



**DENTON COUNTY STATUTORY
COUNTY COURTS
2007 BIENNIAL INDIGENT
DEFENSE PLAN**

**1450 E. MCKINNEY
DENTON, TEXAS 76209-4524**

DENTON COUNTY STATUTORY COUNTY COURTS 2007 BIENNIAL INDIGENT DEFENSE PLAN

Qualifications for Appointment

1. Attorneys must be licensed to practice law in the State of Texas.
2. Attorneys must be members in good standing with the State Bar of Texas.
3. Attorneys must devote at least thirty (30%) percent of their time practicing criminal law in the State of Texas **or** must be board certified by the Texas Board of Legal Specialization in criminal law.
4. Attorneys appointed must not have been found by any court to have engaged in professional misconduct within the last three (3) years.
5. Attorneys must not have received a public reprimand or greater penalty within the last three (3) years.
6. Attorneys may not be on community supervision probation, deferred adjudication or participating in the diversion program, or owe fines or court costs for any criminal offense above the level of Class "C" misdemeanor.
7. Attorneys must not be currently under indictment or charged with a criminal offense involving moral turpitude.
8. Attorneys may not have a judgment or outstanding debt (and currently in default) to any governmental entity or federally insured program.
9. Attorneys must have handled at least five (5) contested criminal trials before the court and/or five (5) criminal jury trials and/or criminal appeals greater than class "c" offenses with lead counsel experience in at least two (2) cases.
- 10. Attorney must complete at least ten (10) hours of CLE in criminal law each year. This requirement is waived for the initial application process. All attorneys must file a copy of their Continuing Legal Education annual report form (or a list of CLE completed if the attorney has been licensed less than one year) no later than December 30th of each year with the Statutory County Court Administrator. Beginning January 1, 2004 we will allow a maximum of five (5) hours of self-study to count toward your CLE requirement(s). You may carry over up to 10 hours in criminal law to the next reporting year. Those attorneys who fail to comply with the CLE provisions of the plan will be removed on January 16th of each year unless good cause is shown not to do so.**
11. To be eligible to receive appointments in misdemeanor cases, not otherwise covered under other rules, an attorney must:
 - a. Maintain an office in Denton County, Texas; and
 - b. Must file an affidavit by December 30th of each year stating that they are qualified to accept appointments and that eighty (80) percent of their total criminal cases are pending in a court-of-record in Denton County, Texas.
12. All attorneys must complete an application/affidavit and provide all relevant information to be considered for inclusion in the Denton County Statutory County Courts Indigent Defense Plan.

13. Attorneys applying for inclusion in the Denton County Statutory County Courts Indigent Defense Plan agree to be bound by and accept as a condition of their appointment the schedule for Court-appointed attorney's fees for the County Courts of Denton County pursuant to Article 26.05 of the Code of Criminal Procedure.
14. Attorneys are required to act with competence, commitment and dedication to the interest of the accused/defendant and with zeal in advocacy upon their behalf.
15. Attorneys are under an independent and ethical duty to supplement their application/affidavit with information that may affect their eligibility for court appointments under this plan.
16. An attorney meeting all the qualifications under the plan must be approved by a majority of the Statutory County Court Judges exercising criminal jurisdiction.

