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J'LYN SAUSEDA, COURT REPORTER  
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## 106<sup>th</sup> Judicial District

CARTER T. SCHILDKNECHT  
DISTRICT JUDGE

July 19, 2013

**RECEIVED**  
JUL 24 2013

Joel Lieurance, Policy Monitor  
Texas Indigent Defense Commission  
209 West 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Re: *Responses to the June 11, 2013, Review of Dawson County's Indigent Defense System as applied to the 106<sup>th</sup> District Court, Dawson County, Texas*

Dear Mr. Lieurance:

In response to the report of the monitoring review of Dawson County's indigent processes, I am addressing each of the recommendations that applies to the District Court.

"Core Requirement 5. Institute a fair, neutral and non-discriminatory attorney selection process.

**Recommendation 4:** The parties to the contract for felony defense services must follow the terms of the contract according to the contract's caseload limitations. Excessive caseloads could compromise the quality of representation provided for indigent clients."

The 106<sup>th</sup> District Court is very lenient toward indigent defendants and appoints counsel for defendants with annual average income up to and including 200% of the Federal poverty guidelines, which substantially exceeds the 125% requirement set out by the State.

Except on rare occasion, the Court appoints counsel the same day the Court receives an application requesting appointed counsel. Because of the prompt appointment of counsel following request, many times a defendant retains counsel within a few days after having counsel appointed. Also, in numerous cases, appointed counsel immediately withdraws because of a legal conflict discovered during the initial intake interview. These cases, although the appointed attorney's representation is brief, are counted in the appointed attorney's caseload.

The 106<sup>th</sup> District Court also may appoint counsel in the interest of justice when a defendant wants to proceed with his case more quickly than he can retain an attorney or for some other justifiable reason. There are times when this happens during arraignment in open court. In these cases, at the defendant's request, the appointed attorney's representation may be very brief but still count in his caseload.

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Joel Lieurance, Policy Monitor  
Texas Indigent Defense Commission  
July 19, 2013

As stated in your Monitoring Review Report dated June 11, 2013, "The NAC standards are a good starting point in assessing caseloads but should not be accepted as universal standards." The provision of criminal defense services does not lend itself to pure numerical analysis. Arbitrary standards set outside the Court's discretion infringe on the independence of the judiciary. The judge sitting in a case is in the best position to evaluate and determine if an attorney's quality of representation is compromised. This can occur with a retained attorney as well as with an appointed attorney. I have removed attorneys from the appointment list when I felt that the attorney did not provide the quality of representation that the court expects. I have never felt that the contracting attorney's representation fell below that which the court expects. In fact, because of the priority that the contracting attorney places on his work as appointed counsel in this court, I have found that his representation of clients is more timely, efficient, and many times exceeds the quality and effectiveness of other attorneys, appointed or retained.

Late in 2011, this court felt harassed and pressured by Fiscal Monitor Carol Conner to add additional language about caseload limitations to our contracts. In response to that pressure, I added the language, "the ABA's recommended caseload limitations," to our contracts. That specific language will be removed from future contracts and more appropriate language will be added that requires the judge to monitor caseloads to determine if the quality and effectiveness of representation is compromised in any manner.

**"Recommendation 5: The County must ensure that procedures are in place to meet the requirements of 1 TAC § 174.25 and Article 26.05(c) so that itemized fee vouchers are submitted and approved by the appointment authority prior to payment by the financial officer."**

To comply, the District Judge will ensure that fee vouchers for the District Court are submitted to the judge for approval prior to payment by the financial officer.

A copy of a letter dated February 10, 2012, that I wrote to Wesley Shackelford, Deputy Director/Special Counsel, Texas Indigent Defense Commission, addressing this same issue is enclosed.

Sincerely,



Carter T. Schildknecht  
106<sup>th</sup> Judicial District Judge

Enclosure: Letter dated February 10, 2012, to Wesley Shackelford

c: The Honorable Foy O'Brien, Dawson County Judge  
Mr. Rick Dollahan, Dawson County Auditor  
Mr. Arthur Aguilar, Jr., Contract Defender  
Mr. James D. Bethke, Executive Director, Texas Indigent Defense Commission

JANA FURLOW, COURT ADMINISTRATOR  
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## 106<sup>th</sup> Judicial District

CARTER T. SCHILDKNECHT  
DISTRICT JUDGE

February 10, 2012

COPY

Mr. Wesley Shackelford  
Deputy Director/Special Counsel  
*via fax: 512-463-5724*

Re: *Contract Defender Program / Dawson, Gaines, Garza, Lynn Counties*

Dear Mr. Shackelford:

I am writing in response to your letter to Arthur Aguilar, Jr. dated January 27, 2012, which was copied to me. I hope that this letter will help you to understand the program and the contracts between Mr. Aguilar and the four counties in the 106<sup>th</sup> Judicial District. Previously I have provided to Carol Conner all materials requested by her and have discussed this program and contract at length with you by telephone and also with Jim Bethke in person in my office during a visit on January 12, 2012.

