Medina County Juvenile Board Plan

Preamble

05/20/2021

As required by the Texas Fair Defense Act, the Juvenile Board of Medina County approves the following plans for the qualification of and appointment of attorneys to represent indigent juveniles.

JUVENILE BOARD OF MEDINA COUNTY.

The Juvenile Board of Medina County shall consist of the elected or appointed District Judge, the County Court at Law Judge and the County Judge. The Board meet periodically in accordance with the Texas Open Meetings Act. The Board shall elect a Chairman who is responsible for the administrative duties of the Boards. The Board may impose policies, procedures and guidelines to implement this plan and guarantee effective representation to juveniles whose families may be indigent.

BOARD'S DESIGNEE

The Chairman of the Juvenile Boards is responsible for the following:

1. Maintaining and updating the list of qualified attorneys;

2. Managing intake procedures;

3. Tracking cases and assignments to avoid duplication;

4. Supervising and monitor attorney fee payments;

5. Coordinating with the Office of Court Administration;

6. Maintaining the rotation schedule of appointed attorneys, as applicable;

7. Insuring compliance with the policies and standards of the Task Force on Indigent Defense;

8. Assisting in all reporting requirements; and

9. Performing all other duties designated by the Juvenile Board.

Prompt Detention Hearings

10/20/2021

I

A. A child taken into custody must either be brought to a juvenile processing office without unnecessary delay where they may not be detained for longer than six hours pursuant to §52.025, Family Code, or another disposition as authorized by §52.02, Family Code, including referral to the office designated by the juvenile board as intake for the juvenile court. The intake officer shall process the child according the requirements of §53.01, Family Code, and shall also inform the child and the child's parents of the right to appointed counsel if they are indigent and provide a form to the child and the child's parent(s)/person(s) deemed responsible for the support of the child for the purpose of determining eligibility for appointment of counsel. If the child is not released by intake, then a Detention Hearing shall be held not later than the second working day after the child is taken into custody unless the child is detained on a Friday, Saturday or listed holiday in which case the Detention Hearing shall be held on the first working day after the child is taken into custody.

B. Prior to the Detention Hearing the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent, and of the child's right to remain silent as to the alleged conduct.

C. The Detention Hearing may be conducted without the presence of the child's parent(s) or other responsible adult(s), however, in these cases the court must immediately appoint counsel or a guardian ad litem to represent the child.

D. The court shall provide the attorney for the child access to all written matter to be considered by the court in making the detention decision.

Indigence Determination Standards

05/20/2021

II

A. Definitions, as used in this rule:

i. "Indigent" means a person who is not financially able to employ counsel.

ii. "Net household income" in the case of a child is the income of the child's parents or other person determined responsible for the support of the child. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the person determined responsible for the support of the child has no income or lesser income.

iii. "Household" means all individuals who are actually dependent on the child's parent(s) or person(s) deemed responsible for the support of the child, for financial support.

iv. "The cost of obtaining competent private legal representation" includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

B. Eligibility for Appointment

i. A child is presumed indigent if any of the following conditions or factors are present:

1. At the time of requesting appointed counsel, a child is presumed indigent if the child's parent(s) or other person(s) determined responsible for the support of the child is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.
2. The net household income of the child's parent(s) or other person(s) determined responsible for the support of the child does not exceed 100% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register;
3. The child's parent(s) or other person(s) determined responsible for the support of the child is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought; or

ii. The child who does not meet any of the standards above shall nevertheless be considered indigent if the child's parent(s) or other person(s) responsible for the support of the child is unable to retain private counsel without substantial hardship. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:

1. the nature of the charge(s);
2. anticipated complexity of the defense;
3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
4. the amount needed for the support of the child, the child's parent(s)/person(s) deemed responsible for the support of the child and other dependents of the child's parent(s)/person(s) responsible for the support of the child;

5. child's parent(s') income or the income of other person(s) determined responsible for the support of the child;
6. source of income;
7. assets and property owned by the child, child's parent(s), or other person(s) determined responsible for support of the child;
8. outstanding obligations;
9. necessary expenses; and
10. the number and ages of any siblings of the child.

iii. Factors NOT to be considered in determining indigence:

1. The resources available to friends or relatives of the child, other than the child's parent(s) or other person(s) deemed responsible for the support of the child, may not be considered in determining whether the child is indigent.
2. Only the child's parent(s) or other person(s) responsible for the support of the child and the child's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. Indigence Proceedings:

i. The appointing authority can require the child and the child's parent(s) or other person(s) responsible for the child to respond to questions about the child's household financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.

ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:

1. Determining if the child is (or is not) indigent; or
2. Impeaching direct testimony of the child or the child's parent(s)/person(s) deemed responsible for the support of the child regarding the child's indigence.

iii. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in Parts I and IV of these rules.