Duties/Responsibilities of Attorneys to Accused/Defendant

1. Appointed attorneys shall make every reasonable effort to contact the defendant not later than the end of the first working day after appointment. All attorneys are required to visit defendants who are incarcerated in the Denton County Jail in person, not through an associate, no later than three (3) working days after the date of their appointment and/or after notification of their incarceration.
2. Attorneys are appointed to represent an indigent 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.
3. Attorneys appointed are responsible to ascertain whether an indigent client has a pending felony or is subsequently charged with a felony offense to which another attorney has been appointed. If this occurs, it shall be the misdemeanor attorney's immediate responsibility to inform the Court and the felony appointed attorney so that a substitution may be effected. The withdrawing misdemeanor attorney shall immediately make arrangements for an orderly transfer of his/her files(s) and also must submit their bill for services to the appropriate Court.
4. Attorneys appointed by the Court will preferably be able to speak the language of the defendant. If Denton County does not have at least 10 attorneys on the appointment list that have been determined to speak the defendant's language (determination is to be made in the same manner Denton County determines to pay their employees for language proficiency) then attorneys with an employee proficient in the language will be added to the language proficiency list. If neither situation applies, the appointment will be made from the regular appointment list, and Denton County will find and appoint an interpreter to work with the attorney.
5. All attorneys are required to use the "Attorney Fees Expense Claim Form – County Courts" in submitting their bills to be paid under this Plan. Bills not submitted on the proper form will be rejected for payment until the proper form is used.
6. No attorney shall bill the plan for incidental expenses relating to research, jail visits, conferences with clients and/or witnesses, mail and copying expenses, courier fees, driving to/from court or the detention facility or any other miscellaneous expense(s) associated with the appointed case. All expenses, except expert fees or investigation expenses, are included in the rates approved by a majority of the Statutory County Court Judges exercising criminal jurisdiction.
7. **All requests for payments of court-appointed attorney fees and expenses shall be submitted at the time of disposition of the case or on the day the attorney is removed from the case via a substitution of counsel signed by the Court. If your client's case has been dismissed or declined**

by the District Attorney's office, you must submit your request for payment within seven (7) days after you were notified of said dismissal or their intent to decline the case. In no event will payment be made after the expiration of thirty (30) days from the date of disposition, unless good cause is shown to exist.

A. Investigators, Experts, Necessary Expenses. Counsel appointed in a noncapital 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.

B. Procedure Without Prior Court Approval:

An attorney shall be reimbursed for reasonable and necessary expenses including expenses for private investigators licensed in Texas, mental health experts and other incurred on behalf of the appointed client as provided by TEX CODE CRIM. P. ARTICLE 26.05(d), 26.052 and case law.

8. An attorney will be paid only for services performed on cases directly related to their appointment on a Denton County case. Services performed on matters in other jurisdictions should be directed to the courts where the services are performed.
9. In case of conflicts with the Court's schedule, it is the duty of an attorney to call the affected judge's attention or his/her staff to all multiple settings as soon as they are known.
10. When an attorney has been appointed and subsequently the defendant retains counsel, the appointed attorney will be restored to his or her place on the list. The burden of notification of such change will be on the appointed attorney. The withdrawing misdemeanor attorney shall immediately make arrangements for an orderly transfer of his/her files(s) and also must submit their bill for services to the appropriate Court. The attorney will be paid consistent with the schedule for Court-appointed attorney's fees for the County Courts of Denton County pursuant to Article 26.05 of the Code of Criminal Procedure.
11. Attorneys who withdraw as counsel in a case for any reason other than substitution of counsel required as a result of a pending felony charge against the client, shall be paid a fee of not more than \$100 for the case without regard to the number of hours actually submitted. This provision supersedes the published fee schedule.
12. A maximum of \$100 will be paid on each case for court resets. The maximum amount does not include the day the case is ultimately disposed of via a plea or other type of disposition.

Removal from List

1. An attorney may be removed by a majority vote of the judges trying criminal cases from the Court Appointed Attorney List if the attorney has been consistently found not to have made an effort to contact the accused/defendant(s) by the end of the first working day or does not interview the accused/defendant(s) as soon as possible.
2. An attorney may be removed by a majority vote of the judges trying criminal cases from the Court Appointed Attorney List if the attorney has been found not to have faithfully fulfilled the duties responsibilities imposed upon him/her as a result of his court-appointed representation.
3. Any time after an attorney has made the appointment list he/she fails to maintain the qualifications for appointment as set out herein, the attorney shall be immediately removed from the list. If they later regain their eligibility, they are required to reapply in order to be placed back on the appointment list.

