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**IN THE DISTRICT/COUNTY COURT OF DUVAL COUNTY, TEXAS
ORDER AMENDING LOCAL RULES
IMPLEMENTING S.B. 7
Amended July 11, 2022**

The District/County Court of Duval County, Texas hereby adopts Local Rules implementing the provision of the Texas Fair Defense Act, Acts 2001, 77th Leg., Ch. 906, eff. January 1, 2002, also known as S.B. 7, as follows:

Rule 1. Booking into Jail

1.01 Authority to Book a Person

No person shall be booked into the Duval County Jail unless:

- a. a complaint or affidavit of probable cause is filed contemporaneously with the booking of the person;
- b. an indictment or information has previously been filed;
- c. a motion to revoke community supervision has previously been filed;
- d. a parole revocation warrant of arrest has previously been filed;
- e. an Order of commitment has been issued;
- f. a warrant of arrest has been issued;
- g. a warrant of arrest by a United State County Court or Magistrate Court has been issued; or
- h. a warrant of extradition from another State has been issued.

1.02 "Booked" or "Booking" Defined

"Booked" or "Booking" means the act of recording the placement of a person in jail.

1.03 Complaint or Affidavit to be sworn.

1.04 Authority to Administer Oath

- a. The District/County Attorney, an Assistant District/County Attorney, the District/County Clerk, a Deputy District/County Clerk, and a notary public are competent and authorized to administer oaths to law enforcement officers for the purpose of filing complaints or affidavits of probable cause contemporaneously with the booking of the person into the jail.
- b. The Sheriff shall provide a person, whether that person is a deputy Sheriff or a civilian employee or any other person, who shall be competent and authorized to administer oaths to law enforcement officers for the purpose of filing complaints or affidavits of probable cause.

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ELODA M. GARZA
CLERK COUNTY COURT DUVAL COUNTY, TEXAS
BY *Janet Mung* DEPUTY

1.05 Determination of Time of Arrest

At the time of booking, the booking officer shall determine from the arresting or transporting officer the time of the arrest of the person and shall note said time on all documents relating to the person.

1.06 Duplicate Booking Records

The booking officer shall make a duplicate booking record of the person and shall provide a copy thereof to the Magistrate, the State, and the Clerk.

Rule 2. Filing of Felony Case

2.01 Assignment of Number

Unless there is an existing cause or case number, a person booked into the County Jail on a new felony arrest shall be given an Arrest Case [AC] number in the same form as an indicted felony case, except that the letters "AC" shall be used instead of "CRD" to indicate that the case has not been indicted. If an indictment is returned on the case, the letter designation shall be automatically changed to "CRD." The case shall be given the number as if it had been given by the Clerk.

2.02 Filing of Misdemeanor Case

If the new arrest is for a misdemeanor offense, the cause shall be given a cause number under the present Local Rules.

Rule 3. Taking Person before Magistrate

3.01 Duty to take Person to Magistrate

The arresting officer or the booking officer or his/her representative shall take the person, not later than forty-eight (48) hours after the person was arrested, before the Magistrate who issued the warrant or before the Magistrate named in the warrant. Art. 15.16, Tx.C.Cr.P.

3.02 Delivery of Duplicate Booking Record

When taking the person to the Magistrate, the officer shall take a duplicate booking record for filing with the Magistrate.

3.03 Filing of Duplicate Booking Record

The Magistrate or his/her representative shall file with the District/County Clerk the duplicate booking record in the cause and shall note the time of delivery of the person.

Rule 4. The Magistrate

4.01 Who is a Magistrate

"Magistrate" means any officer described in Art. 2.09, Tx.C.Cr.P.

4.02 General Duties of Magistrate

The County Judge or other magistrate as designated by the County Judge, after conducting a hearing in which the State is represented by counsel, shall administer the warning to the arrested persons and shall perform the duties set out in Art. 15.17, Tx.C.Cr.P.

4.03 Court's Designee

The Court's "Designee" means the Court Manager.

4.04 Determination of whether Person has Counsel

The Magistrate shall determine from the person arrested whether the person already has counsel, and, if so, whether counsel is appointed or retained.

