



DALLAS COUNTY JUDGE
JIM FOSTER

September 11, 2009

Mr. Joel Lieurance, Policy Monitor
Texas Task Force on Indigent Defense
P.O. Box 12066
Austin, Tx. 78711

Re: Response to monitoring report dated August 3, 2009

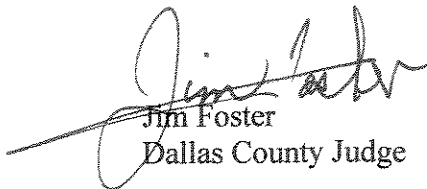
Dear Mr. Lieurance:

This letter is in response to the Texas Task Force on Indigent Defense's, hereinafter referred to as the Task Force, visit that occurred from May 26, 2009 to May 29, 2009. As stated within the Texas Government Code 71.062(b), a directive is given to the Task Force to monitor local jurisdictions' compliance with the Fair Defense Act, hereinafter referred to as FDA. The purpose of this visit was to re-examine the previous action plans submitted January 2008, and to address issues involving new laws that begin September 1, 2009, that may have an impact on the way Dallas County complies with the FDA.

On August 3, 2009, a compliance report was provided to Dallas County. This report illustrated varying degrees of non-compliance that included mandatory and non-mandatory recommendations from the Task Force. These recommendations were taken into consideration in determining the appropriate action plans needed to comply with the FDA.

Attached is Dallas County's response to the Task Force's monitoring report. Dallas County is committed to making the changes necessary to comply with the FDA. These changes involve the District and County Criminal Courts, multiple Dallas County Departments, and the 23 municipalities within Dallas County. The Dallas County Commissioners Court has tasked Ron Stretcher, our Criminal Justice Director, with coordinating all efforts and ensuring timely completion of the action plans provided. Please direct any questions about this response to Mr. Stretcher. He can be contacted at 469-385-1720 or via e-mail at ron.stretcher@dallascounty.org.

Sincerely,


Jim Foster
Dallas County Judge

Dallas County FELONY COURTS

Felony Courts Recommendation 1: TEX. CODE CRIM. PROC. Art. 1.051 requires courts to appoint counsel within one working day. The felony court coordinators appoint counsel as soon as they receive a request. As the data indicates, this process does not ensure that all eligible defendants receive counsel as required by State law. Hence, the courts must put in place a process that comports with the timely requirements of State law. The County must also put in place a process so that requests are transmitted from municipal courts to the felony court coordinators within 24 hours as required by TEX. CODE CRIM. PROC. art. 15.17.

Dallas County Response and Action Plan:

The Dallas County District (Felony) Courts are in the process of revising procedures to ensure the timely appointment of counsel. There are two separate processes that require modification: appointment of counsel for defendants booked directly into the Dallas County Jail and appointment of counsel for defendants who are first booked into one of the 23 municipal jails throughout Dallas County.

Defendants booked directly into the Dallas County Jail: The current Affidavit of Indigence (AI) form has been revised to collect more detailed financial information and to indicate if the defendant is requesting a court appointed attorney or will retain their own counsel. The new Election of Counsel (EOC) form will be completed by all defendants appearing before the Dallas County District Court Magistrate. The new EOC form is attached for your review. Court staff will receive the EOC form for all persons magistrated, not just defendants requesting a court appointed attorney. The EOC form from the prior work day will be distributed the morning of the following work day. Court staff will continue to appoint counsel the same day the EOC is received and will not wait until the defendant appears in Court. Reports in the Adult Information System (AIS) will be used by Court staff to ensure that all EOC forms are processed timely and attorneys are appointed by the next work day after magistration.