4. An attorney may be removed by a majority vote of the judges trying criminal cases from the Court Appointed Attorney List if the attorney consistently submits expenses which exceed what the judges consider to be reasonable for the type of case.
5. An attorney may be removed for failure to complete at least ten (10) hours of CLE in criminal law each year. This must be reported no later than December 30th of each year to the Statutory County Court Administrator. Those attorneys who fail to comply with the CLE provisions of the plan will be removed on January 16th of each year unless good cause is shown not to do so.
6. An attorney may be removed by a majority vote of the judges trying criminal cases from the Court Appointed Attorney List if the attorney fails to visit defendants who are incarcerated in the Denton County Jail in person, not through an associate, no later than three (3) working days after the date of their appointment and/or after notification of their incarceration.

Appointment Process Misdemeanor Cases in Denton County

1. When an accused/defendant is brought to the Denton County Jail, after being arrested either with or without a warrant, the in-take officer at the Denton County Jail will require the arresting officer to complete a probable cause affidavit. If the magistrate finds probable cause a warrant should issue. No one shall be booked into the Denton County Jail without probable cause affidavit information.
2. All magistrate(s) shall no later than 24 hours after the person is arrested give the accused/defendant the magistrate's warning as set forth in Art. 15.17 of the Code of Criminal Procedure.
3. All magistrate(s) arraigning prisoners in Denton County shall inform the accused/defendant of their right to request appointment of counsel and the procedures for requesting appointment of counsel.
4. A written record shall be made of magistrate's advising accused/defendant of their right to appointed counsel and all such information shall be forwarded to Virgil L.Vahlenkamp, Local Administrative Judge for the Denton County Statutory Courts, 1450 E. McKinney, Suite 1325, Denton, Texas 76209-4524
5. If the accused/defendant does not speak and/or understand the English language or is deaf, the magistrate(s) shall inform the person in a manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31.
6. All judges/magistrate(s) shall ensure that reasonable assistance in completing the "Application for Court-Appointed Attorney and Financial Affidavit" is provided to all individuals who request appointed counsel.
7. In determining whether an accused/defendant is indigent the Court or the Court's designee may consider the accused/defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the accused/defendant. The Court or the Court's designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the accused/defendant's financial circumstances. A defendant will be considered indigent if he/she meets any of the requirements of the Denton County Statutory County Courts Indigent Defense Plan.
8. If the magistrate who arraigns the accused/defendant cannot appoint counsel, then the magistrate shall transmit the "Application for Court-Appointed Attorney and Financial Affidavit" by fax (940-349-2101) or mail to Virgil L. Vahlenkamp, Local Administrative Judge for the Denton County Statutory Courts, 1450 E. McKinney, Suite 1325, Denton, Texas 76209-4524, no later than 24 hours after the application is received and completed by the arraigning magistrate.
9. If an indigent accused/defendant requests appointment of counsel, the Court or the Court's designee shall appoint counsel if authorized under Texas Code of Criminal Procedure Article 1.051, not later than the end of the first working day after the date on which the Court or Court's designee receives the request.
10. The Court or the Court's designee shall enter a finding regarding indigence and Order to appear with attorney regarding the indigence of the accused/defendant not later than the end of the first working day after the date on which the Court or Court's designee receives the request for appointment of counsel.
11. If the accused/defendant is found to be indigent only because of being incarcerated and was appointed counsel and if the accused/defendant gets out of jail by posting a bond or otherwise, then **he or she is ordered to appear with appointed counsel in County Criminal Court No. 3 at 8:30 a.m. on the**

next Monday following their date of release to review the defendant's ability to pay for an attorney. Failure to so appear after release on bond shall by the order entered appointing counsel necessitate the immediate issuance of a warrant for arrest for the defendant's failure to appear. The releasing officer shall inform the accused/defendant of the requirement of the court appearance by providing the defendant with a copy of the "Finding Regarding Indigence and Order to Appear with Attorney".

