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BRAZOS COUNTY INDIGENT DEFENSE PLAN

To implement the Texas Fair Defense Act, the following Local Rules of Administration are adopted under Texas Government Code §74.093, Texas Code of Criminal Procedure, Article 26.04 et. seq., and Texas Family Code §51.102. These rules shall be effective January 1, 2007, subject to the approval of the Presiding Judge of the Second Administrative Judicial Region. All prior indigent defense plans adopted are superseded by these rules.

Rule 1. Applicability

1.01 *Scope.* These rules will govern:

- (a) criminal procedures relating to the appointment of counsel to represent indigent adult defendants in all municipal, justice of the peace, county, and district courts in Brazos County; and
- (b) civil procedures relating to the appointment of counsel to represent indigent juvenile offenders in Brazos County.

1.02 *Limitation.* Nothing contained in these rules shall be interpreted to require or compel appointment of counsel in any criminal case or juvenile case involving a Class C misdemeanor.

1.03 *Prior orders.* Nothing contained in these rules shall affect the validity of any court order entered prior to the effective date of these rules.

Rule 2. Determination of Indigency

2.01 *Definitions.*

- (a) “*Indigent*” means a person who is not financially able to employ counsel, using the financial standards established in these rules.
- (b) “*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.

- (c) “*Non-exempt assets and property*” means cash in the defendant’s possession or control, stocks and bonds, accounts at financial institutions, and equity in real or personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.
- (d) “*Household*” means all individuals who are actually dependent on the defendant for financial support.
- (e) “*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.

2.02 *Financial Standards for Determining Indigency.* The following financial standards shall be used to determine whether a defendant is indigent and shall be applied equally to each defendant in the county.

- (a) A defendant is considered indigent if:
 - (1) the defendant’s net household income does not exceed 125% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and
 - (2) the value of the non-exempt assets and property owned by the defendant:
 - (i) does not exceed \$1,500;
 - (ii) does not exceed \$3,000 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

- (iii) are insufficient to pay the cost of retaining competent private legal representation in Brazos County for the offense(s) with which the defendant is charged.
 - (b) A defendant is considered indigent if, 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.
 - (c) A defendant is considered indigent if the defendant is:
 - (1) currently serving a sentence in a correctional institution, 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; and
 - (2) has no non-exempt assets or property in excess of the amounts specified in Rule 2.02(a)(2).
 - (d) 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.
- 2.03 *Limitation.* The judge determining indigency shall not consider whether the defendant has posted bail, except to the extent that it reflects on the defendant's financial circumstances.
- 2.04 *Procedure.* Each person arrested who chooses to request the appointment of counsel, shall complete a sworn Application for Court Appointed Attorney, on a form approved by the county court at law and district judges of Brazos County (See Appendix for approved forms). The completed form shall be delivered to the judge or judge's designee and utilized in determining the indigency of the requesting person.

Rule 3. Selection and Appointment of Counsel in Criminal Cases

- 3.01 *Method of Appointment.* Attorneys shall be appointed to represent indigent adult defendants from public appointment lists using an "alternative program" as described

in Article 26.04(g) of the Texas Code of Criminal Procedure and as further specified in this rule.

- 3.02 *Public Appointment Lists.* The judges hereby establish the following public appointment lists from which counsel for indigent defendants shall be appointed:
- (a) A Misdemeanor List consisting of attorneys eligible for appointment in Class A and B misdemeanors.
 - (b) An Other Felony List consisting of attorneys eligible for appointment in any non-capital felony case which is not:
 - (1) an offense listed under Tex. Code Crim. Pro. Art. 42.12, Sec. 3g. (a) (1); or
 - (2) an offense for which the punishment may be enhanced under Tex. Penal Code Sec. 12.42 (b), (c), or (d).
 - (c) A 3g/Enhanced Felony List consisting of attorneys eligible for appointment to represent indigent defendants in any non-capital felony case which is:
 - (1) an offense listed under Tex. Code Crim. Pro. Art. 42.12, Sec. 3g. (a) (1); or
 - (2) an offense for which the punishment may be enhanced under Tex. Penal Code Sec. 12.42 (b), (c), or (d).
 - (d) A Capital Felony List consisting of attorneys eligible for appointment in capital felony cases.
 - (e) An Appellate Attorney List consisting of attorneys eligible for appointment to represent indigent defendants on appeal from any Class A or B misdemeanor and any non-capital felony case.
- 3.03 *Attorney Qualifications.* At least twice each year, on or before April 1st and October 1st, attorneys may apply to be included on one or more of the public appointment lists. To be eligible for placement on each list, attorneys must meet the following minimum qualifications:

(a) *Misdemeanor List.*

- (1) Currently licensed and in good standing with the State Bar of Texas;
- (2) Practiced in the area of criminal law for at least one (1) year, or exhibited professionalism and reliability when providing representation to criminal defendants;
- (3) Exhibited proficiency and commitment to providing quality representation to criminal defendants;
- (4) 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 the United States within the last five (5) years;
- (5) May not have been convicted of any felony offense or of any misdemeanor involving moral turpitude within the last ten (10) years. For the purposes of this requirement, “convicted” includes, but is not limited to, serving any period of probation, community supervision, or deferred adjudication supervision under any order of a court of record, regardless of whether the charges were ultimately dismissed or not;
- (6) May not be delinquent in the payment of obligations to the State Bar of Texas, or to any taxing authority, including Brazos County, the State of Texas, and the United States;
- (7) May not be delinquent in the payment of any child support obligation;
- (8) Must have and maintain an office with a permanent physical address (other than a Post Office Box), together with a facsimile transmission machine and telephone capable of receiving information twenty-four (24) hours per day; and
- (9) Unless currently certified in criminal law by the Texas Board of Legal Specialization, must annually complete a minimum of six (6) hours of continuing legal education pertaining to criminal law.

(b) *Other Felony List.*

- (1) Meet the minimum qualifications for placement on the Misdemeanor List;
- (2) Practiced in the area of criminal law for at least two (2) years; and

- (3) Have tried to verdict at least two (2) criminal jury trials as lead counsel.
- (c) *3g/Enhanced Felony List.*
- (1) Meet the minimum qualifications for placement on the Misdemeanor List;
 - (2) Practiced in the area of criminal law for at least three (3) years; and
 - (3) Have tried to verdict at least ten (10) criminal jury trials as lead counsel, five (5) of which must have been felony trials.
- (d) *Capital Felony List.*
- (1) Meet the minimum qualifications for placement on the 3g/Enhanced Felony List;
 - (2) Comply with the requirements of Article 26.052 of the Texas Code of Criminal Procedure; and
 - (3) Be admitted to the Second Administrative Judicial Region's List of Court-Appointed Counsel for Capital Felony Cases.
- (e) *Appellate Attorney List.*
- (1) Meet the minimum qualifications for placement on the Other Felony List; and
 - (2) Unless currently certified in criminal law by the Texas Board of Legal Specialization, have acted as counsel on appeal in at least 3 separate criminal appeals.

3.04 *Application and Approval of Attorneys by the Judges.*

- (a) *Application.* Any attorney desiring to be placed on any public appointment list shall complete an application under oath on a form approved by the district and county court at law judges (See Appendix for approved forms). The application shall be delivered to the Brazos County Local Administrative Judge.
- (b) *Misdemeanor List.* In addition to meeting the objective minimum qualifications described in Rule 3.03(A) above, an attorney may be placed on the misdemeanor appointment list only if both of the county court at law judges approve the attorney's placement on the Misdemeanor List.

- (c) *Other Felony List.* In addition to meeting the objective minimum qualifications described in Rule 3.03(B) above, an attorney may be placed on the felony appointment list only if a majority of the district judges approves the attorney's placement on the Other Felony List.
- (d) *3g/Enhanced Felony List.* In addition to meeting the objective minimum qualifications described in Rule 3.03(C) above, an attorney may be placed on the felony appointment list only if all three of the district judges approve the attorney's placement on the 3g/Enhanced Felony List.
- (e) *Capital Felony List.* In addition to meeting the objective minimum qualifications described in Rule 3.03(D) above, an attorney may be placed on the Capital Felony List only if all three of the district judges approve the attorney's placement on the Capital Felony List.
- (f) *Appellate Attorney List.* In addition to meeting the objective minimum qualifications described in Rule 3.03(D) above, an attorney may be placed on the Appellate Attorney List only if all three of the district judges and both of the county court at law judges approve the attorney's placement on the Appellate Attorney List.
- (g) *Action on Applications.* When an attorney application to be placed on a public appointment list is received by the Local Administrative District Judge, the Local Administrative District Judge shall prepare and route to the county court at law judges and the district judges an evaluation form (See Appendix for form). Each county court at law and district judge shall evaluate the new applicants for each public appointment list and write their recommendation, approval, or disapproval on the evaluation form together with any comments, as appropriate, and forward the evaluation form to the next appropriate judge for consideration. The last judge to act on the evaluation shall return the completed evaluation form to the Local Administrative Judge who will determine whether the appropriate number of judges have approved the addition of the attorney to any list. Each attorney will be approved for addition to the appropriate list:
 - (1) who meets the objective qualifications set forth in Rule 3.03 for placement on the list; and
 - (2) whom the judges consider to be actually competent to adequately handle cases associated with the list.

An objective qualification requirement for any list may be waived by unanimous vote of the judges required for approval of an attorney for placement on any list.

- (h) *Notification of Judge's Action.* The Local Administrative District Judge shall notify each attorney by letter of the judges' action on each application. If the attorney's application has been denied, the notification letter shall describe the reasons for the denial by reference to each qualification required by these rules which has not been met, and inform the attorney when another application may be considered. The Local Administrative District Judge shall transmit all retained documentation to the County Magistrate .
- (i) *Confidentiality.* The evaluations and communications between the courts and the attorneys relating to the applications to be placed on any appointed attorney list are records of the judiciary and not subject to public disclosure under the Texas Open Records Act. However, any attorney desiring to review the completed evaluation form concerning the attorney's application to be placed on any list may obtain a copy of the attorney's evaluation by request to the Local Administrative District Judge.
- (j) *Records Maintenance and Retention.* The County Magistrate shall be responsible for and maintain each original application, completed evaluation, and records of MCLE compliance under these rules until a period of five (5) years after an attorney:
 - (1) is denied addition to any appointed attorney list; or
 - (2) is removed or otherwise no longer on any appointed attorney list.

