

STEVE THOMAS
DISTRICT COURT ADMINISTRATOR
HAYS COUNTY GOVERNMENT CENTER
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January 28th, 2019

Texas Indigent Defense Commission
209 West 14th, Room 202
Austin, Texas 78701

Re: Texas Indigent Defense Commission Monitoring Reviews of Hays County- District Courts

Dear Mr. Lieurance and Ms. Stewart,

The Hays County District Courts have reviewed the Fiscal Monitoring Report and the Policy Monitoring Review of Hays County's Indigent Defense Systems Report completed in September 2018. To be in compliance with the Texas Indigent Defense Commission's findings, the District Courts will adhere to the proceeding procedures as they relate to each finding.

Fiscal Monitoring

A. Finding One

"Some attorney payments do not appear to be made in accordance with the published fee schedule as required by Article 26.05(b) of Texas Code of Criminal Procedure (CCP)."

Hays County Response: Although the Hays County District Court's Fee Schedule is in compliance with Code of Criminal Procedure Article 26.05(b) a few attorney vouchers either exceeded the maximum hourly rate or fell below the minimum hourly rate. Obviously, this not acceptable according to the Fee Schedule and the CCP.

Hays County Action Plan: To be in compliance the District Court Judges will adhere to the current fee schedule and stay within the established hourly rates. Additionally, the Hays County Auditor review the attorney vouchers to assure compliance is met.

Furthermore, the District Courts will review and, if necessary, adopt a new fee schedule and submit it to the Texas Indigent Defense Commission prior to November 1st, 2019.

Contact Person: Steve Thomas, Hays County District Court Administrator
Completion Date: Immediately

B. Finding Two

“Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present as required by CCP Article 26.05(c)”

Hays County Response: The examined attorney vouchers indeed did not have an explanation as to why a different amount was paid to the attorney as stated in the finding. This practice is not consistent with the Article 26.05(c) of the CCP and will be corrected.

Hays County Action Plan: The District Judges will make written findings when the amount requested by an attorney is approved for a different amount than what was submitted. Similar to the preceding Finding, the Hays County Auditor’s Office will review the attorney vouchers to ensure compliance is achieved. Once again, the District Court will review its Fee Schedule and, if necessary, will adopt a new Fee Schedule in accordance with CCP Article 26.05(c) and submit it to the Texas Indigent Defense Commission prior to November 1st, 2019.

Contact Person: Steve Thomas, Hays County District Court Administrator
Completion Date: Immediately

Policy Monitoring Review

Requirement 1

A. Finding 1: *“Article 15.17(a) requires reasonable assistance in completing financial paperwork be provided to persons requesting counsel at the time of the 15,17 hearing. Hays County must put in place a system in which all persons requesting counsel receive assistance in completing financial affidavits.”*

Hays County Response: The magistrate and/or jail personnel should provide assistance to the persons requesting an attorney at the time of magistration in accordance with CCP Article 15.17(a).

Hays County Action Plan: Assure that assistance is being provided to the persons requesting a court appointed attorney at magistration by notifying the jail that this must occur and for jail personnel to aid the magistrate in achieving this requirement.

Contact Person: Steve Thomas, Hays County District Court Administrator
Completion Date: Immediately

- B. Finding 2: *“Article 15.17(a) requires requests for counsel to be transmitted to the courts within 24 hours of the requests being made. Hays County must ensure that whenever a request is made at the 15.17 hearing, the associated paperwork is sent to the courts within 24 hours of the request being made.”*

Hays County Response: According to the review, the courts are not receiving the pauper’s affidavits in the time required by the Tex. Crim. Pro. Code Art. 15.17(a) “...the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court...” After reviewing the samples provided by the TIDC, it appears that a number of pauper’s affidavits do not make it to the court from the jail within 24 hours. Currently, the original pauper’s affidavits are received from the jail by the transport department and, for the most part, attached to the magistration roster.