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

1. A child's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court proceeding. The child's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:
    a. Evidence of a material change in the child's parent(s)/person(s) deemed responsible for the support of the child and the child's financial circumstances; or
    b. Additional information regarding the child's parent(s)/person(s) deemed responsible for the support of the child and the child's financial circumstances that shows that they do not meet any of the standards for indigence contained in these rules.
2. If a child previously determined to be indigent is subsequently determined not to be indigent, the court appointed attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.

v. If the court determines that a child's parent(s) or other person(s) deemed responsible for the support of the child has financial resources that enable him/her

to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the child's parent(s) or other person(s) deemed responsible for the support of the child to pay the charges. Further, if the child is found to have engaged in delinquent conduct or CINS, the court shall order costs, including legal expenses and fees to be paid by the child's parent(s) or other person(s) responsible for the support of the child to the extent the court finds he/she is able to pay them.

Minimum Attorney Qualifications

05/20/2021

III

A. The Juvenile Board shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists. To be eligible for an appointment list, an attorney must meet the following minimum requirements:

i. General Attorney Requirements:

1. An attorney on the appointment list must ensure all information on their application is correct;

2. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;

3. An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on

October 1st and ends on September 30th. The report must be submitted through the online form to the Texas Indigent Defense Commission/form prescribed by the Texas Indigent Defense Commission to the court administration office in the county.

4. An attorney shall complete a minimum of 6 hours of CLE in the area of juvenile law and procedure each year. All attorneys on the appointment list must file a certificate with the court administration office each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in juvenile law. 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. Continuing legal education activity completed during any reporting period in excess of the minimum of 6 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;

5. An attorney must be knowledgeable in juvenile law and be aware of collateral consequences of a juvenile adjudication and disposition;

6. An attorney may not have been the recipient of any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or of the United States;

7. An attorney must maintain an office capable of receiving email, fax, and telephone calls;

8. An attorney must have the ability to produce typed motions and orders;

9. An attorney shall notify the Juvenile Board promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule, or under these guidelines from receiving appointments to represent indigent defendants.

ii. Attorney Requirements where CINS Charges or Delinquent Conduct, and Commitment to TJJD Is Not an Authorized Disposition:

1. An attorney must meet the General Attorney Requirements as set forth herein;

2. An attorney must have a minimum of one (1) year of work experience in juvenile law;

3. An attorney must have observed or participated in at least:

   a. 5 stipulated juvenile adjudications;

   b. 5 contested juvenile adjudications;

   c. 5 juvenile dispositions; and

   d. 5 detention hearings; and

4. An attorney must have participated in at least three (3) criminal or juvenile trials to a jury.

iii. Attorney Requirements Where Delinquent Conduct, and Commitment to TJJD Without a Determinate Sentence Is an Authorized Disposition:

1. An attorney must meet the General Attorney Requirements as set forth herein;

2. An attorney must have a minimum of one (1) year of work experience in juvenile law;

3. An attorney must have participated in five (5) criminal or juvenile cases, of which at least two (2) were tried to a jury verdict; and

iv. Attorney Requirements where Determinate Sentence Proceedings have been initiated; or Proceedings for Discretionary Transfer to Criminal Court have been initiated:

1. An attorney must meet the General Attorney Requirements as set forth herein;

2. An attorney must have a minimum of three (3) years of work experience in juvenile law;

3. An attorney must have participated in twenty (20) criminal or juvenile cases, of which at least two (2) were tried to a jury verdict;

4. An attorney must have tried at least ten (10) criminal or juvenile case as lead counsel.

B. Approval for Appointment Lists - An attorney must be approved by a majority of the Juvenile Board for each appointment list for which the attorney applies.

C. Removal from Appointment List - The Juvenile Board will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be

removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the Juvenile Board.

D. Reinstatement to Appointment Lists

i. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Juvenile Board Plan.

ii. An attorney who was removed from the appointment list for not submitting the attorney's annual practice time report may be immediately reinstated upon submission of the report so long as the attorney otherwise meets the other qualifications under this Juvenile Board Plan.

iii. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

E. Duties of Appointed Counsel - Appointed Counsel shall:

i. Notify the court within 72 hours of the receipt of appointment;

ii. Make every reasonable effort to:

1. Contact the child by the end of the first day after the date on which the attorney is appointed; and

2. Interview the child IN PERSON as soon as practicable after the attorney is appointed, but no later than 5 working days after the date of appointment or prior to the first court hearing whichever is earlier.

iii. Represent the child until:

1. The case is terminated; or

2. The family retains an attorney; or

3. The attorney is relieved of his duties by the court or replaced by other counsel.

iv. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense that may be reasonably and arguably available to the child;

v. Brief the law of the case and be prepared to present any legal defense that may be reasonably and arguably available to the child;

vi. Be prepared to negotiate with the prosecutor for the most favorable solution of the case as can be achieved through a plea agreement;

vii. Be prepared to try the case to conclusion either with or without a jury;

viii. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;

ix. Maintain reasonable communication and keep the child informed of the status of the case; and

x. Advise the child on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case.

xi. Perform the attorney's duty owed to the child in accordance with these procedures, the requirements of the Code of Criminal Procedure and the Family Code, and applicable rules of ethics.

xii. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

Prompt Appointment of Counsel

05/20/2021

IV.