3.05 *Removal of Attorneys from Public Appointment List.*

- (a) An attorney may be removed, at any time, from one or more public appointment lists by a majority of the judges for the corresponding court level whenever the judges determine that the attorney:
 - (1) no longer meets the objective qualifications for that list;
 - (2) is not fully competent to adequately handle the category of cases associated with that list;
 - (3) fails to annually certify completion of the required continuing legal education requirements;
 - (4) repeatedly fails to comply with time requirements imposed by the Texas Rules of Appellate Procedure, the Texas Code of Criminal Procedure, or any of this county's local rules of administration;
 - (5) submitted a claim for legal services not performed by the attorney; or

- (6) has been the subject of any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States.
 - (b) The judges may, in their discretion, remove an attorney from one or more lists, while continuing to approve the attorney for other lists.
 - (c) When a majority of the judges remove an attorney from any list, the Local Administrative Judge shall inform the attorney in writing of the judges' action and of the reasons for the removal. Within 15 days following the date of the letter removing an attorney from any list, an attorney may then deliver to the Local Administrative Judge a written request to appear before the judges en banc to appeal the decision. A majority of the judges may reinstate the attorney. If a majority of the judges do not vote in favor of reinstatement of the attorney, the original removal of the attorney from the list shall remain in effect.
 - (d) Unless the notice of removal from an appointment list specifies a different duration of suspension or removal, any attorney removed from a list may reapply to be placed on that list after a period of one (1) year.
- 3.06 *Assignment of Attorneys.* The following method shall be used to assign attorneys from the appropriate public appointment list to represent individual defendants:
- (a) *Prompt Appearance before a Magistrate.* The law enforcement officer making the arrest and any officer who later has custody of an accused person shall ensure that the person is taken before any magistrate authorized by law without unnecessary delay, but not later than 48 hours after the person was arrested. The magistrate before whom the arrested person is brought shall administer the required magistrate's warnings, set bail, if appropriate, and provide the person with an application for court appointed attorney and assistance in completing the application, if appointment of counsel is requested by the individual arrested.
 - (B) *Transmittal of Request for Appointed Counsel.* Any magistrate who administers magistrate's warnings to an arrested individual shall make a written note on any request for appointment of counsel of the date and time the request was made. After a request for appointment of counsel has been made by an individual claiming to be indigent, the magistrate shall cause the written request of the individual and any other documentation relating to the indigency of the individual, to be delivered within twenty-four (24) hours to the County Magistrate whose office is located in the Brazos County Courthouse, if the individual is charged with a Class A or B misdemeanor or any felony other than a capital felony. If the arrested individual is charged with a capital felony, the request and any documentation shall be delivered within twenty-four (24) hours to the Local Administrative District Judge,

who shall determine indigency and appoint counsel within three (3) working days after the request is received.

- (c) *County Magistrate to Determine Indigency and Appoint Counsel for Incarcerated Individuals.* If the individual requesting appointment of counsel remains incarcerated on the charges, the County Magistrate, shall, within three (3) working days after the request for appointment of counsel is received by the County Magistrate, determine whether or not the requesting arrested individual is indigent and, if found to be indigent, shall appoint an attorney from the appropriate list. In determining which attorney to appoint, the County Magistrate shall appoint the attorney whose name next appears in order on the public appointment list that corresponds to the most serious offense as currently charged, unless any of the following circumstances exist, which override the sequential appointment preference:
- (1) If the defendant requesting appointed counsel does not understand English, an attorney who can communicate with the defendant in the defendant's language is preferable to one who cannot;
 - (2) If the defendant requesting appointed counsel has pending charges in which he has previously been appointed counsel, the attorney who was previously appointed should be appointed;
 - (3) If the defendant requesting appointed counsel has been arrested on both felony and misdemeanor charges, or has pending felony charges at the time of a misdemeanor arrest, an attorney from the appropriate Felony List should be appointed; or
 - (4) If the defendant requesting appointed counsel has been arrested on any motion to proceed with adjudication or motion to revoke community supervision, and the attorney who represented the defendant at the time the defendant was placed on supervision continues to be on the appropriate public appointment list, the attorney who represented the defendant previously should be appointed.
- (d) *Limitation on appointment after overriding circumstance.* When any attorney is appointed out of order due to an overriding circumstance, that attorney shall not receive another sequential appointment until every other attorney on that list has received an appointment in that rotation (but may receive additional overriding circumstance appointments).
- (e) *Assigned Trial Judge to Determine Indigency and Appoint Counsel for Individuals Not Incarcerated.* If the individual requesting appointment of counsel is no longer incarcerated within three (3) working days after the County Magistrate receives the request for appointment, the County Magistrate shall note on the request for appointment of counsel that the

individual is no longer incarcerated and deliver the request and any other documents received by the magistrate to the District Clerk once charges are filed. If charges are rejected by the District Attorney or County Attorney the request and any related documentation shall be delivered to the District Attorney or County Attorney, as appropriate, and maintained by the District Attorney or County Attorney. Upon filing of any request for appointment of counsel after charges have been filed, the District Clerk shall deliver the request to the assigned court. The judge of the assigned court shall immediately set the request for hearing, give notice to the defendant and determine the indigency of the defendant and, if found indigent, appoint counsel from the appropriate list as soon as possible.

- (f) *TDCJ Inmates Charged with Offenses Committed While in TDCJ Custody.* Notwithstanding anything herein to the contrary, if the Court determines that a defendant before the court is indigent and is an inmate charged with an offense committed while in the custody of the Institutional Division of the Texas Department of Criminal Justice, the Court may request the Office of State Counsel for Offenders to provide legal representation to that defendant in accordance with Tex. Code Crim. Pro. Art. 26.051 and the policies and procedures established by the Texas Board of Criminal Justice.

3.07 *Notice of Determination that the Defendant is Not Indigent.* If the person making the indigency findings, determines that a person who requests appointment of counsel is not indigent, that finding shall be entered on the request for appointment of counsel and file the original with the other orders in the case and cause a copy to be returned to the requesting person.

3.08 *Notice of Determination that the Defendant is Indigent and Appointment of Counsel.* If the person making the appointment finds that a person who requests counsel is indigent, an order appointing counsel shall be completed and a copy delivered to the appointed counsel, to the indigent defendant, to the prosecutor with jurisdiction over the charge, and the original delivered to the District Clerk to be filed with the orders in the case. Immediately after an order appointing counsel is signed, the appointing magistrate shall notify the appointed attorney of the appointment by at least one of the following methods: telephone, facsimile transmission, electronic mail, in person, or other means of immediate communication.

3.09 *Attorney Acceptance of Appointment and Contact with the Defendant.* The appointed attorney is required to provide the court, within 72 hours of receiving the notice of appointment, an acknowledgment of the appointment and a confirmation that the attorney has made the reasonable effort required under Article 26.04(j)(1) to contact the defendant by the end of the first working day after the date of the appointment.

- (a) The appointed attorney shall deliver an acknowledgment and confirmation in written form to the appointing judge or person(s) designated by the judges to appoint counsel.

- (b) The acknowledgment and confirmation shall be delivered by hand, by facsimile, by electronic mail, or by such other means as the judges may approve.

3.10 *Reporting Compliance with Minimum Continuing Legal Education Requirements.*

- (a) *Reporting Period.* In determining compliance with the minimum continuing legal education requirements of these rules, the period used shall be the same as the MCLE compliance year used by the State Bar of Texas [See State Bar Rules, Art. XII, Sec. 2(L)].
- (b) *Reporting Requirement.* Not later than the last day of an attorney's birth month each year, an attorney on any appointment list must submit to the Local Administrative Judge:
 - (1) An affidavit signed by the attorney detailing the criminal continuing legal education activities completed in the prior year, with a copy of the State Bar of Texas Minimum Continuing Legal Education Annual Verification Report covering the reporting period (see Appendix for form); or
 - (2) An affidavit signed by the attorney, that the attorney is currently certified in criminal law by the Texas Board of Legal Specialization (See Appendix for form).
- (c) *Carryover Limited to One Year.* Continuing legal education activity completed during any reporting period in excess of the minimum six hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one (1) year only.
- (d) *Initial Reporting Period.* Continuing legal education activity completed within a two-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year.

Rule 4. Attorney Fee Schedule and Compensation of Appointed Attorneys

4.01 *Trial Fee Schedule.* Brazos County will pay appointed counsel for all trial time reasonably necessary for adequate representation of the defendant, as approved by a judge, according to the following fee schedule adopted as provided under Article 26.05(b) of the Texas Code of Criminal Procedure:

TRIAL SERVICES FEE SCHEDULE			
Type of Service	Fixed Fee	Daily Rate	Hourly Rate (Min - Max)
JURY			
Capital (Death Penalty)-Lead Counsel	\$25,000	\$800	\$75-\$100
Capital (Death Penalty)-Assoc. Counsel	\$18,000	\$700	\$60-\$75
Capital (Non death penalty) - Lead Counsel	\$10,000	\$700	\$60-\$75
Capital (Non death penalty) – Assoc. Counsel	\$7,500	\$600	\$45-\$60
Non-capital 3g/Enhanced Felony	\$3,000	\$800	\$75-\$100
Other Felony	\$1,250	\$500	\$50-\$65
Misdemeanor	\$750	\$300	\$45-\$50
Contested Competency	\$1,000	\$400	\$60-\$75
BENCH			
Contested 3g/Enhanced Felony Trial	\$1,500	\$600	\$75-\$100
Contested Other Felony Trial Contested Felony MTR/MTP	\$500	\$300	\$50-\$60
Uncontested 3g/Enhanced Felony Plea Uncontested 3g/Enhanced MTR/MTP	\$750	---	---
Uncontested Other Felony Plea Uncontested Other Felony MTR/MTP	\$400	---	---
Contested Misdemeanor Trial Contested Misdemeanor MTR/MTP	\$400	\$250	\$45-\$60
Uncontested Misdemeanor Plea Uncontested Misdemeanor MTR/MTP	\$200	---	---
“Uncontested” Competency	\$400	---	---

4.02 *Compensation for Services Not Provided by Schedule.*

- (a) *Multiple Cases for Single Defendant.* In determining the amount of compensation for disposition of multiple cases involving a single defendant, the court may award an amount greater than the established fixed fee.
- (b) *Other Services.* Services not specifically described above (e.g., bond reductions, pre-filing dismissals, defense of motions to deny bail or revoke bond, dismissals, habeas corpus, etc.) will be paid on a rate basis using a daily or hourly rate most appropriate to the circumstances. Any request for compensation on a rate basis must be accompanied by an itemized statement showing the amount of time actually expended by the attorney on the case.

