

The Haslam Law Firm, PLLC

G. Donald Haslam, Jr., Esq.

1800 S. Baltimore, Ste. 1000
Tulsa, OK 74119

3140 Clark Lane
Paris, TX 75460

[903] 739-9221
[888] 541-9780 FAX
dhaslam@alumni.uchicago.edu
www.donhaslam.com

September 16, 2014

Re: Second supplement to existing complaint CJC No. 14-0795-DI

Received by

Texas State Commission on Judicial Conduct
P.O. Box 12265
Austin, TX 78711-2265
(877) 228-5750

NOV 07 2014

**State Commission on
Judicial Conduct**

Dear Sir or Mme:

Please find enclosed materials offered to supplement the existing complaint in the captioned matter. There are four [4] exhibits relating to five [5] distinct additional judicial complaints. Each is related to the Texas judge identified in the captioned, existing complaint, Hon. Eric Clifford, 6th District Court, Lamar County [Paris]. Each is a complaint that has not been offered before.

The Mattoon Dispute

The first set of materials [*Exhibit A*] relates to a private dispute between a Lamar County citizen and neighbor of Clifford, Bill Mattoon [903] 272-6300. Mr. Mattoon is employed by a successful national business as its Director of Marketing. He is a graduate of St. Marks School of Texas, a private boys' school in Dallas, and Austin College in Sherman. He is married with children. He is articulate, straightforward and credible. As one might expect of a marketing professional, he is personable.

As *Exhibit A*'s three [3] pages of correspondence describe, Clifford confronted Mattoon in 2011 about an incident relating to their dogs. While there is surely nothing inappropriate about a sitting judge experiencing and handling the common interferences in his daily life, the enclosed memorialize Clifford's confusion of his personal problems with his public persona. In this instance, Clifford corresponded with Mattoon about this dispute on 6th District Court letterhead. He did this at least twice; the two of which I am aware are enclosed. More importantly, the correspondence on the Court's letterhead reflects Clifford's expression that he was bringing to bear the influence of the 6th District Court on the City of Paris attorney about the dispute.

According to Mr. Mattoon, Lamar County District Attorney Gary Young advised him that Clifford called him directly and requested he prosecute Mr. Mattoon for some kind of crime related to the dog situation. Mr. Young confirmed this when I called several months ago to confirm it; however, when I contacted Mr. Young in October 2014 to re-confirm before submitting this issue to the SCJC he denied this.

Still more unfortunate, Mr. Mattoon advised me this week in a text thread he has filed for divorce in Lamar County and he is too fearful of Clifford's vindictiveness to "...participate at this time. With the potential of my personal matter going before a local judge, unfortunately I cannot risk the politics associated with it. I'm very sorry that this is the case. When we spoke, I was not in the position that I am in now."

The Bigler Dispute

Forest Bigler [[903] 227-9558] is a Paris Police Officer. On information and belief, Clifford directly threatened Mr. Bigler to have CPS remove his children from his home because his court reporter complained directly to him about Bigler's children [or his significant other's children] threatening her children. Apparently, Clifford called Bigler directly and levelled this threat. I called Bigler some weeks ago to inquire about these events. Bigler indicated he has an audiotape of the conversation[s] with Clifford in which the threats were levelled.

My inspection reveals no court case open in which these matters were being adjudicated, whether, criminal, civil or Texas CPS. It appears Clifford simply called Bigler and threatened to have his children removed in an extra-judiciary setting. Unfortunately, when I call Bigler to confirm details he no longer answers the phone.

Clifford's medications and service on the bench

Clifford had a motor scooter accident in the early summer of 2014. The accident caused him to be treated for serious shoulder and leg injuries. He was off the bench for weeks and returned to the bench in late August 2014. He returned in a wheelchair because the leg injury was still recovering from infection. He resumed the administration of daily court business when he returned, including presiding over disputed matters.

Clifford is a material witness in a civil rights action pending in the EDTX, *Ali Burress v. Blake et al* [4:14-cv-00035-RAS-DDB]. I represent the plaintiff, a young woman who alleges she was strip searched by a Paris Police officer in the Lamar County courthouse. Clifford reportedly ordered the search *sui sponte*.