4.05 If Person has Counsel

- a. If the person has counsel, the Magistrate shall cause the person to be returned to the booking officer for further booking procedures, including the making of bail.
- b. The Magistrate shall cause that counsel be notified that the person is in jail.
- c. The Magistrate shall provide to the person the necessary forms for requesting the appointment of counsel.
- d. The Magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time.

4.06 If the Person does not have Counsel

- a. If the person does not have counsel, the Magistrate shall inform the person of the person's right to request the appointment of counsel if the person cannot afford counsel and of the procedures for requesting appointment of counsel.
- b. If the person does not understand the English language or is deaf, the Magistrate shall obtain the assistance of a qualified language or sign interpreter as appropriate.
- c. The Magistrate shall provide to the person the necessary forms for requesting the appointment of counsel.
- d. The Magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time.

4.07 Time to Compete and Return Forms

- a. The person shall be given sufficient time to complete and to return the necessary forms for requesting appointment of counsel.
- b. In a felony case, the person shall not be released from jail, even after he/she has posted bond, unless there has been a determination whether s/he is indigent, and, if so, after counsel has been appointed.

4.08 Determination of Indigence

- a. The Magistrate shall determine whether the arrested person is indigent.
- b. As provided by Art. 1.051(b), Tx.C.Cr.P., "indigent" means a person who is not financially able to employ counsel.

4.09 If Person Requests Appointment of Counsel

If the person is indigent and requests the appointment of counsel, the Magistrate Judge shall immediately and without unnecessary delay, but not later than twenty-four (24) hours after the person requests appointment of counsel, appoint counsel and shall notify the person of the same.

4.10 Record of Proceedings

- a. A record shall be made of the Magistrate informing the person of the person's right to the appointment of counsel, the magistrate asking the person whether the person wants to request appointment of counsel, and whether the person requested the appointment of counsel.
- b. The record concerning the request for counsel shall consist of written forms. The completed written forms shall be filed with the cause.
- c. All documentary records shall be maintained in the official file of the cause.

4.11 Other Participants at Hearings

At all proceedings before the Magistrate, the following shall also appear:

- a. The District/County Attorney or an Assistant District/County Attorney;
- b. The District/County Clerk or a Deputy District/County Clerk;
- c. An officer of the Personal Bond office;
- d. A Pre-Trial Supervision's Officer; and
- e. Any other person having an interest in the case.

4.12 Assignment of Magistrate

- a. The County Judge may randomly assign a Magistrate to perform the duties of Magistrate as provided by law and in the Rules.
- b. No assignment shall be for more than two (2) consecutive weeks at a time, unless the assigned Judge agrees to more than two (2) consecutive weeks.

Rule 5. Appointment of Counsel

5.01 Alternative Plan Adopted

It is the intent of the District/County Court to adopt an alternative program for appointing counsel for indigent defendants pursuant to Art. 26.04(g) and (h), Tx.C.Cr.P.

5.02 Notice for Application

On or before January 11, 2002, and, thereafter, on or before December 1 of each year, the Court Manager of the District Court shall issue notice to all attorneys who reside in Duval County or who have appeared in a criminal case within the preceding year in Duval County and that any attorney willing to accept an appointment on or before January 31, 2002 and, thereafter, on or before December 10 of each year.

5.03 Filing of Application

The Application for appointment must be filed with the Court Manager.

5.04 Form of Application

- a. Form of the application shall be in the form promulgated by the Court.
- b. The form shall inquire about an applicant's biographical, educational, licensing, certification, continuing education, trial experience, disciplinary, and other pertinent data.
- c. The form shall also inquire whether the application is for all cases or limited to misdemeanors only; to felonies only; for both misdemeanors and felonies; community supervision revocation motions only; for jury trial; for mental competency proceedings; for capital cases; for appeals only; for post-conviction proceedings, including writs of habeas corpus, motions for DNA testing, and such other proceedings as determined by the Courts.

5.05 Appointment of Lead Counsel and other Counsel

- a. A Court shall appoint lead counsel from a category appropriate to the case.
- b. A Court may appoint co-counsel from a category appropriate to the case.
- c. To foster the development of effective, competent, and experienced criminal defense counsel, a Court may appoint any attorney as second chair counsel in any case.
- d. At any stage of the proceedings, after the Court has appointed counsel to the case, in the discretion of the Court and for good cause stated in the record, the Court may appoint other counsel, either as lead counsel or as co-counsel, to assist previously appointed counsel. By way of example only, after the appointment of first counsel, if competency to stand trial becomes an issue and first counsel has no experience in trying a competency case, the Court may appoint lead counsel or co-counsel for the purpose of trying the issue.