4.03 *Appellate Fee Schedule.* Brazos County will pay appointed counsel for appellate services only on a fixed fee basis, unless otherwise approved by a judge for good cause, according to the following fee schedule adopted as provided under Article 26.05(b) of the Texas Code of Criminal Procedure:

APPELLATE SERVICES FEE SCHEDULE			
Type of Case	Motion for New Trial and Brief	Oral Argument and Motion for Rehearing	Total
Capital Felony	\$10,000	\$2,500	\$12,500
Non-Capital 3g/Enhanced Felony	\$1,750	\$750	\$2,500
Non-Capital <u>Other</u> Felony	\$1,250	\$500	\$1,750
Misdemeanor	\$800	\$400	\$1,200

4.04 *Incidental Expenses.* Appointed counsel, both trial and appellate, shall be reimbursed for reasonable and necessary incidental expenses such as copying, telephone, mileage, etc., incurred without prior approval of the Court.

4.05 *Investigations and Expert Testimony.* 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.

- (a) *Procedure with prior court approval.* Appointed counsel may file with the trial court a Motion for Court Appointed Attorneys Fee/Approval (Appendix

E) together with a pretrial *ex parte* confidential request for advance payment of investigative and expert expenses. The request for advance payment of expenses must state, as applicable:

- (1) the type of investigation to be conducted or the type of expert to be retained;
- (2) 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
- (3) an itemized list of anticipated expenses for each investigation or each expert.

(b) *Procedure Without Prior Court Approval.* Appointed counsel may incur investigative or expert expenses without prior approval of the court. Appointed counsel may file with the trial court a Motion for Court Appointed Attorneys Fee/Approval (Appendix E). The motion must have an itemized statement attached which states, as applicable:

- (1) the type of investigation that was conducted or the type of expert that was retained;
- (2) specific facts that show the investigation was necessary to assist in the preparation of the defense; and
- (3) an itemized list of actual expenses incurred for each investigation or each expert.

(c) *Approval of requests.* On presentation of a Motion for Court Appointed Attorneys Fees/Approval (Appendix E) and the request for advance payment or itemized statement required, the court shall approve the payment of the requested amount if the expenses are reasonably necessary and reasonably incurred. Upon approval by the Court, the completed Motion for Court-Appointed Attorneys Fees/Approval shall remain a public record and be transmitted to the County Auditor for payment. If the request for advance payment or claim for reimbursement is made prior to the conclusion of the trial of the case, the request for claim, together with any supporting documentation, that was attached to the motion may be ordered sealed until the trial of the case is concluded. All payments shall be made directly to the requesting counsel. No payments will be made directly to the investigator or expert.

(d) *Denial of Requests.* If the court denies in whole or in part a request for advance payment or a claim for reimbursement of expenses incurred for investigation or expert testimony, the court shall:

- (1) state the reasons for the denial in writing;
- (2) attach the denial to the request or claim;
- (3) submit the request or claim and denial as an exhibit to the record;
and
- (4) if the request or claim has been made *ex parte* prior to trial, may order the request or claim and denial sealed until the trial of the case is concluded.

4.06 *Procedure for Compensation.* Not later than thirty (30) days after the case is disposed by the trial court, the appointed attorney shall prepare and submit to the trial court last having jurisdiction of the most serious offense case, a Motion for Court Appointed Attorney Fees on a form approved by the judges (See Appendix for approved forms). The motion shall include all services provided a single defendant, regardless of the number of cases disposed. The judge shall determine the reasonableness of the amount requested based upon the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel using the above fee schedules. If the judge disapproves the requested amount, 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. The attorney may file written objections to the court's action and request an oral hearing to show the court reasons that justify the amount requested.

4.07 *Appeals from any Disapproval of Requested Amount.* The attorney may appeal any determination disapproving the requested amount to the Presiding Judge of the Second Administrative Judicial Region in accordance with the rules promulgated by the Second Administrative Judicial Region. The amount determined by the Presiding Judge of the Second Administrative Judicial Region shall be paid by Brazos County to the attorney appointed within forty-five (45) days after the appeal is determined.

Rule 5. Selection and Appointment of Counsel in Juvenile Cases

5.01 *Method of Appointment.* Attorneys shall be appointed to represent indigent juvenile offenders using an "alternative program" as described in Article 26.04(g) of the Texas Code of Criminal Procedure and as further specified in this rule.

5.02 *Contract Attorneys.* Upon approval by the Judges of the District Courts and County Courts at Law in Brazos County of the individual or firm selected to provide indigent juvenile representation, the Commissioners Court of Brazos County may enter into a contract with the selected individual or law firm to provide the majority of all legal representation to indigent juvenile offenders entitled to representation under the Texas Juvenile Justice Code. During the term of such contract, the contract

attorney(s) shall be appointed to represent any juvenile offenders determined to be indigent according to these rules, except:

- (a) Contract attorneys shall not be appointed or obligated under the contract to provide representation to juveniles charged with delinquent conduct arising from the criminal offense of Capital Murder;
- (b) Contract attorneys shall not be appointed or obligated under the contract to provide representation to juveniles when the contract attorney or contract firm is disqualified from such representation or has a conflict of interest under the Texas Disciplinary Rules of Conduct.

5.03 *Terms of Contract.* Any contract executed by the Commissioners Court of Brazos County and an attorney or law firm under these rules shall provide:

- (a) The contract shall provide a set term of one year, renewable upon the consent of (1) the District Judges and County Court at Law Judges, (2) the Commissioners Court, and (3) the attorney or law firm selected.
- (b) The attorney or law firm selected shall agree to make the representation of indigent juveniles the priority of their practice and file few, if any, motions for continuance in juvenile cases to which they have been appointed on the grounds of a conflicting setting in another court.
- (c) The attorney or law firm selected shall agree to meet or exceed the IJA-ABA Standards for Juvenile Justice relating to the quality of service provided by court-appointed attorneys to indigent juveniles. (A copy of these standards is attached as Appendix I). The contract shall state a policy to assure that the attorney or firm selected shall not provide representation to indigent juveniles when doing so would involve a conflict of interest.
- (d) The attorney or firm selected will be solely responsible for all routine expenses associated with the representation of indigent juveniles to which they are appointed under the contract. Routine expenses include paralegal and secretarial services, library expenses, office supply and equipment expenses, telephone services, facsimile transmission services, copying expenses, postage and parcel delivery expenses, transportation expenses incurred within Brazos County and the counties contiguous to Brazos County, and expenses associated with serving subpoenas on and contacting witnesses. Prior written approval by the juvenile court or referee is required for reimbursement of other expenses including investigation and expert witness services. Requests for approval of investigative expenses and expenses for expert testimony shall be filed in the appropriate court setting forth good cause for such investigation and a justification of the cost. There shall be no additional compensation or reimbursement due on any case without the express, written approval of the Juvenile Court having

jurisdiction over the case.

- (e) The amount of compensation under the terms of the contract shall be stated in the contract and payable at such frequency as determined by the contract, with no provision for advances. The contract shall require the contract attorney or firm to submit an itemized fee voucher to be approved by the juvenile judge prior to being forwarded to the County Judge for approval and payment.
- (f) The contract shall identify the attorneys who will perform legal representation and prohibit the substitution of other attorneys without prior approval by the juvenile court and the Commissioners Court of Brazos County. Nothing in the contract shall prohibit the contract attorney or firm from being relieved or replaced in accordance with the Texas Family Code or the Texas Code of Criminal Procedure.
- (g) The contract shall set the maximum number of cases or workload each attorney may be required to handle pursuant to the contract.

5.04 *Qualifications.* Each attorney appointed to represent an indigent juvenile under the contract shall meet and maintain throughout such representation each of the following minimum qualifications:

- (a) Be an attorney licensed to practice law in the State of Texas and maintain that license in good standing throughout the term of the contract.
- (b) If only one attorney is contracted, that contract attorney must be a resident of Brazos County, Texas; if a law firm is contracted, the contract firm must maintain its principal office located in Brazos County, Texas.
- (c) The contract attorney or any member of a contract law firm may not be or have been the recipient of any disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States.
- (d) The contract attorney or any member of a contract law firm may not have ever been convicted of any felony or misdemeanor involving moral turpitude. For the purposes of this requirement, “convicted” includes, but is not limited to, serving any period of probation, community supervision, or deferred adjudication supervision under any order of a court of record, regardless of whether the charges were ultimately dismissed or not.
- (e) The contract attorney or any member of a contract firm may not be currently or at any time during the term of the contract delinquent in the payments of obligations to the State Bar of Texas or to any taxing authority, including Brazos County, the State of Texas and the United States of America.

- (f) The contract attorney or any member of a contract firm may not be currently or at any time during the term of the contract delinquent in the payment of any child support obligation.
- (g) The contract attorney or contract firm must maintain a policy of malpractice insurance in a coverage amount for each claim of at least \$500,000. This policy of insurance must survive the termination of the attorney's or firm's contract for any claim arising from actions occurring during the term of the contract.
- (h) The contract attorney or any member of the contract firm must comply with the minimum continuing legal education requirements of these rules.

5.05 *Procedure for award of contract.* Unless a contract is a renewal of an existing contract under these rules, the following procedures shall be used in awarding contracts to an attorney or law firm:

- (a) Not later than July 1st, the County Purchasing Office will prepare and submit to the Commissioners Court a formal Request for Proposals. Once approved by the Commissioners Court, the Request for Proposals will be mailed to every licensed attorney residing in Brazos County and to the Brazos County Bar Association.
- (b) Upon passing of the deadline for submission, the proposals will be reviewed by the Commissioners Court and the Judges of the District Courts and County Courts at Law.
- (c) Once the Commissioners Court and the Judges of the District Courts and County Courts at Law have had a reasonable opportunity to review the proposals, the Commissioners Court shall select an individual or firm and submit the selected proposal to the District and County Court at Law Judges for approval. If approved by the District Court and County Court at Law Judges, the Commissioners Court may accept the proposal of the selected individual or firm and enter into a contract for services in accordance with the requirements of these rules.
- (d) The criteria for selection and approval of the individual or firm shall not be based solely upon the low bid. Consideration of the selection must be based upon at least the following factors:
 - (1) experience and qualifications of the individual or firm submitting the proposal;
 - (2) past performance of the individual or firm submitting the proposal in representing juveniles;

- (3) disciplinary history of the individual or firm submitting the proposal with the state bar;
 - (4) ability of the individual or firm submitting the proposal to comply with the terms of the contract; and
 - (5) the cost for the services.
- (e) Upon execution of the contract by the individual or firm selected and the Commissioners Court, the Juvenile Courts will exclusively appoint the contract attorney or law firm, subject to the limitations described in these rules.
 - (f) It is the intent of these rules that the contract be executed prior to the final adoption by the Commissioners Court of the county's annual budget and that the term of the contract be concurrent with the county's fiscal year.

