of Judges of Fort Bend County.

5. At probable cause hearings each arrestee shall be provided an opportunity to request court appointed counsel, if indigent. Each requesting arrestee shall complete and file a sworn affidavit of indigence with the magistrate.

6. The magistrate will send all requests for appointment of attorney by an indigent in felony cases and cases in which both felony and misdemeanor charges are pending to the District Judge responsible for arraignments. The Magistrate will send all requests for

appointment of attorney by an indigent in Misdemeanor cases to the Administrative Judge for the County Courts at Law who will then assign such requests to the Ancillary County Court at Law Judge for such week. Such District Judge and the assigned Ancillary County Court at Law Judge, or if the Ancillary County Court at Law Judge is not available or has not been assigned, the Administrative County Court at Law Judge shall appoint attorneys from the approved graduated list of attorneys not later than three (3) working days after receipt of such request. If an indigent person is arrested pursuant to indictment then the appointment will be made within one (1) working day after receipt of the request by the judge in whose court the case is filed. Those indigents arrested on Capital Murder charges shall have attorneys appointed from the approved 2nd Administrative Region list of attorneys qualified to try Capital Cases, with preference given to those qualified attorneys who have practiced in Fort Bend County, have knowledge of Fort Bend County local rules and adhere to the requirements of paragraphs VIII and IX of addendum "A" of these local rules. Notice of appointment will be faxed and mailed to the appointed attorney and a telephone call shall be made to the attorney informing such attorney of the appointment.

7. The financial standards set forth at 7.1 below shall be used in determining whether an arrestee is considered indigent and shall be applied equally between arrestees and defendants.

7.1 A person is considered indigent if their net household income does not exceed 125% of the federal poverty guideline as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register, with the guidelines for 2001 being the base year.

(An example is attached hereto as Addendum "C")

II. PROCEDURE FOR THE APPOINTMENT OF COUNSEL FOR INDIGENTS PURSUANT TO SENATE BILL 7

A. Applications for appointment to represent indigent defendants

The Board of Judges of Fort Bend County shall prepare and mail to all attorneys residing in or doing business in Fort Bend County and all attorneys who have received court appointments in Fort Bend County for the five (5) years proceeding the date of these local rules, as reflected in the records of the Fort Bend County Auditor, an Application for Criminal and Juvenile Appointments in Fort Bend County on or before December 1, 2001. Such attorneys shall complete the appropriate documents and return same to the Fort Bend County Administrative Judge on or before December 15, 2001.

B. Graduated lists of approved attorneys

The District and County Court at Law Judges trying criminal cases, or a committee established by same, shall prior to January 1, 2002, approve a graduated list or lists of attorneys for appointment in Felony and Misdemeanor cases. Such list or lists shall be filed with the District and County Clerks. The lists of attorneys shall be revised at least annually by these Judges or the

committee appointed by same. Applications submitted after the graduated lists are approved by the Judges shall be considered inclusion on the list as received and acted upon by the Judges. An attorney who desires to be removed from the list and/or who no longer qualifies for appointments shall submit a Request for Exclusion from Indigent Appointments on a form approved by the Board of Judges.

C. Felony appointments

In order to qualify as a court appointed attorney to represent indigent defendants in felony cases an attorney must meet the requirements set forth in Addendum “A” attached hereto and made a part hereof by reference.

D. Misdemeanor appointments

The Board of County Court at Law Judges of Fort Bend County will establish a plan to be incorporated into this plan as set forth in Addendum “B” attached hereto and made a part hereof by reference which shall consist of the following:

1. Qualification criteria for attorneys for appointment to represent indigent defendants, who are charged with Class A and Class B misdemeanors;
2. Procedure for the appointment of attorneys for each criteria stated in 1;
3. Pay schedule for attorneys appointed for each criteria stated in 1.

The criteria set forth above may be reviewed and revised by the County Court at Law Judges in accordance with these local rules or at such other time as the County Court at Law Judges determine and any revision is necessary such changes shall be included in these local rules and plan thereafter at a regularly posted meeting of the Board of Judges.

E. Continuing responsibilities:

An attorney who is appointed to represent an indigent defendant, regardless of the degree of offense, is expected to represent that defendant through all pretrial, post trial and appellate levels. In the event an appointed attorney desires to withdraw from representing an indigent defendant through the appellate process, such attorney shall promptly, upon completion of post trial matters, move to withdraw with good and satisfactory cause cited and bring such motion to the immediate attention of the judge.

F. Adoption of fee schedules

Attorneys appointed by the Court to represent indigents shall receive such reasonable compensation as established by Order of the Board of District Judges of Fort Bend County and by Order of the Board of County Court at Law Judges of Fort Bend County. The fee schedules adopted by formal action of the each of such Board of Judges shall comply with Art. 26.25 Texas Code of Criminal Procedure and all applicable law and shall be sent to the Commissioners Court of Fort Bend County, Texas.

G. Reasonable and necessary expenses

The appointment and reimbursement for reasonable and necessary investigation, mental health, and other expert witness expenses shall be as provided by law and only upon written motion and prior approval of the trial Judge. A complete and true statement of expenses incurred by the person appointed shall be submitted to the trial judge with the request for reimbursement.

III. STANDARDS AND RESPONSIBILITIES FOR ATTORNEYS

A. An attorney appointed to represent indigents 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.

B. An attorney who appears on the approved list of attorneys qualified to receive appointments to represent indigents must maintain a place of business with a phone which is answered during regular business hours and from 8:00 am to 6:00 pm on the weekends and holidays. Such attorney shall make arrangements so that the attorney may be promptly located and notified of appointment or hearing settings. Attorneys on the approved list must maintain a **FAX** number which shall be operational 24 hours a day, seven days a week. These numbers shall be included on the Application for Criminal and Juvenile Appointments in Fort Bend County and shall be the official number utilized by the Court to inform counsel of appointment or court hearings. Any change in these notification numbers must be given in writing to each County Court at Law and District Court in Fort Bend County.

C. Attorneys appearing on the approved list shall comply with all laws, rules, procedure and ethical provisions for providing reasonable assistance of counsel to their client.

D. Attorneys appearing on the approved list shall maintain the highest standard of ethical conduct and always be completely candid with the Court.

E. A court **MAY REPLACE AN ATTORNEY** if the appointed attorney does not make an effort to contact the defendant by the end of the first working day or does not interview the defendant as soon as possible. The court may sanction an attorney for violation of these standards.

F. A majority of the Judges trying criminal cases in Fort Bend County may remove an attorney from the approved list if the attorney intentionally or repeatedly does not fulfill the duties required by law, rules, local rules, provisions for providing reasonable assistance of counsel, or for failing to comply with the requirements for inclusion on the approved list.

These Local Rules were adopted by the below signed Judges and are effective beginning January 1, 2002.

Signed and ORDERED this the ____ day of _____, 2001.

Thomas Stansbury
328th Judicial District Court
Administrative Judge

Thomas R. Culver, III
240th Judicial District Court

Brady G. Elliott
268th Judicial District Court

Robert Kern
387th Judicial District Court

Bradley Smith
400th Judicial District Court

Larry Wagenbach
County Court at Law #1

Walter McMeans
County Court at Law #2

Susan G. Lowery
County Court at Law #3

Sandy Bielstein
County Court at Law #4