5.06 Responsibilities of Appointed Counsel

- a. "Lead Counsel" means the attorney in charge of the case. All motions filed in the case shall be filed in the name of lead counsel, whether prepared or signed by other counsel. When assisted by other counsel, lead counsel may assign tasks among other counsel on behalf of the defendant. Except when conflicting settings may not be avoided, lead counsel appears on all matters before the Court and speaks for the defendant. Lead counsel is ultimately responsible for the case in all respects. There may be only one lead counsel to the case.
- b. "Co-Counsel" means an attorney otherwise eligible to serve as lead counsel who, because of the complexity of the case or in the sound discretion of the Court, should be appointed to assist lead counsel in the case. Co-counsel must be ready to step in as lead counsel in the event lead counsel is removed or withdraws from the case. Except for the trial of the case, co-counsel may appear before the Court for lead counsel and speak for the defendant when lead counsel is not able to attend a proceeding in the case because of a conflicting setting. There may be more than one co-counsel appointed to the case.
- c. "Second Chair Counsel" means an attorney who is not eligible to be appointed as lead counsel and who agrees to be appointed for the purpose of gaining experience, knowledge, and competency in the trial or disposition of a criminal case. Second chair counsel may not act as or become lead counsel in the case. Under the direction and in the presence of lead counsel, second chair counsel may present and argue motions, conduct examination of witnesses, and participate in a hearing or trial.

5.07 Categories of Appointments

- a. After reviewing all applications submitted timely, the Council shall place attorneys in the following categories:
 1. Capital;
 2. First and Second;
 3. Third, State Jail, and Misdemeanor;
 4. Competency;
 5. Appeals;
 6. Post-conviction, other than parole revocations; and
 7. Extradition.
- b. An attorney may be placed in more than one category.

5.08. Standard Guideline for All Categories

- a. An attorney placed in any category must meet the following requirements:
 1. Earned nine (9) or more hours per year of continuing legal education in criminal law or a related subject matter, or, if Board Certified in Criminal Law, then six (6) or more hours per year of continuing education in criminal law; and
 2. Be in good standing with the State Bar of Texas.

- b. An attorney must disclose in the application that, within the previous three (3) years, whether –
 - 1. S/He was the subject of a final disciplinary action by the Commission for Lawyer Discipline; and/or,
 - 2. S/He was the subject of a finding that s/he rendered ineffective assistance of counsel in a criminal case; and
 - 3. In either event, s/he may include an explanation of such action or finding.
- c. An attorney must complete a certification course in criminal law given every odd numbered year and taught by members of the local Judiciary, member of the Bar, and other persons.
- d. An attorney who previously served as a prosecutor in felony cases may apply such experience to qualify for appointment.
- e. An attorney who is license for more than ten (10) years; who has been engaged in the practice of law, criminal law during that period, including service as a prosecutor for two (2) years or more; who is Board Certified in Criminal Law; who has attended more than fifty (50) hours of continuing education in criminal law within the preceding five (5) years; and who is certified that s/he has tried ten (10) or more felony jury trials shall be presumed to qualify in Categories 2 and 3 of Rule 5.07(a).

5.09 Specific Guidelines for Categories

- a. An attorney placed in the “Capital” category must meet the requirements set by Art. 26.052, Tx.C.Cr.P. and established by the Fifth Administrative Judicial Region Committee on appointment of counsel on capital cases.
- b. An attorney placed in the “First and Second” category must meet the following minimum requirements:
 - 1. Has practiced criminal law for three (3) or more years; and
 - 2. Has served as lead counsel or co-counsel in five (5) or more jury trials in felony cases, of which three (3) or more were for Capital, First, or Second Degree offenses; or
 - 3. Has served as lead counsel, co-counsel, or second chair counsel in twenty (20) or more jury trials in felony cases, of which three (3) or more were for Capital, First, or Second Degree offenses.
- c. An attorney placed in the “Third, State Jail, and Misdemeanor” category must meet the following minimum requirements:
 - 1. Has practiced criminal law for two (2) or more years; and
 - 2. Has served as lead counsel or co-counsel in five (5) or more jury trials in felony cases; or
 - 3. Has served as lead counsel, co-counsel, or second chair counsel in ten (10) or more jury trials in criminal cases.
- d. An attorney placed in the “Competency” category must meet the following minimum requirements:
 - 1. Has practiced criminal law for three (3) or more years; and
 - 2. Has served as lead counsel, co-counsel, or second chair counsel in three (3) or more jury trials to determine the mental competency of the defendant to stand trial and other matters under Art. 46.02, Tx.C.Cr.P.