5.06 *Procedure for renewal of contract.*

- (a) Not later than June 1st prior to the expiration of the contract, the contract attorney or firm will prepare and submit to the County Purchasing Office a letter of intent to renew the contract, specifying any proposed changes to the terms of the contract.
- (b) The County Purchasing Office shall immediately forward to the Commissioners Court and the Judges of the District Courts and County Courts at Law a copy of the contract attorney's or firm's letter of intent to renew the contract and any proposed changes to the terms of the contract.
- (c) The Judges of the District Courts and County Courts at Law shall review the contract attorney's letter of intent to renew the contract. If a majority of the Judges of the District Courts and County Courts at Law object to renewal of the contract, the Local Administrative District Judge shall prepare and deliver a letter of objection to renewal of the contract to the County Judge no later than July 1st prior to the expiration of the current contract.
- (d) If no letter of objection by the Judges of the District Courts and County Courts at Law to renewal of the contract is received by the County Judge by July 1st prior to expiration of the current contract, the Commissioners Court may renew the contract on such terms that do not conflict with these rules.
- (g) If a letter of objection by the Judges of the District Courts and County Courts at Law to renewal of the contract is received by the County Judge on or before July 1st prior to expiration of the contract, the process for award of a new contract specified in Rule 4.05 above shall immediately begin.

- (h) It is the intent of these rules that any renewal contract be executed prior to the final adoption by the Commissioners Court of the county's annual budget and that the term of the contract be concurrent with the county's fiscal year.
- (i) Notwithstanding anything to the contrary in these rules, no contract may be renewed more than four (4) times without rebidding the contract under Rule 5.05 above.

5.07 *Reporting Compliance with Minimum Continuing Legal Education Requirements.*

- (a) *Reporting Period.* In determining compliance with the minimum continuing legal education requirements of these rules, the period used shall be the same as the MCLE compliance year used by the State Bar of Texas [See State Bar Rules, Art. XII, Sec. 2(L)].
- (b) *Reporting Requirement.* Not later than the last day of an attorney's birth month each year, any attorney providing service to indigent juveniles under the contract must submit to the Local Administrative Judge:
 - (1) An affidavit signed by the attorney detailing the juvenile law continuing legal education activities completed in the prior year, with a copy of the State Bar of Texas Minimum Continuing Legal Education Annual Verification Report covering the reporting period (see Appendix for form); or
 - (2) An affidavit signed by the attorney, that the attorney is currently certified in juvenile law by the Texas Board of Legal Specialization (See Appendix for form).
- (c) *Carryover Limited to One Year.* Continuing legal education activity completed during any reporting period in excess of the minimum six hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one (1) year only.
- (d) *Initial Reporting Period.* Continuing legal education activity completed within a two-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year.

5.07 *Appointment of Non-Contract Attorneys.* In those circumstances where:

- (a) the juvenile is charged with charged with delinquent conduct arising from the criminal offense of Capital Murder;

- (b) the contract attorney or law firm is disqualified from representation of a juvenile;
- (c) the contract attorney or law firm has a conflict of interest under the Texas Disciplinary Rules of Conduct; or
- (d) the contract has been terminated or expired without renewal

an attorney shall be appointed from the public appointment list established in Rule 3.02 above appropriate to the criminal offense forming the basis of the alleged delinquent conduct. The juvenile judge or referee making such appointment shall utilize the rotation system specified in Rule 3.06 above.

5.09 *Determination of Indigency.* The juvenile referee (or juvenile judge in the referee's absence) shall determine a juvenile's indigency in accordance with the Texas Juvenile Justice Code and the standards established by Rule 2 above. The income and assets of the juvenile's parent or other person responsible for the juvenile's support must be used in determining whether the child is indigent.

APPENDIX

- A** Application to be Placed on Public Appointment List
- B** Warning by Magistrate
- C** Application for Court Appointed Attorney
- D** Order Appointing Attorney
- E** Motion for Appointed Attorney's Fees/Approval
- F** MCLE Compliance Affidavit (Criminal Law)
- G** MCLE Compliance Affidavit (Juvenile Law)
- H** Judges' Evaluation Form
- I** Selected Excerpts from IJA-ABA Juvenile Justice Standards

**APPLICATION TO BE PLACED ON PUBLIC APPOINTMENT LIST
BRAZOS COUNTY, TEXAS**

Name			Bar Card No.	
Name of Law Firm			Date of Birth	
Physical Office Address	Street		Suite No.	
	City		Zip + 4	
Office Mailing Address	P.O. Box			
	City		Zip + 4	
Office Telephone No.	() -	Office FAX No.	() -	
Mobile Telephone No.	() -	Pager No.	() -	
E-Mail Address				

Mark each public appointment list on which you want to be placed:

<input type="checkbox"/>	Misdemeanor List	<input type="checkbox"/>	Other Felony List	<input type="checkbox"/>	3g/Enhanced Felony List
<input type="checkbox"/>	Capital Felony List	<input type="checkbox"/>	Appellate List		

Please answer the following questions by marking the box in the appropriate column. <i>(Attach additional sheet to provide any necessary explanation or request waiver)</i>	YES	NO
Have you been the recipient of any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States within the last five (5) years?	<input type="checkbox"/>	<input type="checkbox"/>
Have you been convicted of any felony offense or of any misdemeanor involving moral turpitude within the last ten (10) years?	<input type="checkbox"/>	<input type="checkbox"/>
Are you now delinquent in the payment of any obligations to the State Bar of Texas, or to any taxing authority, including Brazos County, the State of Texas, and the United States?	<input type="checkbox"/>	<input type="checkbox"/>
Are you now delinquent in the payment of any child support obligations?	<input type="checkbox"/>	<input type="checkbox"/>
Are your FAX machine and telephone capable of receiving information 24 hours per day?	<input type="checkbox"/>	<input type="checkbox"/>

Please answer the following questions. <i>(Attach additional sheet to provide any necessary explanation or request waiver)</i>	
How many years have you actively practiced criminal law?	<input type="text"/>
How many criminal jury trials have you tried to a verdict as lead counsel?	<input type="text"/>
How many hours of continuing legal education instruction have you attended in the area of criminal law before making this application?	<input type="text"/>
Are you currently certified in criminal law by the Texas Board of Legal Specialization?	<input type="text"/>
If applying for Appellate List, in how many criminal cases have you acted as counsel on appeal?	<input type="text"/>

I, the undersigned attorney, declare that the statements made in this application are true and correct. I further declare that I have read the Brazos County Indigent Defense Plan and will comply with all requirements of that plan.

Attorney's Signature: _____ Date: _____

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, by the above stated person on this ____ day of _____, 20____.

NOTARY'S SIGNATURE: _____

(NOTARY'S SEAL OF OFFICE)

WARNING #:

THIS IS TO CERTIFY THAT I, _____ OF MAGISTRATE DID, ON _____ AT _____ ACTING AS AND IN THE CAPACITY ADMINISTER THE WARNINGS REQUIRED BY ARTICLES 15-17 OF THE TEXAS CODE OF CRIMINAL PROCEDURE TO:

NAME:

ADDRESS:

PHONE:

AGE:

DR. LIC. NO. / ID:

WHO APPEARED BEFORE ME IN MY OFFICE IN BRAZOS COUNTY, TEXAS. SPECIFICALLY, I INFORMED THIS PERSON AS FOLLOWS:

1. THE ACCUSATION AND ANY AFFIDAVIT CHARGES YOU WITH THE OFFENSE(S) OF:

OFFENSE(S)

BOND/FINE

- 2. IF YOU ARE CHARGED WITH ANY FELONY OFFENSE, YOU HAVE THE RIGHT TO AN EXAMINING TRIAL;
- 3. YOU HAVE THE RIGHT TO REMAIN SILENT AND MAKE NO STATEMENT AT ALL. IF YOU DO MAKE A STATEMENT SUCH STATEMENT MAY BE USED AGAINST YOU AS EVIDENCE AT YOUR TRIAL;
- 4. IF YOU CHOOSE TO MAKE A STATEMENT, YOU MAY TERMINATE THE INTERVIEW AT ANY TIME;
- 5. YOU HAVE THE RIGHT TO HAVE A LAWYER PRESENT TO ADVISE YOU PRIOR TO AND DURING ANY QUESTIONING OR INTERVIEW WITH PEACE OFFICERS OR ANY ATTORNEYS REPRESENTING THE STATE;
- 6. IF YOU ARE UNABLE TO EMPLOY A LAWYER, YOU HAVE THE RIGHT TO HAVE A LAWYER APPOINTED TO COUNSEL WITH YOU PRIOR TO AND DURING ANY SUCH QUESTIONING OR INTERVIEW;
- 7. IF YOU DESIRE TO REQUEST A COURT APPOINTED ATTORNEY:
 - 1. YOU MUST COMPLETE A WRITTEN APPLICATION FOR COURT APPOINTED ATTORNEY;
 - 2. THE APPLICATION MUST CONTAIN SUFFICIENT FINANCIAL INFORMATION TO ENABLE THE JUDGE TO DETERMINE WHETHER YOU ARE INDIGENT;
 - 3. THE APPLICATION MUST BE MADE UNDER OATH; AND
 - 4. REASONABLE ASSISTANCE WILL BE PROVIDED TO HELP YOU COMPLETE THE APPLICATION, IF NEEDED;
- 8. ANY REQUEST FOR A COURT APPOINTED ATTORNEY WILL BE DETERMINED WITHIN THREE (3) WORKING DAYS AFTER THE REQUEST IS RECEIVED;
- 9. IF YOU ARE FOUND TO BE INDIGENT AND AN ATTORNEY IS APPOINTED, THE ATTORNEY WILL ATTEMPT TO CONTACT YOU BY THE END OF THE NEXT WORKING DAY AFTER BEING APPOINTED.