Hays County Action Plan: The proceeding plan will be effective immediately:

Hays County District Court

Procedure to Forward a Pauper’s Affidavit from the Jail to the Court

1. After the defendant has been magistrated and reasonable assistance in completing the pauper’s affidavit by the magistrate/jail personnel, the pauper’s affidavit (court appointed attorney form) will be scanned in by jail personnel.
2. The pauper’s affidavit shall be emailed to the District Court after magistration.
3. The email to be used to send the pauper’s affidavit to the District Court will be:
hayscountydistrictcourt@co.hays.tx.us
4. There will be no need to scan into Odyssey the pauper’s affidavit since it has not been reviewed by the Court.
5. It is recommended the pauper’s affidavit that is scanned in by jail personnel be retained in a separate folder in the event an issue arises.
6. This procedure applies to both incarcerated persons as well as those that bond out of custody.

Contact Person: Steve Thomas, Hays County District Court Administrator
Completion Date: Immediately

Requirement 4

- A. Finding 4 (felony cases): “Article 1.05(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. The monitor’s sample of attorney appointments in felony cases fell below the Commission’s 90% timely

threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The county must implement practices that satisfy Article 1.051(c)(1)'s timeline in felony cases.”

Hays County Response: It is certainly unacceptable that requests for court appointed attorneys are not being ruled upon within the proscribed timeframe. Hays County District Courts strive to achieve that all requests are ruled upon within three working days and will continue to do so.

Hays County Action Plan: The procedures implemented in Requirement 1, Finding 2 should help to alleviate this issue. Furthermore, all efforts from court staff to present the pauper's affidavits to the Judges will be made including the use of email.

Contact Person: Steve Thomas, Hays County District Court Administrator
Completion Date: Immediately

The preceding responses and action plans pertain only to the Hays County District Courts. If the proposed solutions used by the Hays County Courts-at-Law to address their issues are consistent with the Hays County District Courts desire to have an effective and efficient indigent defense system, we will certainly review and consider their solutions in our future indigent defense plans.

It is the goal of the Hays County District Courts to provide an effective and efficient indigent defense system. With this in mind, I would like to thank the Texas Indigent Defense Commission in reviewing our policies and procedures in order for us to achieve our goal.

Respectively,



Steve Thomas
Hays County District Court Administrator

TACIE ZELHART
Judge, County Court at Law No. 3



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January 30, 2019

Texas Indigent Defense Commission
ATTENTION: Joel Lieurance and Debra Stewart
209 West 14th Street, Room 202
Austin, Texas 78701

RE: Texas Indigent Defense Commission Monitoring Reviews of Hays County Courts at Law

Dear Texas Indigent Defense Commission,

The Hays County Courts at Law have reviewed the Fiscal Monitoring Report and the Policy Monitoring Report of Hays County's Indigent Defense Systems completed in September 2018. To be in compliance with the Texas Indigent Defense Commission's findings, the County Courts at Law will adhere to the recommendations listed in each of the reports. Please find below our response and action plan as it relates to findings in the County Court at Law System:

Fiscal Monitoring Review

A. Finding One: District Courts

Findings pertained to District Court

(Please see Steve Thomas' letter to the Commission dated January 28, 2019)

B. Finding Two: County Courts at Law

Hays County Courts at Law Response: The attorney vouchers that were examined for the report were from District Court cases and did not have a written explanation as to why a different amount was paid to the attorney as stated in the finding. This practice is not consistent with the CCP 26.05(c) and was corrected. The County Court at Law reviewed vouchers and found that an explanation for pay variance was missing on some County Court at Law vouchers. This practice was corrected immediately.

Hays County Courts at Law Action Plan: The County Courts at Law Judges will make written explanations when the amount approved for payment is different from the amount requested and submitted by the attorney as to comply with CCP 26.05(c).

The Hays County Auditor's Office will review the attorney vouchers to ensure compliance is achieved.