- e. An attorney placed in the "Appeals" category must meet the following minimum requirements:
 - 1. Has practiced criminal law for three (3) or more years; and
 - 2. Has served as lead counsel in the direct appeal of five (5) or more criminal cases, of which two (2) or more were from jury trials; or
 - 3. Has served as an appellate attorney in criminal cases in a prosecutor's office or an appellate court.
- f. An attorney placed in the "Post-conviction" category must meet the following minimum requirements:
 - 1. Has practiced criminal law for three (3) or more years;
 - 2. Has served as lead counsel, co-counsel, or second chair counsel in three (3) or more applications for writs of habeas corpus, motions for DNA testing, or other post-conviction matters requiring an evidentiary hearing.
- g. An attorney placed in the "Extradition" category must meet the following minimum requirements:
 - 1. Has practiced criminal law for one (1) or more year; and
 - 2. Has served as lead counsel, co-counsel, or second chair counsel in three (3) or more extradition proceedings.

5.10 Method of Appointments

- a. Counsel shall be appointed randomly and by rotation within each category.
- b. To the extent possible, the appointing authority shall obtain written acceptance of the appointment from the attorney or his/her employee within forty-eight (48) hours of the appointment, which acceptance shall be noted in the cause.
- c. Except as provided for in sub-part d. of this Rule, an appointment is for all cases pending against the person.
- d. In certain non-capital cases, the County/District Judge may appoint two (2) or more attorneys to represent a person on separate matters in the same case; e.g., see Rule 5.05 d.

5.11 Order for Appointment

Each appointment shall be by an Order of Appointment, which shall note the date and time of appointment.

5.12 Duties of Counsel

- a. Counsel must have on file with each Court or the Court Manager current information on his/her office address, Bar number, telephone number, fax number, e-mail address, pager number, and other such data that will allow the appointing authority to immediately notify counsel of an appointment.
- b. Counsel for the Defendant must contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant within the end of the second working day after the attorney is appointed.
- c. Counsel shall represent the defendant on all matters pending against the defendant at the time of appointment.

- d. Counsel shall continue to represent the defendant on all proceedings as provided in Art. 26.04(j)(2), Tx.C.Cr.P.

5.13 Replacement and/or Removal of Appointed Counsel

- a. The Court may replace counsel in a case as provided in Art. 26.04(k), Tx.C.Cr.P.
- b. The Court may remove from consideration for appointment an attorney for good cause.
- c. The Court may suspend from consideration for appointment an attorney for good cause for a period of not less than ninety (90) days and may require the attorney to attend a continuing legal education course in criminal law before his/her reinstatement.

5.14 Compensation for Counsel

Please See Attachment.

5.15 Fee Application; Documentation

Counsel requesting payment must submit a written fee application in the form promulgated by the Court at the time of the disposition of the case or within five (5) days of the completion of services. The application must have attached to it any documentation to support expenses, including charges by investigators.

5.16 Failure to Timely Submit Fee Application

Failure to timely submit a fee application may constitute a waiver of compensation

5.17 When Prior Approval Required

The appointment of an investigator or an expert witness and the filing of a petition for discretionary review must first be approved in writing before such expenses may be incurred.

Rule 6. Bail

6.01 Time to Set Bail

The County Judge or designated Magistrate after having a hearing in which the State is represented by counsel shall set bail within the time provided by law.