THE ACCUSED DOES DOES NOT WANT TO REQUEST A COURT APPOINTED ATTORNEY.

SIGNED ON:

WITNESSES: _____

JUSTICE OF THE PEACE, PRECINCT _____
BRAZOS COUNTY, TEXAS

DEFENDANT'S SIGNATURE: _____

Offense(s): _____ Date of Offense: _____ Date of Arrest: _____

AFFIDAVIT IN SUPPORT OF COURT APPOINTED ATTORNEY

By signing this application you are swearing, under oath, that an attorney does not now represent you, that your right to representation by an attorney has not been waived and that the information that you are providing is true and correct.

To be considered for court appointed counsel, **every question** on this form **must be answered**. If the question does not apply to you, place an N/A in the blank. Failure to answer every question could result in your application **not** being considered. If you need assistance, notify the person in charge of taking this application.

Section 1. Personal Information

Last name: _____ First name: _____ Middle: _____
Address: _____ Married Single Other _____
Social Security Number: _____ - _____ - _____ Texas Driver's License or ID #: _____
Date of Birth: _____ Place of Birth: _____ Primary Language: _____ INS Hold yes no
Home Phone: (____) _____ Cell Phone: (____) _____ Other Contact No: (____) _____

Section 2. Employment Information

Place of Employment: _____ Length of Employment: _____ mo _____ yr
Hourly pay rate: \$ _____ Number of Hours per week _____ Net monthly salary: \$ _____
List Deductions (not taxes) from payroll and the amount of each deduction: Child Support \$ _____
Uniforms \$ _____ Savings/retirement: \$ _____ Cash advance/loans \$ _____ Other \$ _____

*If **unemployed**, give the length of time unemployed, reason for employment and explanation as to how your monthly expenses are paid or how you support yourself. _____

List names of all employers for last two years and monthly salary for each.

Employer's Name	Dates of Employment	Monthly Net Income (take home)

Section 3. Spouse's Information:

Spouse Name _____ Place of Employment _____ Net salary \$ _____
Hourly pay rate: \$ _____ Number of hours per week: _____ List Deductions (not taxes) from payroll and the amount of each deduction: Child support: \$ _____ Uniforms: \$ _____
Savings/retirement: \$ _____ Cash advance/loans \$ _____ Other \$ _____

Section 4. Government Assistance: Are you receiving benefits from any other source? yes no
 AFDC \$ _____ per month SSI \$ _____ per month Disability \$ _____ per month
 Medicaid \$ _____ per month Food Stamps \$ _____ per month Child Support \$ _____ per month
 Other: (Specify type of benefit and amount per month): \$ _____

Do you have any property that you could sell or use as collateral? yes no
If yes, then list item with approximate value? _____

Do you have any friends or relatives from which you can borrow funds for an attorney? yes no
If yes, how long will it take you to obtain the funds? _____

Section 5. Real Estate

Do you own any real estate? yes no Homestead Rental Business
Address of property: _____ Date purchased _____
Tax Appraisal value: \$ _____ Purchase price: \$ _____ Amt owed on property: \$ _____

(Please use back of sheet to list additional properties owned or being purchased by you)

Section 6. Motor Vehicles

List all vehicles, including boats, motorcycles, and recreational vehicles titled in your name
Year, Model and Make of Vehicle: _____ Est Value: _____
Year, Model and Make of Vehicle: _____ Est Value: _____
Year, Model and Make of Vehicle: _____ Est Value: _____

Section 7. Personal Property:

Clearly indicate all assets currently in your name or subject to your control and the value of each

- | | | | |
|---|----------|--|----------|
| <input type="checkbox"/> Security/Bonds/CDs | \$ _____ | <input type="checkbox"/> Livestock | \$ _____ |
| <input type="checkbox"/> Life Insurance | \$ _____ | <input type="checkbox"/> Cash Money | \$ _____ |
| <input type="checkbox"/> Retirement Plans | \$ _____ | <input type="checkbox"/> Checking Accounts | \$ _____ |
| <input type="checkbox"/> Savings Accounts | \$ _____ | <input type="checkbox"/> Available Credit | \$ _____ |

Section 8. Dependents

List all dependents living with you.

Name	Relationship

Section 9. Monthly Expenses

Rent/House pymt	\$ _____	Food	\$ _____	Medical Insurance	\$ _____
Fuel/Maintenance	\$ _____	Telephone	\$ _____	Cell Phone	\$ _____
School Tuition	\$ _____	Church	\$ _____	Credit Cards	\$ _____
Doctor/Dentist	\$ _____	Medical Ins.	\$ _____	Auto Insurance	\$ _____
Utilities	\$ _____	Auto payment	\$ _____	Child Support	\$ _____
Haircuts/Nails	\$ _____	Bank Loans	\$ _____	Cable/Satellite	\$ _____
Child Care	\$ _____	Entertainment	\$ _____	Clothing	\$ _____
Other	\$ _____	School lunches	\$ _____	Total Monthly Expenses:	\$ _____

Section 10. Miscellaneous Information

Are there any co-defendants in your case? yes no

If yes, please name co-defendants to avoid attorney conflicts. _____

Section 11. Oath

I do hereby swear that the information given above is true and correct. I understand that making a false statement under oath to the Court is perjury, which is a criminal offense for which I can be punished by imprisonment in the Institutional Division of the Dept of Criminal Justice for 2 to 10 years, fined up to \$10,000, or both. I also understand that this application will be filed of record and that it is a crime to intentionally or knowingly file a fraudulent court record or a fraudulent instrument with the clerk.

I have been advised of my right to an attorney in the prosecution of the charge pending against me. I certify that I am without means to employ an attorney of my own choosing and I hereby request the court to appoint an attorney for me. I have been further advised that my failure to answer all questions above will result in the denial of a court appointed attorney. Accordingly, I certify that I have voluntarily prepared this Affidavit and have carefully checked my answers for accuracy.

Defendant's Signature

Date

On this day, personally appeared the above-named defendant, who stated under oath that his/her answers to this Affidavit are true and correct.

SUBSCRIBED AND SWORN BEFORE ME on this _____ day of _____, 200____.

Notary Public, State of Texas
Deputy Clerk

No. «CAUSE»

THE STATE OF TEXAS

«COURT»

VS.

IN

«NAME_FIRST_LAST»

BRAZOS COUNTY, TEXAS

ORDER APPOINTING ATTORNEY

I hereby appoint «ATT_NAME_FL_UPPER», an attorney found by the Court to be competent, to represent the defendant in the above numbered and titled cause, and to continue to represent the defendant until the trial of this case is concluded, or until released by written order of this Court.

SIGNED on this _____ day of _____, 20_____.

Presiding Judge

Copy was: Mailed to: Delivered to: Transmitted by fax to:

«ATT_NAME_FL_UPPER»

«ATT_ADDRESS»

«ATT_PHONE»

«ATT_CSZ»

FAX: «ATT_FAX»

Attorney Appointed

Address

Phone Number

Copy was: Mailed to: Delivered to: Custody status: «CS»

«NAME_FIRST_LAST»

«ADDRESS»

«PHONE»

«CSZ»

Defendant

Address

Phone Number

Original to: District Clerk
Copies to: Defendant
Community Supervision and Corrections Department
Prosecuting Attorney

No. _____

THE STATE OF TEXAS) (IN THE 85TH / 272ND / 361ST DISTRICT
 VS.) (COUNTY COURT-AT-LAW NO. 1 / NO. 2
) (OF
 _____) (BRAZOS COUNTY, TEXAS

MOTION FOR COURT APPOINTED ATTORNEY'S FEES / APPROVAL

The undersigned was appointed by the Court in the above entitled and captioned cause and requests the following compensation and reimbursement for expenses incurred on behalf of the defendant/respondent:

Check the case type below (For multiple cases, write the number of cases for each type)

<u>Adult Criminal Case</u>	<u>Juvenile Case</u>	<u>Civil Case</u>
_____ Misdemeanor (A4)	_____ Adj/Disp/Cert Hearing/Trial (J3)	_____ CPS (C9)
_____ Felony (A3)	_____ Appeal (to Court of Appeals) (J2)	_____ Child Support Enforce (C9)
_____ Appeal (A2)	_____ No charges filed (J1)	_____ Mental (C9)
_____ No charges filed (A1)		_____ Other (C9)

Amount	Description	For Auditor Use	
			Project
\$ _____	Fixed Fee Basis	1	
\$ _____	Rate Basis (Itemized Statement Attached)	1	
\$ _____	Expenses (Itemized Statement Attached)	2	
\$ _____	Investigation Expense (Itemized Statement Attached)	3	
\$ _____	Expert Testimony (Itemized Statement Attached)	4	
\$ _____	TOTAL AMOUNT REQUESTED	ACCT#	72

The above is true and correct to the best of my knowledge. I have made no other claim for payment for recent services to this defendant in this or any other Court except as disclosed and described above.

APPROVED FOR PAYMENT OF \$ _____

DENIED FOR PAYMENT OF \$ _____

Reasons for any denied amount: _____

Appointed Attorney Signature Date

Appointed Attorney Name (Printed or Typed)

Address

City State Zip Code

PRESIDING JUDGE Date

COUNTY AUDITOR Date

THE STATE OF TEXAS |
COUNTY OF BRAZOS |

BEFORE ME the undersigned authority, personally appeared the undersigned attorney, who, being by me duly sworn, stated on oath the following:

“I, _____, certify
(Name of Attorney)
that I have complied with the continuing legal education requirements of the Brazos County Indigent Defense Plan by
(check appropriate box and complete) :

- maintaining my certification in criminal law with the Texas Board of Legal Specialization throughout the twelve months prior to my last birthday.
- attending and receiving credit for at least six (6) hours of continuing legal education in the area of criminal law within the twelve months prior to my last birthday as shown on the copy of my State Bar of Texas CLE compliance report attached.
- attending and receiving credit for _____ hours of continuing legal education in the area of criminal law within the twelve months prior to my last birthday and claiming credit for _____ hours of carryover credit from the year prior, as shown on the copy of my State Bar of Texas CLE compliance report attached.”

ATTORNEY’S SIGNATURE

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority on this _____ day of _____, 20_____.