It appears to me that because our program does not fit the mold that other counties are using, there is either an inability or unwillingness to understand how our program satisfies the requirements of CCP 26.05 and TAC §§174.10 - 174.25.

I have thoroughly reviewed CCP 26.05 and the TAC §174 provisions. When the contracts are issued for 2013, I am willing to amend the language by adding the provision you request covering submitting a fee voucher to me prior to payment. I will do that to comply with the requirements even though my position is that it is already satisfied by the contract language as it exists. A voucher is a document that serves to recognize a liability and authorize the disbursement of cash that shows on its face the fact, authority, and purpose of disbursement. A careful reading of item number 4 in our contract shows that payment is determined by services performed during the prior year as itemized in the year-end report required in item number 9 of our contract. By signing each contract as the appointing authority when it is presented to each commissioners court, I am approving that payment according to the services that had been itemized to me as required in item number 9.

Nowhere in CCP 26.05 or TAC §§174.10 - 174.25 can I find the requirement for a monthly voucher. The only time I find the word "monthly" is in Texas Government Code §71.0351 referred to in TAC §174.10(5), which provides for reports to be sent to the OCA "on a monthly, quarterly, or annual basis." However, §71.0351 was repealed effective September 1, 2011. Our county financial officers report to me that they currently receive all the information they need from Mr. Aguilar to complete their indigent defense expenditure reports.

Please understand that from the inception of the Texas Fair Defense Act, this court and the counties covered by it have taken very seriously our legal and ethical obligations to provide legal representation for indigent defendants and to pay counsel appropriately for those services. This is and should be the guiding principle behind indigent defense policies and standards.

Sincerely,



Carter T. Schildknecht

c: Jim Bethke, Executive Director,  
Texas Indigent Defense Commission - *via fax 512-463-5724*  
Arthur Aguilar, Jr. - *via fax 806-687-3502*

Phone: (806) 872-7544  
Fax: (806) 872-7496

**Dawson County  
Judge's Office**

# Fax

To: <u>Joel Lieurance</u>	From: <u>Fay O'Brien</u>
Fax: <u>512-463-5724</u>	Pages: <u>3 w/cover</u>
Phone: _____	Date: <u>8/8/13</u>
Re: _____	CC: _____

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COUNTY OF DAWSON  
FOY O'BRIEN  
COUNTY JUDGE

PO BOX 1268  
LAMESATX 79331

August 8, 2013

PHONE 806-872-7544

Joel Lieurance, Policy Monitor  
Texas Indigent Defense Commission  
209 West 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Re: *Responses to the June 11, 2013, Review of the Dawson County's Indigent Defense System as applied to the County Court, Dawson County, Texas*

Dear Mr. Lieurance:

In response to the monitoring review of Dawson County's indigent processes, I will address each of the recommendations that applies to the County Court.

Core Requirement 3. Establish minimum attorney qualifications.

1. Dawson County Court will require all attorneys on the juvenile appointment list to have proof of current CLE hours. These CLE hours will be on file and will be updated annually.

Core Requirement 4. Appoint counsel promptly.

2. Dawson County Court will have all court appointed attorneys appointed within one week or less of application.
3. Prior to docket call Dawson County Court will notify all defendants and will give applications for court appointed attorneys. No defendants will speak to the prosecutor without signing a waiver. Article 1.015(g) of the Code of Criminal Procedure will be followed. (see attached)

Dawson County court will do everything in it power to comply with the Texas Indigent Defense Commission.

Sincerely,

Foy O'Brien  
Dawson County Judge

Article 1.051(g) of the Code of Criminal Procedure further states:

- (g) If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently made, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings:

**I HAVE BEEN ADVISED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_, BY  
 THE DAWSON COUNTY COURT OF MY RIGHT TO REPRESENTATION BY  
 COUNSEL IN THE CASE PENDING AGAINST ME. I HAVE BEEN FURTHER  
 ADVISED THAT IF I AM UNABLE TO AFFORD COUNSEL, ONE WILL BE  
 APPOINTED FOR ME FREE OF CHARGE. UNDERSTANDING MY RIGHT TO HAVE  
 COUNSEL APPOINTED FOR ME FREE OF CHARGE IF I AM NOT FINANCIALLY  
 ABLE TO EMPLOY COUNSEL, I WISH TO WAIVE THAT RIGHT AND REQUEST  
 THE COURT TO PROCEED WITH MY CASE WITHOUT AN ATTORNEY BEING  
 APPOINTED FOR ME. I HEREBY WAIVE MY RIGHT TO COUNSEL.**

\_\_\_\_\_  
 DEFENDANT