A. Appointment of Counsel for Children in Detention

i. Prior to the detention hearing the court shall inform the parties of the child's right to counsel, and to appointed counsel if they are indigent, and of the child's right to remain silent as to the alleged conduct.

ii. Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.

iii. Prior to the initial detention hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the detention decision.

iv. If there is no parent or other responsible adult present, the court must appoint counsel or a guardian ad litem for the child.

v. If the child is detained, the child has an immediate right to counsel. If counsel has not already been appointed, the court must either appoint counsel or direct the child's parent or other responsible adult to retain an attorney promptly. The court may enforce an order to retain counsel by appointing an attorney to represent the child and requiring that the child's parent or other responsible adult reimburse the county for attorneys' fees.

vi. Upon appointment, the court administrator shall notify the appointed attorney by fax, e-mail, or personal contact of the appointment and the scheduled hearing time and date.

vii. The appointed attorney shall make every reasonable effort to contact a child in detention by the end of the first working day after receiving the notice of appointment or to inform the court that the appointment cannot be accepted. Contacting the child in detention may be by personal visit (including contact during a detention hearing), by phone, or by video teleconference. Contacting the court may be by fax, email, phone or personal visit. A court-appointed attorney shall contact the child, in one of the ways mentioned above, no less than once every ten working days while the child remains in detention.

viii. An attorney appointed for a detention hearing shall continue to represent the child until the case is terminated, the family retains an attorney, or a new

attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.

ix. Court-appointed attorneys shall make every effort to comply with the Texas State Bar Code of Ethics for communication with a client.

B. Appointment of Counsel for Children not Detained at Intake

i. If the child is released from detention and if a Petition to Adjudicate or a Motion to Modify is filed, the Juvenile Court will use the financial forms gathered at intake to make a determination of indigence. If no financial information is available, the juvenile court shall promptly summon the child's parent/guardian/custodian to the court so that financial information may be gathered for a determination of indigence.

ii. If the court makes a finding of indigence, the court shall appoint an attorney on or before the fifth working day after:

a. The date a Petition for Adjudication or Discretionary Transfer hearing has been served on the child; or

b. A Motion to Modify Disposition Seeking Commitment to TJJD or placing the child in a secure correctional facility has been filed.

iii. If the family does not qualify for appointed counsel or if the parent or guardian is not available, and the family fails to provide an attorney, the juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

iv. The prosecuting attorney and court clerk shall notify the Juvenile Court upon the filing of, and return of service of, a Motion to Modify or the return of service of a Petition for Adjudication or Discretionary Transfer.

Attorney Selection Process

05/20/2021

V

A. The appointing authority will identify which of the appointment lists, discussed in the attorney qualifications section, is most appropriate based on the accusations against the child and will appoint the attorney whose name is first on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:

   i. The child requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients' language, if one is available;

   ii. The child has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case;

   iii. An initial detention hearing is scheduled and the first attorney on the list is unavailable; or

   iv. Other good cause exists for varying from the list.

B. Once appointed, with the exception of the Regional Public Defender's Office, an attorney's name will be moved to the bottom of the appointment list. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

C. Regional Public Defender's Office - The Regional Public Defender's Office will appear on each list so that it receives 100% of cases for each category of offense. The Juvenile Board may, from time to time, adjust the percentage of cases received by the Regional Public Defender's Office. The Regional Public Defender's Office may be removed from a specific list by the judges, if it is determined that the office will no longer handle that category of cases. In such cases, the Regional Public Defender's office appointment rates will be increased for the other categories of offenses to maintain an adequate workload. The Regional Public Defender's office may refuse to accept appointment to a case, if:

i. A conflict of interest exists;

ii. The office has insufficient resources to provide adequate representation;

iii. The office is incapable of providing representation in accordance with the rules of professional conduct; or

iv. The office shows other good cause for refusing appointment.

D. Judicial Removal from Case:

i. The judge presiding over a case involving a child may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:

1. Counsel's failure to appear at a court hearing;
2. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
3. Current information about the child and the charges against the child indicate that another qualified attorney is more appropriate for the child under these rules;
4. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
5. The child requests an attorney, other than trial counsel, for appeal; or

6. The child shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the child.

ii. Appointment of Replacement Counsel - Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

Fee and Expense Payment Process

05/20/2021

VI

A. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by the Juvenile Board.

B. 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 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.

C. Payment of Expenses:

i. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth below. Whenever possible prior court approval should be obtained before expenses are incurred.

ii. 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 the following, 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 and/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.

iii. 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.

Miscellaneous

05/20/2021

Counsel appointed to represent indigent defendants shall be reimbursed as follows:

Out of Court or In Court time found to be reasonable and necessary at no less than $20 nor more that $110 per hour; total compensation not to exceed $500 per day unless exceptional circumstances or good cause shown.

Preparation and appeal of a cause to a higher court found to reasonable and necessary at no less than $20 nor more that $110 per hour; total compensation for appeal not exceed $1500 unless the court finds exceptional circumstances or good cause.

Request for payments must be made within 10 working days for hearings on detention or final disposition hearing and within 30 days after completion of the last deadline or oral argument on appeal.