Defendants first booked into a municipal jail: Under current procedures, defendants first booked into a municipal jail are transported to the Dallas County Jail and appear before a Dallas County District Court Magistrate where an Affidavit of Indigence (AI) form is completed by all defendants requesting appointment of counsel. These defendants may have been previously magistrated by a municipal magistrate. Procedures are in development to ensure that the Dallas County District Court Magistrate is notified when a defendant is booked into a municipal jail and appears before a municipal magistrate. Initially, the municipal jails will fax an EOC form to the Dallas County District Court Magistrate. This process will be piloted in two municipal jails: Rowlett and Seagoville. Once the process is functioning at the two pilot sites, the process will be implemented in all municipal jails within Dallas County. Dallas County IT Services is developing requirements to automate this notification of booking and magistration functions within the Adult Information System (AIS). The Dallas County Criminal Justice Advisory Board (CJAB) will assist in coordination with the municipal jails. The CJAB is currently developing a plan to allow for video magistration of defendants at municipal jails by the Dallas County District Court Magistrate. The CJAB project is a comprehensive revision

to the process for transferring defendants from municipal jails to the Dallas County Jail. The goals of this project include ensuring that the Dallas County bond schedule is followed for defendants in the municipal jails, allowing for defendants in municipal jails to be magistrates quicker and to increase the number of defendants able to bond out from the municipal jail, thus avoiding the need to be transported to the Dallas County Jail.

Completion date: January 1, 2010 for implementation of process improvement pilots

Felony Courts Recommendation 2: In response to the July 2007 monitoring visit, the Dallas felony courts coordinated with IT Services so that they could access attorney appointment wheel reports. The monitor examined the attorney appointment wheel data for FY 2008 and found that appointments were not allocated evenly among qualified attorneys. Some attorneys were getting a significant number of appointments from each wheel, while others were getting very few. TEX. CODE CRIM. PROC. art. 26.04(b) requires the County to ensure that a fair, neutral, and non-discriminatory appointment system is implemented.

Dallas County Response and Action Plan:

Improvements to the attorney appointment wheel in AIS have been completed as of September 8, 2009. Testing by the District Courts will begin the week of September 14, 2009. Once all Courts have confirmed that the AIS attorney appointment wheel is working as required, the system will be implemented in all 17 District Courts. Dallas County requests that staff from the Task Force on Indigent Defense review the AIS attorney appointment wheel and provide any relevant input before full implementation. Dallas County staff is available to present a demonstration as schedules allow.

Completion date: January 1, 2010

Dallas County MISDEMEANOR COURTS

Misdemeanor Courts Recommendation 1: TEX. CODE CRIM. PROC. Art. 1.051 requires courts to appoint counsel within one working day. The Dallas County Criminal Courts must implement a procedure to timely receive and complete requests for counsel. The County must also put in place a process so that requests are transferred from municipal courts to the misdemeanor court coordinators within 24 hours as required by TEX. CODE CRIM. PROC. art. 15.17.

Dallas County Response and Action Plan:

The Dallas County Criminal (Misdemeanor) Courts are in the process of revising procedures to ensure the timely appointment of counsel. As with the District Courts, there are two separate processes that require modification: appointment of counsel for defendants booked directly into the Dallas County Jail and appointment of counsel for defendants who are first booked into one of the 23 municipal jails throughout Dallas County.

Defendants booked directly into the Dallas County Jail: The current Affidavit of Indigence (AI) form has been revised to collect more detailed financial information and to indicate if the defendant is requesting a court appointed attorney or will retain their own counsel. The new Election of Counsel (EOC) form will be completed by all defendants appearing before the Dallas County District Court Magistrate. The new EOC form is attached for your review. Court staff will receive the EOC form for all persons magistrated, not just defendants requesting a court appointed attorney. The EOC form from the prior work day will be distributed the morning of the following work day. Court staff will appoint counsel the same day the EOC is received and will not wait until the defendant appears in Court. Reports in the Adult Information System will be used by Court staff to ensure that all EOC forms are processed timely and attorneys are appointed by the next work day after magistration. This new process is currently being piloted in one Dallas County Criminal Court. Once all issues are resolved in the pilot, the process will be implemented in the remaining Dallas County Criminal Courts.