NOTARY PUBLIC In and For
THE STATE OF TEXAS

Commission expiration date

THE STATE OF TEXAS |
COUNTY OF BRAZOS |

BEFORE ME the undersigned authority, personally appeared the undersigned attorney, who, being by me duly sworn, stated on oath the following:

“I, _____, certify
(Name of Attorney)
that I have complied with the continuing legal education requirements of the Brazos County Indigent Defense Plan by
(check appropriate box and complete) :

- maintaining my certification in juvenile law with the Texas Board of Legal Specialization throughout the twelve months prior to my last birthday.
- attending and receiving credit for at least six (6) hours of continuing legal education in the area of juvenile law within the twelve months prior to my last birthday as shown on the copy of my State Bar of Texas CLE compliance report attached.
- attending and receiving credit for _____ hours of continuing legal education in the area of juvenile law within the twelve months prior to my last birthday and claiming credit for _____ hours of carryover credit from the year prior, as shown on the copy of my State Bar of Texas CLE compliance report attached.”

ATTORNEY’S SIGNATURE

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority on this _____ day of _____, 20_____.

NOTARY PUBLIC In and For
THE STATE OF TEXAS

Commission expiration date

JUDGES' EVALUATION
Application to Be Placed on Public Appointment List

Applicant: _____ Application Date: _____

List(s) Requested: ___ Misdemeanor ___ Other Felony ___ 3g/Enhanced ___ Appellate

CCL1 Comments: _____			
CCL1 Action:	For Misdemeanor List:	___ Approved	___ Denied
	For Other Felony List:	___ Recommended	___ Not Recommended
	For 3g/Enhanced List:	___ Recommended	___ Not Recommended
	For Appellate List:	___ Approved	___ Denied

CCL2 Comments: _____			
CCL2 Action:	For Misdemeanor List:	___ Approved	___ Denied
	For Other Felony List:	___ Recommended	___ Not Recommended
	For 3g/Enhanced List:	___ Recommended	___ Not Recommended
	For Appellate List:	___ Approved	___ Denied

361st Comments: _____			
361st Action:	For Misdemeanor List:	___ Recommended	___ Not Recommended
	For Other Felony List:	___ Approved	___ Denied
	For 3g/Enhanced List:	___ Approved	___ Denied
	For Appellate List:	___ Approved	___ Denied

272nd Comments: _____			
272nd Action:	For Misdemeanor List:	___ Recommended	___ Not Recommended
	For Other Felony List:	___ Approved	___ Denied
	For 3g/Enhanced List:	___ Approved	___ Denied
	For Appellate List:	___ Approved	___ Denied

85th Comments: _____			
85th Action:	For Misdemeanor List:	___ Recommended	___ Not Recommended
	For Other Felony List:	___ Approved	___ Denied
	For 3g/Enhanced List:	___ Approved	___ Denied
	For Appellate List:	___ Approved	___ Denied

Response Letter Mailed to Attorney on: _____

SELECTED EXCERPTS FROM IJA-ABA JUVENILE JUSTICE STANDARDS¹
STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES
PART III. THE LAWYER-CLIENT RELATIONSHIP

3.1 The Nature of the Relationship

- (a) Client's interests paramount. However engaged, the lawyer's principal duty is the representation of the client's legitimate interests. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance.
- (b) Determination of client's interests.
 - (i) Generally. In general, determination of the client's interests in the proceedings, and hence the plea to be entered, is ultimately the responsibility of the client after full consultation with the attorney.
 - (ii) Counsel for the juvenile.
 - [a] Counsel for the respondent in a delinquency or in need of supervision proceeding should ordinarily be bound by the client's definition of his or her interests with respect to admission or denial of the facts or conditions alleged. It is appropriate and desirable for counsel to advise the client concerning the probable success and consequences of adopting any posture with respect to those proceedings.
 - [b] Where counsel is appointed to represent a juvenile subject to child protective proceedings, and the juvenile is capable of considered judgment on his or her own behalf, determination of the client's interest in the proceeding should ultimately remain the client's responsibility, after full consultation with counsel.
 - [c] In delinquency and in need of supervision proceedings where it is locally permissible to so adjudicate very young persons, and in child protective proceedings, the respondent may be incapable of considered judgment in his or her own behalf.
 - [1] Where a guardian ad litem has been appointed, primary responsibility for determination of the posture of the case rests with the guardian and the juvenile.

¹*Juvenile Justice Standards Annotated: A Balanced Approach* by the Institute of Judicial Administration, American Bar Association (IJA-ABA), edited by Robert E. Shepherd, Jr., and published by the American Bar Association (1996).

[2] Where a guardian ad litem has not been appointed, the attorney should ask that one be appointed.

[3] Where a guardian ad litem has not been appointed and, for some reason, it appears that independent advice to the juvenile will not otherwise be available, counsel should inquire thoroughly into all circumstances that a careful and competent person in the juvenile's position should consider in determining the juvenile's interests with respect to the proceeding. After consultation with the juvenile, the parents (where their interests do not appear to conflict with the juvenile's) and any other family members or interested persons, the attorney may remain neutral concerning the proceeding, limiting participation to presentation and examination of material evidence or, if necessary, the attorney may adopt the position requiring the least intrusive intervention justified by the juvenile's circumstances.

(iii) **Counsel for the parent.** It is appropriate and desirable for an attorney to consider all circumstances, including the apparent interest of the juvenile, when counseling and advising a parent who is charged in a child protective proceeding or who is seeking representation during a delinquency or in need of supervision proceeding. The posture to be adopted with respect to the facts and conditions alleged in the proceeding, however, remains ultimately the responsibility of the client.

3.2 Adversity of Interests.

- (a) Adversity of interests defined. For purposes of these standards, adversity of interest exists when a lawyer or lawyers associated in practice:
- (i) Formally represent more than one client in a proceeding and have a duty to contend in behalf of one client that which their duty to another requires them to oppose.
 - (ii) Formally represent more than one client and it is their duty to contend in behalf of one client that which may prejudice the other client's interests at any point in the proceeding.
 - (iii) Formally represent one client but are required by some third person or institution, including their employer, to accommodate their representation of that client to factors unrelated to the client's legitimate interests.
- (b) Resolution of adversity. At the earliest feasible opportunity, counsel should disclose to the client any interest in or connection with the case or any other matter that might be relevant to the client's selection of a lawyer. Counsel should at the same time

seek to determine whether adversity of interests potentially exists and, if so, should immediately seek to withdraw from representation of the client who will be least prejudiced by such withdrawal.

3.3 Confidentiality

- (a) Establishment of confidential relationship. Counsel should seek from the outset to establish a relationship of trust and confidence with the client. The lawyer should explain that full disclosure to counsel of all facts known to the client is necessary for effective representation and at the same time explain that the lawyer's obligation of confidentiality makes privileged the client's disclosures relating to the case.
- (b) Preservation of client's confidences and secrets.
 - (i) Except as permitted by 3.3(d) below, an attorney should not knowingly reveal a confidence or secret of a client to another, including the parent of a juvenile client.
 - (ii) Except as permitted by 3.3(d) below, an attorney should not knowingly use a confidence or secret of a client to the disadvantage of the client or, unless the attorney has secured the consent of the client after full disclosure, for the attorney's own advantage or that of a third person.
- (c) Preservation of secrets of a juvenile client's parent or guardian. The attorney should not reveal information gained from or concerning the parent or guardian of a juvenile client in the course of representation with respect to a delinquency or in need of supervision proceeding against the client, where (1) the parent or guardian has requested the information be held inviolate, or (2) disclosure of the information would likely be embarrassing or detrimental to the parent or guardian and (3) preservation would not conflict with the attorney's primary responsibility to the interest of the client.
 - (i) The attorney should not encourage secret communication when it is apparent that the parent or guardian believes those communications to be confidential or privileged and disclosure may become necessary to full and effective representation of the client.
 - (ii) Except as permitted by 3.3(d) below, an attorney should not knowingly reveal the parent's secret communication to others or use a secret communication to the parent's disadvantage or to the advantage of the attorney or of a third person, unless (1) the parent competently consents to such revelation or use after full disclosure or (2) such disclosure or use is necessary to the discharge of the attorney's primary responsibility to the client.

- (d) Disclosure of confidential communications. In addition to circumstances specifically mentioned above, a lawyer may reveal:
- (i) Confidences or secrets with the informed and competent consent of the client or clients affected, but only after full disclosure of all relevant circumstances to them. If the client is a juvenile incapable of considered judgment with respect to disclosure of a secret or confidence, a lawyer may reveal such communications if such disclosure (1) will not disadvantage the juvenile and (2) will further rendition of counseling, advice or other service to the client.
 - (ii) Confidences or secrets when permitted under the Texas Disciplinary Rules of Professional Conduct or as require by law or court order.²
 - (iii) The intention of a client to commit a crime or an act which if done by an adult would constitute a crime, or acts that constitute neglect or abuse of a child, together with any information necessary to prevent such conduct. A lawyer must reveal such intention if the conduct would seriously endanger the life or safety of any person or corrupt the processes of the courts and the lawyer believes disclosure is necessary to prevent the harm. If feasible, the lawyer should first inform the client of the duty to make such revelation and seek to persuade the client to abandon the plan.
 - (iv) Confidences or secrets material to an action to collect a fee or to defend himself or herself or any employees or associates against an accusation of wrongful conduct.

3.4 Advice and service with respect to anticipated unlawful conduct. It is unprofessional conduct for a lawyer to assist a client to engage in conduct the lawyer believes to be illegal or fraudulent, except as part of a bona fide effort to determine the validity, scope, meaning or application of law.

3.5 Duty to keep client informed. The lawyer has a duty to keep the client informed of the developments in the case, and of the lawyer's efforts and progress with respect to all phases of representation. This duty may extend, in the case of a juvenile client, to a parent or guardian whose interests are not adverse to the juvenile's, subject to the requirements of confidentiality set forth in 3.3 above.

²The phrase "Texas Disciplinary Rules of Professional Conduct" has been substituted for "ABA Code of Professional Responsibility" contained in the original text.