12. If a defendant is detained in jail after being arrested without a warrant for a misdemeanor, and the magistrate has not determined probable cause, the defendant must be released on bond in an amount not to exceed \$5,000, not later than the 24th hour after arrest. If the defendant cannot get a surety for the bond or is unable to deposit money in the amount of the bond, the defendant must be released on a personal bond.
13. If the prosecutor files an application, a magistrate may postpone the release of a defendant for not more than 72 hours after arrest. The application must state the reason a magistrate has not determined whether probable cause exists to believe the defendant committed the offense.
14. All attorneys meeting the qualifications for appointment and have been approved by a majority of the Denton County Statutory County Court Judges exercising criminal jurisdiction shall be placed on one of two master lists: (1) the regular list or (2) the language proficiency list.
15. If the defendant does not speak and/or understand English or is deaf, the Court or the Court's designee shall make an effort to appoint an attorney capable of communicating in a language the defendant understands.
16. Any attorney meeting the language proficiency requirements may be appointed from the language proficiency list. The attorney's appointment from the language proficiency list does substitute for the attorney's appointment on the regular list.
17. Attorneys shall be appointed from the regular list and the language proficiency list on a rotation basis with the following exceptions:
 - (a) An attorney that has previously been appointed to represent an accused/defendant that has a pending misdemeanor case shall also be appointed on any subsequent misdemeanor case(s) that defendant might have prior to the completion of his initial appointment.
 - (b) An attorney that has previously been appointed to represent an accused/defendant shall be appointed to a current charge/case of the accused/defendant if the Court finds that there are special circumstances unique to the accused/defendant that the appointment of the same attorney would better serve the interests of justice.
 - (c) An accused/defendant has a pending felony charge/case then the Court or the Court's designee, may appoint the attorney that is representing the accused/defendant on the felony charge/case.
 - (d) If the Court or its designee, in their sole discretion, determines that because of the facts of the case, or the special needs of the accused/defendant, or the special qualifications of the attorney, the interests of justice would be best served by appointing someone other than the next attorney on the rotating list.
18. An appointed attorney represents 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.
19. Each Denton County Statutory County Criminal Court will create and maintain its own list containing all the attorneys that meet the qualifications for appointment and that have been approved by a majority of the Denton County Statutory County Court Judges exercising criminal jurisdiction. When an appointment is to be made, the Court or its designee will select an attorney from the individual court list on a rotation basis in a fair, neutral and nondiscriminatory manner taking into account the complexity of the case and the immediacy of the requirement for representation.

20. All attorneys appointed will be notified immediately, but in no event later than twenty-four (24) hours by delivery of the appointment in person, via e-mail or fax.
21. Attorney may request to be suspended from appointment any time they will not be able to contact the defendant within 24 hours for example: long trials, vacations, medical leave, etc. by calling the Statutory County Court Administrator, at (940) 349-2100.
22. All applications/affidavits will be reviewed, discussed and voted as they are received by the Statutory County Courts Judges.

Criteria for Indigence

After receiving notice from the magistrate or the sheriff's staff that an arrested person has requested the appointment of counsel, the Court or Court's designee for the Statutory County Criminal Courts shall review the Application for Court-Appointed Attorney and Financial Affidavit and such other information bearing on the financial status of the defendant and make a determination of indigence status and appoint counsel not later than the end of the first working day after the date on which the Court or Court's designee receives the request.

Definitions:

(1) "Net household income" means all income of the defendant and spousal income actually available to the defendant. 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 defendant has no income or lesser income.

(2) "Household" means all individuals who are actually dependent on the defendant for financial support.

(3) "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.