Defendants first booked into a municipal jail: Under current procedures, defendants first booked into a municipal jail are transported to the Dallas County Jail and appear before a Dallas County District Court Magistrate where an Affidavit of Indigence (AI) form is completed by all defendants requesting appointment of counsel. These defendants may have been previously magistrated by a municipal magistrate. Procedures are in development to ensure that the Dallas County District Court Magistrate is notified when a defendant is booked into a municipal jail and appears before a municipal magistrate. Initially, the municipal jails will fax an EOC form to the Dallas County Magistrate Court. This process will be piloted in two municipal jails: Rowlett and Seagoville. Once the process is functioning at the two pilot sites, the process will be implemented in all municipal jails within Dallas County. Dallas County IT Services is developing requirements to automate this notification of booking and magistration functions within the Adult Information System (AIS). The Dallas County Criminal Justice Advisory Board (CJAB) will assist in coordination with the municipal jails. The CJAB is currently developing a plan to allow for video magistration of defendants at municipal jails by the Dallas County District Court Magistrate. The CJAB project is a comprehensive revision to the process for transferring defendants from municipal jails to the Dallas County Jail. The goals of this project include ensuring that the Dallas County bond schedule is followed for defendants in the municipal jails, allowing for defendants in municipal jails to be magistrated quicker and to increase the number of defendants able to bond out from the municipal jail, thus avoiding the need to be transported to the Dallas County Jail.

Completion date: January 1, 2010 for implementation of process improvement pilots

Misdemeanor Courts Recommendation 2: The monitor found that misdemeanor appointments in FY 2008 were not allocated evenly among qualified attorneys. Some attorneys were getting a significant number of appointments, while others were getting very few. TEX. CODE CRIM. PROC. art. 26.04(b) requires the County to ensure that a fair, neutral, and non-discriminatory appointment system is implemented. The reason for the discrepancy in the appointment distribution is not documented or noted anywhere by the courts. Moreover, it was reported to us that the misdemeanor courts are unable to track appointment data and so are unable to know which attorneys are due for an appointment under the attorney appointment wheel.

Dallas County Response and Action Plan:

The Dallas County Criminal Courts will adopt the same procedures as the Dallas County District Courts for using the AIS attorney appointment wheel. Once the testing of the AIS felony attorney appointment wheel is completed, Dallas County IT Services will make the necessary modifications within AIS to implement a County Criminal Courts' attorney appointment wheel. It must be noted that ten of the thirteen Dallas County Criminal Courts primarily appoint cases for indigent defendants to the Dallas County Public Defender. Appointments from the County Criminal Courts' attorney appointment wheel will be for the three Courts that do not utilize the Public Defender or for unique cases or situations where a conflict exists with the Public Defender.

Completion date: January 1, 2010.

Dallas County JUVENILE COURTS

Juvenile Courts Recommendation: The Dallas Juvenile Indigent Defense Plan requires a system of rotation in appointing attorneys. Following a system of rotation ensures that appointments are allocated in a fair, neutral, and non-discriminatory manner. Under a rotational system, good cause must be found for skipping an attorney on the wheel. Where attorneys do not wish to receive an equal share of appointments, the courts need to document this fact in some manner. From our review, cases assigned to juvenile defense attorneys were not allocated evenly among qualified attorneys. It was reported to us that the uneven distribution occurs because several attorneys choose to focus on criminal rather than juvenile matters. However, many attorneys qualified for all types of juvenile appointments receive very few appointments. The reason for the discrepancy is not noted or documented.

Dallas County Response and Action Plan:

The Juvenile Courts handle both misdemeanor and felony cases. The Indigent Defendant Verification Study does not take into account separate attorneys being appointed on misdemeanor and felony offenses. Because the attorney eligible for felony appointments is also eligible for misdemeanor appointments, in any given cycle of time the dual eligible attorneys will have more opportunities for appointment than the single eligible attorneys (misdemeanor).

Additionally, since the Juvenile Courts handle both misdemeanor and felony cases, during any cycle of time there may be a significant fluctuation in the number of misdemeanor vs. felony cases filed which can also appear as a disparity in appointment if this factor is not properly considered or accounted for.

There are occasions where attorneys will request to receive fewer appointments because they choose to engage in other areas of practice but desire to remain eligible for appointments. The Juvenile Courts also routinely find that attorneys change business addresses and fail to notify the Courts.

Finally, attorneys that fail to follow internal court procedures may receive fewer appointments despite appearing otherwise to be eligible (i.e. habitually failing to timely appear for court).

In consideration of the foregoing, the Juvenile Courts will modify the list such that the misdemeanor eligible attorneys appear alphabetically followed by the felony eligible attorneys. As attorneys are appointed a notation will be made by the attorney's name which will take into account the issues enumerated in paragraphs one and two.

