

**FIFTH AMENDED (2020) LOCAL RULES
OF ANGELINA COUNTY
FOR THE TIMELY AND FAIR APPOINTMENT OF COUNSEL
FOR INDIGENT DEFENDANTS**

FILED
MAY 18 AM 8:05
CLERK OF DISTRICT COURT
ANGELINA COUNTY TEXAS
DEPUTY

**I.
METHOD OF APPOINTMENTS**

A. Public Appointments List

The District and County Courts at Law in Angelina County, Texas will maintain five Public Appointment Lists of attorneys qualified to represent indigent defendants as follows:

1. Trial and Appellate Category A for first degree and second degree felony offenses;
2. Trial and Appellate Category B for third degree and state jail felony offenses;
3. Trial and Appellate Category C for all misdemeanors;
4. Capital Trial Category for death penalty offenses and death penalty appeals;
and
5. Juvenile Category

Attorneys who desire to represent indigent persons shall file a sworn **APPLICATION TO BE PLACED ON PUBLIC APPOINTMENT LISTS FOR ANGELINA COUNTY** (attached hereto as Exhibit "A") with the Board of Judges to have his/her name approved on one or more of the Public Appointment Lists. Before January 1 of each year, the District Judges and County Court at Law Judges shall meet and approve a list of eligible list of attorneys for each List. A copy of each Public Appointment List shall be posted in the Reception Area of respective Judge's offices and will be available to the public upon request.

B. Prompt Magistration & Appointment of Counsel

1. Each accused person/defendant will be brought before a magistrate within 48 hours of arrest for proceedings under Article 15.17 of the Code of Criminal Procedure. The magistrate conducting the arraignment shall conduct the probable cause hearing, set bail, inform the accused of right to counsel and give the magistrate warning in accordance with Article 15.17. When a defendant requests appointment of counsel, the request form will be transmitted by facsimile within 24 hours to the appointing authority (Judges of District Courts or County Courts-at-Law).

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.

- a. 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]
- b. 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]
- c. If an indigent defendant is arrested in another county based on this county's warrant, counsel will be appointed within 3 working days of this county's receipt of the request for counsel.
- d. If a defendant is arrested in this county based on another county's warrant, counsel will be appointed for the defendant if, on the eleventh day after the arrest, the defendant is still in this county's custody.

2. A defendant who has not bonded and remains in custody shall be presented to the appointing authority on the next working day after arrest to complete the **Attorney Request Form**, attached hereto as Exhibit "B," and the **Questionnaire Under Oath Concerning Financial Resources** or the **Affidavit of Indigence**, attached hereto as Exhibit "C:" or "C-1" A defendant who has bonded and does not remain in custody shall, prior to release from custody, be given the form **Order to Appear for Appointment of Attorney**, attached hereto as Exhibit "D", to appear at 8:30AM on the next working day after arrest to the appointing authority to complete the **Attorney Request Form** and **Questionnaire Under Oath Concerning Financial Resources** or **Affidavit of Indigence**.

If a defendant wishes to request counsel 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: Indigent Defense Clerk, at rcedillo@angelinacounty.net. The defendant may submit these forms to the Judge of the appropriate District Court or County Court-at-Law at P.O. Box 908, Lufkin, Texas 75902-0908.

3. The appointing authority shall question the defendant regarding financial eligibility for appointed counsel under this provision and shall consider the accused's income, assets, and liabilities, as set forth in article 26.04(m) of the Texas Code of Criminal Procedure; the seriousness and complexity of each charged offense; the anticipated cost of representation for the offense(s) charged; the social and economic conditions of the accused and any dependents; and any other extenuating circumstances affecting the ability of the accused to retain private counsel. A person accused of a criminal offense shall be presumed to be

indigent, i.e., "a person who is not financially able to employ counsel," Tex. Code Crim. Proc. Art. 1.051(b), if any of the following conditions or factors are present:

- a. The accused or a dependent of the accused has been determined to be eligible to receive public assistance, including, but not limited to, food stamps, Medicaid, Temporary Assistance to Needy Families, Supplemental Security Income, public or subsidized housing, or civil legal services;
- b. The household income of the accused and any dependents is at or below 125% of the poverty guidelines published annually by the United States Department of Commerce;
- c. The accused is currently serving a sentence in a correctional institution, 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; or
- d. The accused previously has been determined to be indigent and entitled to court-appointed counsel in the currently pending or related court proceedings.

When none of these presumptions applies, an accused shall nevertheless be eligible for assignment of counsel if the accused is unable to employ private counsel without substantial financial hardship to the accused or the accused's dependents. An accused shall not be presumed to be financially ineligible for appointment of counsel merely because the accused has posted bail.