PART IV. INITIAL STAGES OF REPRESENTATION

- 4.1 Prompt action to protect the client.** Many important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. Lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protections of their clients' interests.
- 4.2 Interviewing the client.**
- (a) The lawyer should confer with a client without delay and as often as necessary to ascertain all relevant facts and matters of defense known to the client.
 - (b) In interviewing a client, it is proper for the lawyer to question the credibility of the client's statements or those of any other witness. The lawyer may not, however, suggest expressly or by implication that the client or any other witness prepare or give, on oath or to the lawyer, a version of the facts which is in any respect untruthful, nor may the lawyer intimate that the client should be less than candid in revealing material facts to the attorney.
- 4.3 Investigation and preparation.**
- (b) It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts concerning responsibility for the acts or conditions alleged and social or legal dispositional alternatives. The investigation should always include efforts to secure information in the possession of prosecution, law enforcement, education, probation and social welfare authorities. The duty to investigate exists regardless of the client's admissions or statements of facts establishing responsibility for the alleged facts and conditions or of any stated desire by the client to admit responsibility for those acts and conditions.
 - (b) Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend them to the client and the client's family. The lawyer's responsibility in this regard is independent of the posture taken with respect to any proceeding in which the client is involved.
 - (c) It is unprofessional conduct for a lawyer to use illegal means to obtain evidence or information or to employ, instruct or encourage others to do so.
- 4.4 Relations with prospective witnesses.** The ethical and legal rules concerning counsel's relations with law and expert witnesses generally govern lawyers engaged in juvenile court representation.

PART V. ADVISING AND COUNSELING THE CLIENT

5.1 Advising the client concerning the case.

- (a) After counsel is fully informed on the facts and the law, he or she should with complete candor advise the client involved in juvenile court proceedings concerning all aspects of the case, including counsel's frank estimate of the probable outcome. It is unprofessional conduct for a lawyer intentionally to understate or overstate the risks, hazards or prospects of the case in order unduly or improperly to influence the client's determination of his or her posture in the matter.
- (b) The lawyer should caution the client to avoid communication about the case with witnesses where such communication would constitute, apparently or in reality, improper activity. Where the right to jury trial exists and has been exercised, the lawyer should further caution the client with regard to communication with prospective or selected jurors.

5.2 Control and direction of the case.

- (a) Certain decisions relating to the conduct of the case are in most cases ultimately for the client and other are ultimately for the lawyer. The client, after full consultation with counsel, is ordinarily responsible for determining:
 - (i) the plea to be entered at adjudication;
 - (ii) whether to cooperate in consent judgment or early disposition plans;
 - (iii) whether to be tried as a juvenile or an adult, where the client has that choice;
 - (iv) whether to waive jury trial;
 - (v) whether to testify on his own behalf.
- (b) Decisions concerning what witnesses to call, whether and how to conduct cross-examination, what jurors to accept and strike, what trial motions should be made, and any other strategic and tactical decisions not inconsistent with determinations ultimately the responsibility of and made by the client, are the exclusive province of the lawyer after full consultation with the client.
- (c) If a disagreement on significant matters of tactics or strategy arises between the lawyer and the client, the lawyer should make a record of the circumstances, his or her advice and reasons, and the conclusion reached. This record should be made in a manner which protects the confidentiality of the lawyer-client relationship.

5.3 Counseling. A lawyer engaged in juvenile court representation often has occasion to counsel the client and, in some cases, the client's family with respect to nonlegal matters.

This responsibility is general appropriate to the lawyer's role and should be discharged, as any other, to the best of the lawyer's training and ability.

PART VI. INTAKE, EARLY DISPOSITION AND DETENTION

6.1 Intake and early disposition, generally. Whenever the nature and circumstances of the case permit, counsel should explore the possibility of an early diversion from the formal juvenile court process through subjudicial agencies and other community resources. Participation in pre- or nonjudicial stages of the juvenile court process may well be critical to such diversion, as well as to protection of the client's rights.

6.2 Intake hearings.

- (a) In jurisdictions where intake hearings are held prior to reference of a juvenile court matter for judicial proceedings, the lawyer should be familiar with and explain to the client and, if the client is a minor, to the client's parents, the nature of the hearing, the procedures to be followed, the several dispositions available, and their probable consequences. The lawyer should further advise the client of his or her rights at the intake hearing, including the privilege against self-incrimination where appropriate, and of the use that may later be made of the client's statements.
- (b) The lawyer should be prepared to make to the intake hearing officer arguments concerning the jurisdictional sufficiency of the allegations made and to present facts and circumstances relating to the occurrence of and the client's responsibility for the acts or conditions charged or to the necessity for official treatment of the matter.

6.3 Early disposition.

- (a) When the client admits the acts or conditions alleged in the juvenile court proceeding and after investigation the lawyer is satisfied that the admission is factually supported and that the court would have jurisdiction to act, the lawyer should, with the client's consent, consider developing or cooperating in the development of a plan for informal or voluntary adjustment of the case.
- (b) A lawyer should not participate in an admission of responsibility by the client for purposes of securing informal or early disposition when the client denies responsibility for the acts or conditions alleged.

6.4 Detention.

- (a) If the client is detained or the client's child is held in shelter care, the lawyer should immediately consider all steps that may in good faith be taken to secure the child's release from custody.
- (b) Where the intake department has initial responsibility for custodial decisions, the

lawyer should promptly seek to discover the grounds for removal from the home and may present facts and arguments for release at the intake hearing or earlier. If a judicial detention hearing will be held, the attorney should be prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place of and criteria used for detention, and any noncompliance with procedures for referral to court or for detention. The attorney should also be prepared to present evidence with regard to the necessity for detention and a plan for pretrial release of the juvenile.

- (c) The lawyer should not personally guarantee the attendance or behavior of the client or any other person, whether as surety on a bail bond or otherwise.

PART VII. ADJUDICATION

7.1 Adjudication without trial.

- (a) Counsel may conclude, after full investigation and preparation, that under the evidence and the law, the charges involving the client will probable be sustained. Counsel should so advise the client and, if negotiated pleas are allowed under prevailing law, may seek the client's consent to engage in plea discussions with the prosecuting agency. Where the client denies guilt, the lawyer cannot properly participate in submitting a plea of involvement where the prevailing law requires that such a plea be supported by an admission of responsibility in fact.
- (b) The lawyer should keep the client advised of all developments during plea discussions with the prosecuting agency and should communicate to the client all proposals made by the prosecuting agency. Where it appears that the client's participation in a psychiatric, medical, social, or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and, when circumstances warrant, seek the client's consent to participation in such a program.

7.2 Formality, in general. While the traditional formality and procedure of criminal trials may not in every respect be necessary to the proper conduct of juvenile court proceedings, it is the lawyer's duty to make all motions, objections, or requests necessary to protection of the client's rights in such form and at such time as will best serve the client's legitimate interests at trial or on appeal.

7.3 Discovery and motion practice.

- (a) **Discovery.**
 - (i) Counsel should promptly seek disclosure of any documents, exhibits, or other information potentially material to representation of clients in juvenile court proceedings. If such disclosure is not readily available through informal processes, counsel should diligently pursue formal methods of discovery

including, where appropriate, the filing of motions for bills of particulars, for discovery and inspection of exhibits, documents and photographs, for production of statements by and evidence favorable to the respondent, for production of a list of witnesses, and for the taking of depositions.

- (ii) In seeking discovery, the lawyer may find that rules specifically applicable to juvenile court proceedings do not exist in a particular jurisdiction or that they improperly or unconstitutionally limit disclosure. In order to make possible adequate representation of the client, counsel should in such cases investigate the appropriateness and feasibility of employing discovery techniques available in criminal or civil proceedings in the jurisdiction.
- (b) Other motions. Where the circumstances warrant, counsel should promptly make any motions material to the protection and vindication of the client's rights, such as motions to dismiss the petition, to suppress evidence, for mental examination, or appointment of an investigator or expert witness, for severance, or to disqualify a judge. Such motions should ordinarily be made in writing when that would be required for similar motions in civil or criminal proceedings in the jurisdiction. If a hearing on the motion is required, it should be scheduled at some time prior to the adjudication hearing if there is any likelihood that consolidation will work to the client's disadvantage.

7.4 Compliance with orders.

- (a) Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders, and decisions of the judge. Counsel has the right to make respectful request for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct which counsel considers prejudicial to the client's legitimate interests.
- (b) The lawyer should be prepared to object to the introduction of any evidence damaging to the client's interests if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

7.5 Relations with court and participants.

- (a) The lawyer should at all times support the authority of the court by preserving professional decorum and by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses and jurors.
 - (i) When Court is in session, the lawyer should address the court and not the prosecutor directly on any matter relating to the case unless the person acting as prosecutor is giving evidence in the proceeding.
 - (ii) It is unprofessional conduct for a lawyer to engage in behavior or tactics purposely calculated to irritate or annoy the court, the prosecutor or probation

department personnel.

7.6 Selection of and relations with jurors. Where the right to jury trial is available and exercised in juvenile court proceedings, the standards set forth in sections 7.2 and 7.3 of the ABA Standards Relating to the Defense Function should generally be followed.

7.7 Presentation of evidence. It is unprofessional conduct for a lawyer knowingly to offer false evidence or to bring inadmissible evidence to the attention of the trier of fact, to ask questions or display demonstrative evidence known to be improper or inadmissible, or intentionally to make impermissible comments or arguments in the presence of the trier of fact. When a jury is empaneled, if the lawyer has substantial doubt concerning the admissibility of evidence, he or she should tender it by an offer of proof and obtain a ruling on its admissibility prior to presentation.

7.8 Examination of witnesses.

- (a) The lawyer in juvenile court proceedings should be prepared to examine fully any witness whose testimony is damaging to the client's interests. It is unprofessional conduct for counsel knowingly to forego or limit examination of a witness when it is obvious that failure to examine fully will prejudice the client's legitimate interests.
- (b) The lawyer's knowledge that a witness is telling the truth does not preclude cross-examination in all circumstances but may affect the method and scope of cross-examination. Counsel should not misuse the power of cross-examination or impeachment by employing it to discredit the honest or general character of a witness known to be testifying truthfully.
- (c) The examination of all witnesses should be conducted fairly and with due regard for the dignity and, to the extent allowed by the circumstances of the case, the privacy of the witness. In general, and particularly when a youthful witness is testifying, the lawyer should avoid unnecessary intimidation or humiliation of the witness.
- (d) A lawyer should not knowingly call as a witness one who will claim a valid privilege not to testify for the sole purpose of impressing that claim on the fact-finder. In some instances, as defined in the ABA Code of Professional Responsibility, doing so will constitute unprofessional conduct.
- (e) It is unprofessional conduct to ask a question that implies the existence of a factual predicate which the examiner knows cannot be supported by evidence.