In conclusion, the Juvenile Courts will monitor the appointments to ensure compliance with the Fair Defense Act.

Completion date: January 1, 2010

Non-Mandatory Recommendation: Dallas County may wish to have defendants complete a detailed affidavit of indigence before assigning counsel. Collecting data regarding an applicant's financial status can allow for a more accurate determination of whether the applicant is indigent. If a more detailed affidavit is used, under Article 15.17(a), it must be completed at magistration when counsel is first requested. Article 15.17(a) requires that the magistrate ensure reasonable assistance in completing the necessary forms for requesting appointment of counsel at the time of magistration. The volume of inmates at the Dallas County Jail is too great for a single individual to provide this necessary assistance. In 2007, the Task Force published a document that found screening for indigence to be beneficial for almost every jurisdiction. This screening involves a face-to-face interview with the arrestee to determine the arrestee's ability to afford an attorney. The Task Force publication is attached with this report.

Dallas County Response: The Dallas County Courts have already revised the existing Affidavit of Indigence (AI) form to collect more detailed financial information and to indicate if the defendant is requesting a court appointed attorney or will retain their own counsel. The new Election of Counsel (EOC) form will be completed by all defendants appearing before the Dallas County District Court Magistrate. The new EOC form is attached for your review. Dallas County will evaluate the efficacy of the cost of providing staff to screen requests for appointment of counsel. A pilot project is underway with two District Courts to screen requests for attorney appointments for defendants who are out on bond. In this pilot, staff from the Pretrial Release Unit

interview defendants and request verification of financial information. The D-Med credit check system is used as part of the evaluation process. Initial results of the pilot indicate that between 10% and 15% of the defendants requesting an attorney appointment do not meet an indigence standard of 150% of the Federal Poverty Level. In the pilot, staff has found that defendants often do not have any form of income/expense verification at the time of their request for court appointed counsel. Dallas County Courts have always prioritized the processing of cases for defendants who are in jail and are very cautious in implementing any changes that would impede the timely processing of cases. Dallas County will continue to explore cost-effective processes to determine indigence.

Cause# _____ **ELECTION OF COUNSEL** Special Needs: _____

Name: _____ DOB: _____ Sex: ___ Race: ___

ARE YOU ENTITLED TO A COURT-APPOINTED LAWYER? (Select and initial one.)

 NO, I AM NOT ENTITLED TO AN APPOINTED LAWYER. I have been warned by the magistrate that I have the right to request a determination of indigency to decide whether I am entitled to the appointment of a lawyer and I understood the warnings given to me by the magistrate. **I will hire my own lawyer.**

 YES, I BELIEVE THAT I AM ENTITLED TO AN APPOINTED LAWYER. I have been advised by the magistrate of my right to request a determination of indigency to determine if I qualify for a court-appointed lawyer. I certify that I am without means to employ a lawyer of my own choosing and I now request the court to select and appoint a lawyer for me. I understand that I may be required to repay Dallas County for a court-appointed lawyer.

 Are you on Public Assistance? (Ex: Food Stamps, SSI, and Disability)

Size of family unit (Members of immediate family that you support financially)(List name, age & relationship)			
Name:	Age:	Relationship:	

Does applicant have a parent or other close relative who is able to make a voluntary contribution toward attorney's fees?

Explain. _____

Monthly Income		Necessary Mo. Living Expenses	
Your Salary		Rent / Mortgage:	
Spouse's Salary		Utilities (gas, electric, etc.)	
SSI/SSDI		Transportation: Make: Model: Year:	
AFDC		Clothes/Food	
Social Security Check		Day Care / Child Care:	
Child Support		Medical Expenses	
Other Government Check		Credit Cards	
Other Income		Court-Ordered Monies:	
		Child Support:	
TOTAL INCOME*		TOTAL NECESSARY EXPENSES*	

DEFENDANT MEETS ELIGIBILITY REQUIREMENTS

 YES NO

 UNDETERMINED

Signature

TOTAL MONTHLY INCOME:	
TOTAL MONTHLY EXPENSES:	-
DIFFERENCE (net income)	=

I swear that the above information is true and correct.

**All information is subject to verification. Falsification of information is a criminal offense.*

Arrested Person

Date