4. Upon determination of indigence, the appointing authority or person(s) designated by the authority shall sign an **Order Appointing Counsel**, attached hereto as Exhibit "E" as soon as possible, but not later than the end of the third working day after the date on which the appointing authority or designee receives and eligible defendant's request for counsel. The appointing authority shall appoint an attorney from the appropriate Public Appointment List using a system of rotation. The appointing authority shall appoint the attorney from the names on the Public Appointment List in the order in which the attorney's name appears on the List, unless the Court makes a finding of good cause on the record for appointing an attorney out of order. Where the appointing authority finds it necessary to deviate from the rotation, deviation is presumed to be for "good cause" if the appointment was made to:

- a. appoint the same counsel as appointed in another pending case involving the same defendant;
- b. appoint the same counsel in a probation revocation matter that represented the defendant at the time of the initial plea or prior proceeding in the underlying case;

- c. provide a non-English speaking defendant with counsel who is capable of communicating in a language understood by the defendant; or
- d. provide immediate representation under exigent circumstances.

The District Judges and County Court-at-Law Judges shall annually review the distribution of appointments from the list of cases and payments collected by the auditor. This review will provide guidance as to whether appointments are being made in a fair, neutral, and non-discriminatory manner, and any necessary adjustments will be made accordingly.

5. The appointing authority shall notify the attorney of the appointment by the most expeditious means available, and provide counsel with a copy of the Order Appointing Counsel and the last known location of the defendant. If the attorney does not accept the appointment, the attorney shall immediately advise the appointing authority or trial Court and the above rotation process shall be repeated.

6. **Capital Cases** (only if Angelina County is a subscriber to Regional Public Defender for Capital Cases Agreement)

The Regional Public Defender for Capital Cases shall be appointed to all capital felony cases unless good cause exists to appoint private counsel. If a co-defendant requests appointment of counsel and is determined to be indigent, the Appointing Authority shall appoint counsel pursuant to the standards and procedures stated in this Section.

II.

QUALIFICATIONS OF APPOINTED ATTORNEYS

A. Minimum Continuing Legal Education Requirements (2004 supplement)

An attorney may be appointed only if the attorney:

1. Completes a minimum of six hours of continuing legal education pertaining to criminal law during each 12 month reporting period. The first reporting period will begin on April 27, 2003, and then on the first day of each reporting period thereafter. Continuing legal education may include activities accredited under Section 4, Article XI, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing; or
2. Is currently certified in criminal law by the Texas Board of Legal Specialization.
3. Reporting Period
 - (a) 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 requirements for the initial year.

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

(c) To be included on the appointment list, each attorney must annually submit an affidavit to the county detailing the criminal continuing legal education activities completed in the prior year. Alternatively, an attorney may annually submit documentation showing the attorney is currently certified as a specialist in criminal law.

4. Emergency Appointment.

If no attorney who meets these continuing legal education or board certification requirements is available by the time an attorney must be appointed in a case, another attorney may be appointed. The person making an appointment shall give priority to an attorney with experience in criminal or juvenile law, respectively.

B. Trial and Appellate Category A

1. A separate master list will be maintained of attorneys who request and are approved for appointment to first degree and second degree felony cases.

2. All attorneys who request appointments in this category must (a) have been licensed to practice law in Texas for at least three years, (b) have completed the minimum CLE requirements as set forth above, and (c) have tried to verdict as 1st chair at least 3 felony jury trials.

C. Trial and Appellate Category B

1. A separate master list will be maintained of attorneys who request and are approved for appointment to third degree and state jail felony cases.

2. All attorneys who request appointments in this category must (a) have been licensed to practice law in Texas for at least one year, (b) have completed the minimum CLE requirements as set forth above, and (c) have tried to verdict as 1st chair at least 3 Class "B" or higher misdemeanor jury trials.

D. Trial and Appellate Category C

1. A separate master list will be maintained of attorneys who request and are approved for appointment to all misdemeanor cases.

2. All attorneys who request appointments in this category must be licensed to practice law in Texas and have completed the minimum CLE requirements as set forth above,

E. Capital Trial Category (If Angelina County is no longer a subscriber to Regional Public Defender for Capital Cases Agreement)

1. A separate master list will be maintained of attorneys who request and are approved for appointment in capital murder cases. To be approved, an attorney must meet the experience requirements established by the Administrative Judge for the Second Administrative Judicial Region for appointment to capital murder cases.

2. Two attorneys will be appointed in each capital case. Only lead counsel is required to meet the above qualifications. Co-counsel must meet at least the requirements of Trial Category A. Additionally, co-counsel must have tried to verdict at least five 1st or 2nd degree felony jury cases.

3. An attorney may not be appointed to more than two capital murder cases per calendar year, except for good cause found by the trial Court.

F. Capital Appellate Category

1. A separate master list will be maintained of attorneys who request and are approved for appointments in the appeal of capital murder cases.

2. All attorneys who request appointments in this category must meet the experience requirements established for the Capital Trial Category.

H. Reporting Obligations for all Categories:

Attorneys must make an online submission to the Texas Indigent Defense Commission by October 15 each year with the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. (Art. 26.04(j)(4), CCP)

**III.
DUTIES OF APPOINTED COUNSEL**

Appointed Counsel shall make every reasonable effort to contact their client not later than the end of the first working day after the date on which the attorney is appointed, and shall interview the client as soon as practicable after the attorney is appointed. The Court may replace an attorney who violates this requirement.