Contact person(s): Rene Garner, Hays County Court at Law Administrator and Tacie Zelhart, Local Administrative Statutory County Court at Law Judge

Completion Date: Immediately

Policy Monitoring Review

Requirement One: Conduct prompt and accurate Magistration Proceedings

- A. Finding One: *"Article 15.17(a) requires reasonable assistance in completing financial paperwork be provided to persons requesting counsel at the time of the 15.17 hearing. Hays County must put in place a system in which all persons requesting counsel receive assistance in completing financial affidavits."*

Hays County Court at Law Response: The Court Staff has met with the Magistrates and Jail Personnel to review the proper process. The Magistrate and Jail Personnel must provide reasonable assistance to persons requesting an attorney at the time of magistration in accordance with CCP Article 15.17(a).

Hays County Action Plan: Assure that assistance is being provided to persons requesting a court appointed attorney at magistration by meeting with jail personnel and educating them that this must occur and for jail personnel to aid the Magistrate in achieving this requirement.

Contact person(s): Rene Garner, Hays County Court at Law Administrator and Tacie Zelhart, Local Administrative Statutory County Court at Law Judge

Completion Date: Immediately

- B. Finding Two: *"Article 15.17(a) requires requests for counsel to be transmitted to the courts within 24 hours of the requests being made. Hays County must ensure that whenever a request for counsel is made at the 15.17 hearing, the associated paperwork is sent to the courts within 24 hours of the request being made."*

Hays County Court at Law Response: According to the review, the Courts are not receiving the pauper's affidavit (court appointed attorney application) in the time required by the Tex. Crim. Pro. Code Art. 15.17(a) "...the magistrate shall without unnecessary delay, but no later than 24 hours after the person requests appointment of counsel, transmit, or cause to be transmitted to the court..." After reviewing the samples, a number of pauper's affidavits did not make it to the Court from the jail within 24 hours. The original pauper's affidavits were being hand carried from the jail to the Court by the transportation department and, for the most part, accompanied by the magistration paperwork. Court staff will no longer wait on the original signed document and will receive the document via email.

Hays County Courts at Law Action Plan:

1. After the Defendant has been magistrates and reasonable assistance is given in completing the pauper's affidavit (court appointed attorney application form) by the Magistrate and jail personnel, the pauper's affidavit will be scanned in by jail personnel.
2. The pauper's affidavit shall immediately be emailed to the County Courts at Law after magistration.
3. The email to be used to send the pauper's affidavit to the County Courts at Law is: kelli@co.hays.tx.us and ccal@co.hays.tx.us.
4. There will be no need to scan the application into Odyssey at this time since it has not yet been reviewed by the Court.
5. It is recommended the pauper's affidavit scanned in by jail personnel be retained in a separate folder in the event an issue arises.
6. This procedure applies to both incarcerated persons as well as those that bond out of jail custody.

Contact person(s): Rene Garner, Hays County Court at Law Administrator and Tacie Zelhart, Local Administrative Statutory County Court at Law Judge

Completion Date: Immediately

Requirement Two: Determine Indigence According to Standards Directed by the Indigent Defense Plan

- A. Finding Three: Not all determinations of indigence follow the financial standard set by the indigent defense plan and Article 26.04(m). The Courts must follow this standard in determining indigence.

Hays County Courts at Law Response: The local standards for determining indigence are set in each county's indigent defense plans. In misdemeanor cases, a person is presumed indigent if:

- (1) The accused is eligible for food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
- (2) The accused's net household income does not exceed 125% of the Federal Poverty Guidelines; or
- (3) The accused is currently serving a sentence in a correctional institution, is residing in a public mental health facility, or is subject to a proceeding in which the admission or commitment to such mental facility is sought.

For juveniles, the same financial standards used in misdemeanor cases apply, except indigence is based upon the person who has custody of the juvenile.

Not following the standards set out in the County's plan is unacceptable.

Hays County Courts at Law Action Plan: The Judges of the County Courts at Law have reviewed the appropriate standards to determine whether a person is indigent and will follow the standards as set out in the County's plan.

Contact person(s): Rene Garner, Hays County Court at Law Administrator and Tacie Zelhart, Local Administrative Statutory County Court at Law Judge

Completion Date: Immediately

Requirement Four: Appoint Counsel Promptly

- A. **Finding Four (Felony Cases)**
Findings pertained to District Court
(Please see Steve Thomas' letter to the Commission dated January 28, 2019)
- B. **Finding Five (Misdemeanor Cases):** Article 1.051(c)(1) requires the Court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring the requests to the Courts) of the request being made. The monitor's sample of attorney appointments in misdemeanor cases fell below the Commission's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The county must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in misdemeanor cases.