6.02 Guidelines

- a. In addition to the rules for setting bail provided by law, bail shall be set according to the following schedules:
 - 1. Capital Murder \$100,000 or more;
 - 2. First Degree Felony \$25,000 to \$100,000;
 - 3. Second Degree Felony \$15,000 to \$50,000;
 - 4. Third Degree Felony \$5,000 to \$25,000;

5. State Jail Felony\$1,500 to \$10,000;
 6. Class A Misdemeanor\$1,000 to \$5,000; and
 7. Class B Misdemeanor\$500 to \$1,500.
- b. In any case, the Court shall have discretion to set bail or to modify bail previously set by the Magistrate.

6.03 Personal Bond Office

With the consent of Commissioners Courts of each County, the County Court establishes a Personal Bond Office for Duval County pursuant to Art. 17.42, Tx.C.Cr.P.

- a. Except as provided in sub-part c. of this Rule, the Magistrate shall presume that every person is eligible for a personal bond.
- b. A person admitted to the personal bond program shall pay a personal bond fee of twenty dollars (\$20) or three percent (3%) of the amount of bail, whichever is greater. In an appropriate case, the Magistrate may waive the fee.
- c. The Magistrate shall not presume that a person with a final felony conviction or who is on community supervision is eligible for a personal bond.

Rule 6.04 Pre-Trial Supervision

Every person released from the jail on a personal bond or any other bond may be ordered to submit to Pre-Trial Supervision through the Community Supervision and Corrections Office.

Rule 6.05 Conditions of Bail and Pre-Trial Supervision

- a. The Magistrate may impose conditions of bail and pre-trial supervision upon every person admitted to the personal bond program.
- b. The conditions of bail and of pre-trial supervision shall be in the form promulgated by the Council.

Rule 6.06 Revocation of Personal Bond

- a. Upon the alleged violation of a condition of bail or of pre-trial supervision, the Magistrate or the Court may issue a warrant of arrest for the person.
- b. Upon the arrest of the person, the Magistrate or the Court shall conduct a hearing within two (2) working days to determine whether to revoke the personal bond, the increase bail, to modify conditions of bail, and to determine other matters of bail.

Rule 7. Arraignment

7.01 Setting Arraignment Date

- a. In a felony case, the Magistrate shall set the arraignment according to the settings set by the District Court.
- b. In Misdemeanor cases, the Magistrate shall set the arraignment according to the settings set by the County Court.

Counsel shall receive compensation according to the following schedule:

Criminal and CPS cases

- a. Guilty Plea, Plea of True, or Dismissal by Defendant\$500
- b. Non-jury Trials and contested hearings
 - 1. In Court \$175 per hour
 - 2. Out of Court \$150 per hour
- c. Jury Trials
 - 1. In Court \$1,400 per full day;
..... \$700 per half day.
 - 2. Out of Court \$150 per hour
- d. Reasonable expenses as documented
- e. Investigation by licensed investigator as ordered by the court
- f. Direct Appeal or Discretionary Review \$175 per hour, not to exceed:
 - 1. \$20,000 in a death sentence case;
 - 2. \$10,000 in a non-death Capital, First, or Second Degree case;
 - 3. \$7,500 in a Third Degree or State Jail case;
 - 4. \$7,500 in a Misdemeanor case.
- g. Upon written motion setting forth good cause, the Court may vary from the foregoing schedule to fairly compensate counsel in a particular case.

- c. The Magistrate shall provide written notice of the arraignment to the Defendant in the form approved by the Courts.
- d. The Defendant shall acknowledge in writing his/her receipt of the notice of arraignment.

7.02 Appointment of Counsel at Arraignment

If an indigent person is released from custody prior to the appointment of counsel, the Court shall appoint counsel for the person at the Arraignment.

7.03 Magistrate of Court may Dismiss Cases

The Magistrate of the Court may dismiss a case upon motion of the State.

Rule 8. Repeal of Conflicting Rules

8.01 Repeal

Upon the effective date of these Rules, orders, practices, and/or procedures in conflict with these Rules are repealed.

8.02 Determination of Repeal

In the event that a question arises regarding the repeal of a prior rule, order, practice, and/or procedure, the Court shall decide whether the prior rule, order, practice and/or procedure is repealed.

Rule 9. Effective Date

9.01 These rules are effective July 11, 2022.

Approved on this the 8th day of August, 2022.


Baldemar Garza, District Judge
229th Judicial District Court
Duval County, Texas


E.B. Garcia, County Judge
Duval County, Texas