Appointed Counsel shall maintain a place of business with a phone 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 County holidays as approved by the Angelina County Commissioners' Court). Said receptionist and answering service must have the capability to promptly locate the attorney to notify the attorney of appointment and hearing settings. Appointed Counsel shall maintain a FAX number to which faxes can be received 24 hours a day, seven days a week. These phone and FAX numbers shall be included in the attorneys Application To Be Placed On Public Appointment List and shall be the official numbers which will be utilized by Court personnel to notify counsel of their appointment and of hearing settings. Any change in these numbers shall be given in writing to each County and District Court prior to the change.

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

Appointed Counsel shall maintain a high standard of ethical conduct toward the Court and their client, and always be completely candid with both.

Appointed Counsel shall timely inform their client of all matters relating to the preparation, trial and disposition of the case, offers of plea bargains, appellate and writ rights, deadlines and such other matters necessary to provide reasonable assistance of counsel.

Appointed Counsel shall represent a defendant until the charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the Court or replaced by other counsel after a finding of good cause is entered on the record.

IV.

INVESTIGATIVE AND EXPERT EXPENSES (2003 supplement)

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.

A. Procedure With Prior Court Approval:

1. 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:

(a) the type of investigation to be conducted or the type of expert to be retained;

- (b) 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
- (c) an itemized list of anticipated expenses for each investigation or each expert.

2. 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:

- (a) state the reasons for the denial in writing;
- (b) attach the denial to the Confidential request; and
- (c) submit the request and denial as a sealed exhibit to the record.

B. Procedure Without Prior Court Approval:

1. 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 reasonably incurred. Unreasonable or unnecessary expenses will not be approved. Articles 26.05(d), 26.052(f), (9) & (h), Code of Criminal Procedure

V.

REMOVAL FROM PUBLIC APPOINTMENT LISTS

Repeated failure to contact or interview clients in a timely manner, submission of an improperly documented request for payment, repeated failure to fulfill the duties required by law, rules, these Local Rules or ethical provisions for providing reasonable assistance of counsel, may result in removal of an attorney's name from a Public Appointment List.

VI.

COMPENSATION OF COUNSEL

A. Legal Fees

All fee payment requests must be itemized by appointed counsel on forms approved by the District and County Court at Law Judges. All requests shall be submitted to the Judge presiding over the proceedings for review and approval, and submitted to the county auditor for payment.

1. Appointed attorneys shall be compensated on an hourly fee basis in accordance with the schedule of fees adopted by formal action of the District and County Court at Law Judges.

2. The range of hourly rates shall be uniform among all Courts, and take into consideration the complexity of the case, the experience and ability of the attorney, time spent in court making an appearance for the defendant as evidenced by a docket entry, time spent in trial, time spent in a proceeding in which sworn oral testimony is elicited, reasonable and necessary time spent out of court supported by any documentation required by the Court, preparation of appellate briefs and preparation of a Motion for Rehearing, the potential punishment faced by the defendant, and reasonable office overhead costs.

3. There will be no minimum or maximum fee per case or per day.

4. If the trial judge recommends disapproval of the requested amount of payment, the Judge shall make written findings, stating the amount of amount different from the requested amount.

5. Any disapproved fee payment request may be appealed by the appointed counsel to the Presiding Judge of the Second Administrative Judicial Region, as provided by the Fair Defense Act.

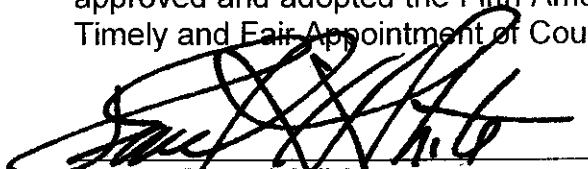
B. Expenses

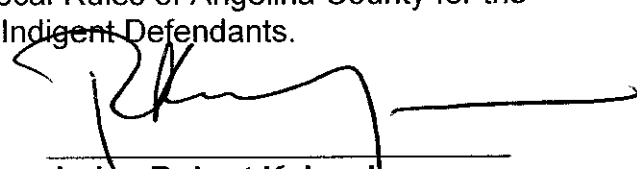
1. Compensation for reasonable and necessary expenses shall be made to include investigation, expert witness assistance, and other litigation expenses, such as long distance or collect telephone call.

2. Procedures consistent with Articles 26.02(f), (g), and (h) of the Code of Criminal Procedure will be adopted for payment of expenses incurred with and without prior Court approval as provided in the Fair Defense Act.

ORDER

On the 14th day of May, 2020, The Board of Judges of Angelina County, Texas approved and adopted the Fifth Amended Local Rules of Angelina County for the Timely and Fair Appointment of Counsel for Indigent Defendants.


Judge Paul E. White,
159th Judicial District Court


Judge Robert K. Inselmann,
217th Judicial District Court


Judge Joe Lee Register,
County Court at Law No. 1


Judge Clyde M. Herrington,
County Court at Law No. 2