Hays County Courts at Law Response: It is unacceptable that some requests for court appointed attorneys are not being ruled upon within the required timeframe. The Hays County Courts at Law strive to make sure that all requests are properly reviewed and ruled upon within three working days and will continue to work hard to ensure meeting this deadline.

Hays County Action Plan: The procedures implemented in Requirement One, Finding Two will help resolve this issue. Jail Personnel will scan and email to the Court the pauper's affidavit immediately after magistration. Once received by the court, the affidavit will be presented to the Judge and reviewed and ruled on the same day it is received to ensure the timely appointment of counsel as required by Article 1.051(c)(1).

Contact person(s): Rene Garner, Hays County Court at Law Administrator and Tacie Zelhart, Local Administrative Statutory County Court at Law Judge

Completion Date: Immediately

- C. **Finding Six (misdemeanor cases):** The county does not have processes in place to ensure misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel. As required by Article 1.051(f-2), the Court must rule upon requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor.

Hays County Court at Law Response: Article 1.051 of the Code of Criminal Procedure addresses waivers and counsel and allows waivers that are voluntarily and intelligently made. Under 1.051(f-1), the prosecutor may not initiate a waiver and may not communicate with a defendant until any pending request for counsel is ruled upon, and the defendant waives the opportunity to retain private counsel. Under 1.051(f-2), the Court must explain the procedures for requesting counsel and must give the defendant a reasonable opportunity to request counsel before encouraging the

defendant to communicate with the prosecutor. Any request for appointed counsel, must be ruled upon before a waiver of counsel is allowed. Article 1.051 must be followed.

Hays County Courts at Law Action Plan: The Courts will ensure that the Defendants are admonished and informed properly of the right to counsel and any application for a court appointed attorney is ruled upon before presenting the Defendant's with the waiver of right to counsel. During the pro-se arraignment docket, the County Court at Law Judges will take the bench thirty minutes before the attorneys for the State arrive in the courtroom to ensure the steps outlined above are discussed and requirements met before a waiver of counsel is presented and before any communication with the State is allowed to begin. Additionally, before a Defendant enters an uncounseled plea, he or she must sign a written waiver, the language of which must conform to the language of 1.051(g). The Courts will obtain this signed written waiver before the plea and include it in the plea paperwork for documentation purposes.

Contact person(s): Rene Garner, Hays County Court at Law Administrator and Tacie Zelhart, Local Administrative Statutory County Court at Law Judge

Completion Date: Immediately

- D. Finding Seven (juvenile cases): Initial Detention hearings for Juveniles are periodically waived. Hays County must ensure detention hearings follow the requirement set in Section 54.01(h), disallowing the waiver of the initial juvenile detention hearing.

Hays County Courts at Law Response: Section 54.01(h) of the Family Code prohibits waivers of the initial detention hearing. Any waiver from or non-compliance with this Section is unacceptable. The County Courts at Law Judges have reviewed the Code.

Hays County Courts at Law Action Plan: There will be no waiver of the Initial Detention Hearing in Juvenile proceedings. The Initial Detention Hearing will be held in accordance with Section 54.01(h) of the Texas Family Code.

Contact person(s): Rene Garner, Hays County Court at Law Administrator and Tacie Zelhart, Local Administrative Statutory County Court at Law Judge

Completion Date: Immediately

- E. Finding Eight (juvenile cases): The monitor's sample of attorney appointments where a juvenile remained in custody and received a detention hearing fell below the Commission's 90% timeliness threshold. The county must implement practices to ensure counsel is present at the detention hearing as required by Section 54.01(b-1) of the Family Code.

Hays County Courts at Law Response: Section 54.01(b-1) of the Texas Family Code requires counsel to be appointed to a juvenile prior to the detention hearing,

unless appointment is not feasible due to exigent circumstances. If exigent circumstances exist, a finding of the exigent circumstance must be made and the Court must include the finding in the case file. The Juvenile Court strives to appointment counsel before all detention hearings.