Financial Standards for Determining Indigence:

The Court or the Court's designee making court appointments of counsel for indigents shall consider the following standards for determining indigence and such other reasonable factors as the courts finds bearing on financial inability of a defendant to retain counsel:

1. Defendant's income from any and all sources;
2. Sources of the defendant's income;
3. Assets of the defendant;
4. Property owned by the defendant, or in which the defendant has an interest;
5. Outstanding obligations of the defendant;
6. Necessary expenses of the defendant;
7. The number and age of the defendant's legal dependents;
8. Spousal income available to the defendant; and
9. Such other reasonable factors as determined by the judge.

The Court or the Court's designee shall not consider whether the defendant has posted bail, except to the extent that it reflects on the defendant's financial circumstances.

A defendant is considered indigent if:

(1) after considering the above factors if the Court or the Court's designee finds that the accused/defendant's net household income is below the current figures under the Federal Poverty Guidelines.

Size of Family Unit	February 2007 Poverty Guidelines
1	\$10,210
2	\$13,690
3	\$17,170
4	\$20,650
5	\$24,130
6	\$27,610
7	\$31,090
8	\$34,570
For each additional person, add	\$3,480

(2) at the time of requesting appointed counsel, the defendant or the defendant's dependents have been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.

(3) is currently serving a sentence in a correctional institution, is currently held in custody and unable to post bail, 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.

(4) a defendant who does not meet any of the financial standards above shall nevertheless be determined indigent if the defendant is otherwise unable to retain private counsel without substantial hardship to the defendant or the defendant's dependents, taking into account the nature of the criminal charge(s), the anticipated complexity of the defense, the estimated cost of obtaining competent private legal representation for the matter charged, and the amount needed for the support of the defendant and the defendant's dependents.

**SCHEDULE FOR COURT-APPOINTED ATTORNEY'S FEES
FOR THE COUNTY COURTS OF DENTON COUNTY, TEXAS**

Pursuant to Article 26.05 of the Code of Criminal Procedure, the Statutory County Court Judges of Denton County, Texas exercising jurisdiction in criminal cases have adopted the following schedule for court-appointed attorney's fees for the Denton County Criminal Courts.

HOURLY RATES

ACTIVITY	MINIMUM	MAXIMUM
Out of Court services	\$75/hr	\$100/hr
In Court services	\$75/hr	\$100/hr
Appeals	\$75/hr	\$100/hr
Resets (pre-plea settings)		\$100 maximum

RATES FOR MISDEMEANOR CASES

ACTIVITY	MAXIMUM
Investigation/Expert fees (<i>with prior court approval</i>)	\$500
Trial Before the Court and contested dispositions	\$750
Jury Trial	\$2,000
Appeals	\$2,000

Incidental expenses related to research, jail visits, conferences with clients and/or witnesses, mail and copying expenses, courier fees or any other miscellaneous expense(s) associated with your appointed case will not be paid separately. All expenses, except expert fees or investigation expenses, are included in the rates set out above.

Upon good cause shown, the Court may approve an amount which exceeds the above rates for compensating a court-appointed attorney based upon the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel.

Signed this _____ day of October, 2007.

Jim Crouch, County Criminal Court #1

Virgil Vahlenkamp, County Criminal Court #2

David D. Garcia, County Criminal Court #3

Joe Bridges, County Criminal Court #4

Richard S. Podgorski, County Criminal Court #5

Approved and adopted this the ____ day of October, 2007 by the Denton County Statutory County Court Judges exercising criminal jurisdiction:

The Honorable Jim Crouch
Judge, County Criminal Court No. 1

The Honorable Virgil Vahlenkamp
Judge, County Criminal Court No. 2

The Honorable David D. Garcia
Judge, County Criminal Court No. 3

The Honorable Joe Bridges
Judge, County Criminal Court No. 4

The Honorable Richard S. Podgorski
Judge, County Criminal Court No.5

Pursuant to Article 26.04 of the Texas Code of Criminal Procedure this plan for the appointment of counsel to represent indigent defendants in the Statutory County Courts of Denton County, Texas is hereby approved on this the ____ day of October, 2007.

The Honorable Jeff Walker
Presiding Judge
8th Judicial Administrative Region