7.9 Testimony by the respondent.

- (a) It is the lawyer's duty to protect the client's privilege against self incrimination in juvenile court proceedings. When the client has elected not to testify, the lawyer should be alert to invoke the privilege and should insist on its recognition unless the client competently decides that invocation should not be continued.

- (b) If the respondent has admitted to counsel facts which establish his or her responsibility for the acts or conditions alleged, and if admissions are true, and the respondent insists on exercising the right to testify at the adjudication hearing, the lawyer must advise the client against taking the stand to testify falsely and, if necessary, take appropriate steps to avoid lending aid to perjury.
 - (i) If, before adjudication, the respondent insists on taking the stand to testify falsely, the lawyer must withdraw from the case if that is feasible and should seek the leave of the court to do so if necessary.
 - (ii) If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during adjudication without notice, it is unprofessional conduct for the lawyer to lend aid to perjury or use the perjured testimony. Before the respondent takes the stand in these circumstances, the lawyer should, if possible, make a record of the fact that respondent is taking the stand against the advice of counsel without revealing that fact to the court. Counsel's examination should be confined to identifying the witness as the respondent and permitting the witness to make his or her statement to the trier of fact. Counsel may not engage in direct examination of the respondent in the conventional manner and may not recite or rely on the false testimony in argument.

7.10 Argument. The lawyer in juvenile court representation should comply with the rules generally governing argument in civil and criminal proceedings.

PART VIII. TRANSFER PROCEEDINGS

8.1 In general. A proceeding to transfer a respondent from the jurisdiction of the juvenile court to a criminal court is a critical stage in both juvenile and criminal justice processes. Competent representation by counsel is essential to the protection of the juvenile's rights in such a proceeding.

8.2 Investigation and preparation.

- (a) In any case where transfer is likely, counsel should seek to discover at the earliest opportunity whether transfer will be sought and, if so, the procedure and criteria according to which that determination will be made.
- (b) The lawyer should promptly investigate all circumstances of the case bearing on the appropriateness of transfer and should seek disclosure of any reports or other evidence that will be submitted to or may be considered by the court in the course of transfer proceedings. Where circumstances warrant, counsel should promptly move for appointment of an investigator or expert witness to aid in the preparation of the defense and for any other order necessary to protection of the client's rights.

- 8.3 Advising and counseling the client concerning transfer.** Upon learning that transfer will be sought or may be elected, counsel should fully explain the nature of the proceeding and the consequences of transfer to the client and the client's parents. In so doing, counsel may further advise the client concerning participation in diagnostic and treatment programs which may provide information material to the transfer decision.
- 8.4 Transfer hearings.** If a transfer hearing is held, the rules set forth in Part VII of these standards shall generally apply to counsel's conduct of that hearing.
- 8.5 Posthearing remedies.** If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

PART IX. DISPOSITION

- 9.1 In general.** The active participation of counsel at disposition is often essential to protection of clients' rights and to furtherance of their legitimate interests. In many cases, the lawyer's most valuable service to clients will be rendered at this stage of the proceeding.
- 9.2 Investigation and preparation.**
- (a) Counsel should be familiar with the dispositional alternatives available to the court, with its procedures and practices at the disposition stage, and with community services that might be useful in the formation of a dispositional plan appropriate to the client's circumstances.
 - (b) The lawyer should promptly investigate all sources of evidence, including any reports or other information that will be brought to the court's attention, and interview all witnesses material to the disposition decision.
 - (i) If access to social investigation, psychological, psychiatric or other reports or information is not provided voluntarily or promptly, counsel should be prepared to seek their disclosure and time to study them through formal measures.
 - (ii) Whether or not social and other reports are readily available, the lawyer has a duty independently to investigate the client's circumstances, including such factors as previous history, family relations, economic condition, and any other information relevant to disposition.
 - (c) The lawyer should seek to secure the assistance of psychiatric, psychological, medical or other expert personnel needed for purposes of evaluation, consultation, or testimony with respect to formation of a dispositional plan.

9.3 Counseling prior to disposition.

- (a) The lawyer should explain to the client the nature of the disposition hearing, the issues involved, and the alternatives open to the court. The lawyer should also explain fully and candidly the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the client's responsibilities under the proposed dispositional plan. Ordinarily, the lawyer should not make or agree to a specific dispositional recommendation without the client's consent.
- (b) When psychological or psychiatric evaluations are ordered by the court or arranged by counsel prior to disposition, the lawyer should explain the nature of the procedure to the client and encourage the client's cooperation with the person or persons administering the diagnostic procedure.
- (c) The lawyer must exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the client's history or condition or, if the client is a juvenile, the history or condition of the client's parents. In general, the lawyer should not disclose data or conclusions contained in such reports to the extent that, in the lawyer's judgment based on knowledge of the client and the client's family, revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interest in the proceeding.

9.4 Disposition hearing.

- (a) It is the lawyer's duty to insist that proper procedure be followed throughout the disposition stage and that orders rendered be based on adequate reliable evidence.
 - (i) Where the dispositional hearing is not separate from adjudication or where the court does not have before it all evidence required by state, rules of court or the circumstances of the case, the lawyer should seek a continuance until such evidence can be presented if to do so would serve the client's interests.
 - (ii) The lawyer at disposition should be free to examine fully and to impeach any witness whose evidence is damaging to the client's interests and to challenge the accuracy, credibility, and weight of any reports, written statements, or other evidence before the court. The lawyer should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the client's interest. Counsel may seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

- (b) The lawyer may, during disposition, ask that the client be excused during presentation of evidence when, in counsel's judgment, exposure to a particular item of evidence would adversely affect the will-being of the client or the client's relationship with his or her family, and the client's presence is not necessary to protecting his or her interest in the proceeding.

9.5 Counseling after disposition. When a dispositional decision has been reached, it is the lawyer's duty to explain the nature, obligations, and consequences of the disposition to the client and his or her family, and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court's decision during the interim.

PART X. REPRESENTATION AFTER DISPOSITION

10.1 Relations with the client after disposition.

- (a) The lawyer's responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the client in matters arising from the original proceeding.
 - (i) If the client has been found to be within the juvenile court's jurisdiction, the lawyer should maintain contact with both the client and the agency or institution involved in the disposition plan in order to ensure that the client's rights are respected and, where necessary, to counsel the client and the client's family concerning the dispositional plan.
 - (ii) Whether or not charges against the client have been dismissed, where the lawyer is aware that the client or the client's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she should render all possible assistance in arranging for such services.
- (b) The decision to pursue an available claim for post dispositional relief from judicial and correctional or other administrative determinations related to juvenile court proceedings, including appeal, habeas corpus, or an action to protect the client's right to treatment, is ordinarily the client's responsibility after full consultation with counsel.

10.2 Post dispositional hearings before the juvenile court.

- (a) The lawyer who represents a client during initial juvenile court proceedings should ordinarily be prepared to represent the client with respect to proceedings to review or modify adjudicative or dispositional orders made during earlier hearings or to pursue

any affirmative remedies that may be available to the client under local juvenile court law.

- (b) The lawyer should advise the client of the pendency or availability of a post dispositional hearing or proceeding and of its nature, issues, and potential consequences. Counsel should urge and, if necessary, seek to facilitate the prompt attendance at any such hearing of the client and of any material witnesses who may be called.

10.3 Counsel on appeal.

- (a) Trial counsel, whether retained or appointed by the court, should conduct the appeal unless new counsel is substituted by the client or by the appropriate court. Where there exists an adequate pool of competent counsel available for assignment to appeals from juvenile court orders and substitution will not work substantial disadvantage to the client's interest, new counsel may be appointed in place of trial counsel.
- (b) Whether or not trial counsel expects to conduct the appeal, he or she should promptly inform the client, and where the client is a minor and the parents' interest are not adverse, the client's parents of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the client decides not to exercise this privilege.
- (c) Counsel on appeal, after reviewing the record below and undertaking any other appropriate investigation, should candidly inform the client as whether there are meritorious grounds for appeal and the probable results of any such appeal and should further explain the potential advantages and disadvantages associated with appeal. However, appellate counsel should not seek to withdraw from a case solely because his or her own analysis indicates that the appeal lacks merit.

10.4 Conduct of the appeal. The rules generally governing conduct of appeals in criminal and civil cases govern conduct of appeals in juvenile court matters.

10.5 Post dispositional remedies: Protection of the client' right to treatment.

- (a) A lawyer who has represent a client through trial and/or appellate proceedings should be prepared to continue representation when post dispositional action, whether affirmative or defensive, is sought, unless new counsel is appointed at the request of the client or continued representation would, because of geographical considerations or other factors, work unreasonable hardship.
- (b) Counsel representing a client in post dispositional matters should promptly undertake any factual or legal investigation in order to determine whether grounds exist for relief from juvenile court or administrative action. If there is reasonable prospect of a favorable result, the lawyer should advise the client, and if their interests are not adverse, the client's parents of the nature, consequences, probable outcome, and

advantages or disadvantages associated with such proceedings.

- (c) The lawyer engaged in post dispositional representation should conduct those proceedings according to the principles generally governing representation in juvenile court matters.

10.6 Probation revocation; Parole revocation.

- (a) Trial counsel should be prepared to continue representation if revocation of the client's probation or parole is sought, unless new counsel is appointed or continued representation would, because of geographical or other factors, work unreasonable hardship.
- (b) Where proceedings to revoke conditional liberty are conducted in substantially the same manner as original petitions alleging delinquency or need for supervision, the standards governing representation in juvenile court generally apply. Where special procedures are used in such matters, counsel should advise the client concerning those procedures and be prepared actively to participate in the revocation proceedings at the earliest stage.

10.7 Challenges to the effectiveness of counsel.

- (a) A lawyer appointed or retained to represent a client previously represented by other counsel has a good faith duty to examine prior counsel's actions and strategy. If, after investigation, the new attorney is satisfied that prior counsel did not provide effective assistance, the client should be so advised and any appropriate relief for the client on that ground should be vigorously pursued.
- (b) A lawyer whose conduct of a juvenile court case is drawn into question may testify in judicial, administrative, or investigatory proceedings concerning the matters charged, even though in so doing the lawyer must reveal information which was given by the client in confidence.