Hays County Action Plan: The County Courts at Law Judges have reviewed Section 54.01(b-1) of the Texas Family Code. The Juvenile Court will appoint counsel before *all* detention hearings and make sure counsel is present at the detention hearing. If exigent circumstances exist, the Court will make a finding of the exigent circumstance on the record and include the finding in the Juvenile's case file.

Contact person(s): Rene Garner, Hays County Court at Law Administrator and Tacie Zelhart, Local Administrative Statutory County Court at Law Judge

Completion Date: Immediately

- F. Finding Nine (juvenile cases): The timeliness of counsel appointments in cases involving service of petition fell below the Commission's threshold of 90% timeliness. The county must implement practices that satisfy the time frames set in Section 51.101 of the Family Code (appointment of counsel or order to employ counsel occurring within five working days of petition of service).

Hays County Courts at Law Response: Under Subsections 51.101(c) and (d) of the Texas Family Code, once a petition is served on the juvenile, the Court has five working days to appoint counsel or order the retention of counsel for the juvenile. The untimeliness appear to be due to the Court not making contact with the parents prior to the expiration of the five-working-day requirement set in Section 51.101(d). If the Court does not receive back from the parents the completed application for appointment of counsel at the detention hearing, the Court mails the application to the parents. A review of this process, indicates only a small percentage of the parents were returning the completed applications to the Court for review.

Hays County Action Plan: The Hays County Court at Law Judges have reviewed Subsections 51.101(c) and (d) of the Texas Family Code. The Juvenile Judge and court staff met with the Juvenile Probation Department to address the issue and ensure that the Juvenile Probation Department is promptly conducting financial intakes and transmitting the affidavits to the Court immediately upon receipt. Instead of allowing the parents to take the affidavit home to fill out, we ask the parent to fill the form out and turn it in to the Court for review at the initial detention hearing. If there is no detention hearing, upon the Juvenile's first contact meeting with the Juvenile Probation Department, the Juvenile Probation Department must give the affidavit to the parents and request it be filled out immediately and the Probation Department must email the completed affidavit to the Court for review. Counsel will be appointed or ordered within five working days of service of the petition.

Contact person(s): Rene Garner, Hays County Court at Law Administrator and Tacie Zelhart, Local Administrative Statutory County Court at Law Judge

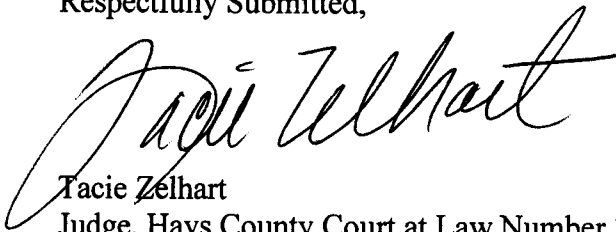
Completion Date: Immediately

The responses included in this letter and the action plans implemented pertain to the Hays County Courts at Law. Our goal is to have an effective and efficient indigent defense plan for Hays County that meets and exceeds all requirements of the Commission rules.

The Hays County Courts at Law have one newly elected Judge, Chris Johnson, to Hays County Court at Law Number 2 and one newly appointed Judge, Tacie Zelhart, to a newly created Hays County Court at Law Number 3. Each of the County Court at Law Judges, including Judge Robert Updegrave, have read the Commission's reports and findings. The County Court at Law Judges have reviewed the Commission's recommendations and applicable Codes and have implemented all noted action plans.

On behalf of the Hays County Court at Law Judges and the court's staff, I would like to thank Joel Lieurance and Debra Stewart for reviewing our policies and procedures and making recommendations for improvement. We greatly appreciate the Commission's time and thoughtful consideration of our responses and action plans. If further information or action is needed, please do not hesitate to call or email me.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Tacie Zelhart". The signature is written in black ink and is positioned above the printed name and title.

Tacie Zelhart
Judge, Hays County Court at Law Number 3
Local Administrative Statutory County Court Judge