Clifford has cancelled three depositions in this lawsuit, the most recent of which was October 8, 2014, 9:00 A.M. According to his attorney, David Harris of the Texas Attorney General's office, he cancelled the October 8 deposition because his medications would likely render his testimony unreliable [*See complete correspondence from Mr. Harris in this regard at Exhibit B*]. If Mr. Harris's concerns are in good faith, the propriety of Clifford's present presence on the bench in other matters is reasonably

questioned by the need for this medication and its implications *in re* the soundness of his judgment. Nonetheless, it appears Clifford's concerns in this regard do not extend to other matters, a concern he is obligated to dignify with his attention.

Clifford's removal of Don Haslam from the Lamar County Indigent Defense Plan

Clifford approved the *Application for Inclusion to the District Court Appointment List on October 5, 2012* submitted by undersigned. [Exhibit C]. Thereafter, I was appointed to defend nearly 100 Lamar County felonies by Clifford.

During the course of my defending these matters, I challenged Clifford over his taxing court-appointed attorney fees to indigents without conducting the requisite evidentiary hearing to determine if a change in the financial circumstances of the defendant had occurred during the pendency of the litigation sufficient to vacate the indigency order. There were numerous challenges over this issue, each of which met significant resistance by Clifford. During this process, it became further evident that Lamar County was not providing a Bill of Costs to indigents at sentencing, as required by law and I challenged this practice. When Lamar County attempted to circumvent my objections to these shortcomings with the inclusion of several waivers in sentencing paperwork, I began striking the waiver language and making oral records at each sentencing hearing. All of this was met with very apparent resistance by Clifford. While this practice eventually ceased in the sentencings of my own clients, it is my understanding the practice continues before Clifford where I am uninvolved. This issue is described in an earlier submission to the SCJC.

I have also detailed my recusals of Clifford for *ex parte* communications with witnesses in earlier SCJC submissions. Of course, these also embarrassed Clifford. They were apparently the first time an attorney had moved for his recusal even though his reputation for *ex parte* communications was well-established before my 2012 arrival in Lamar County. Local lawyers are simply intimidated out of objecting to either the attorney or the *ex parte* practice.

On June 25, 2013, Clifford's secretary sent an e-mail to Marvin Ann Patterson, the Lamar County District Clerk, instructing her to remove Don Haslam from the court-appointed attorney "wheel" in Lamar County. [Exhibit C]. No explanation was offered in Clifford's letter, and no notice was extended to or discussion with Haslam took place before the June 25 letter, but one might infer from the e-mail that Clifford considered that Haslam's workload was too heavy, or too many open, unadjudicated cases existed. However, the enclosed materials generated by the Lamar County District Clerk reflect the number of Haslam's open cases numbered one [1] on June 15, 2013, and this was a privately retained matter.

Clifford's June 25, 2013 removal of me from the *District Court Appointment List* is a process that is governed by the *Lamar District and County Courts Plan {Exhibit D}*. Specifically, Section III. C. [at p. 6] provides:

Removal from Appointment List – The judges will monitor attorney performance on a continuing basis to insure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges.

I am unaware of any vote and cannot find any record of a vote. I have not been reinstated.

In looking for an explanation for Clifford's decision, one might reasonably infer a decision that Haslam is incompetent, or otherwise failed in his work before Clifford's court. This is unfounded.

I have been practicing law in Oklahoma since 1999. My practice focuses in criminal defense. From 2007 to 2011, I was the public defender in Choctaw, Pushmataha, and McCurtain counties, contracting directly with the Oklahoma Indigent Defense System ["OIDS"] at the contractual rate of \$325,000 per year. I have personally defended in excess of 1000 felonies and as many misdemeanors in Oklahoma, and was the supervising attorney for several thousand more while managing the OIDS contract.

I was admitted to practice in Texas in 2010. Since Clifford's October 2011 appointment of me to the Lamar County *District Court Appointment List*, I have defended in excess of 50 Texas felonies and in excess of 75 misdemeanors. In Texas, I have taken six matters to jury trial. Three resulted in outright acquittal, two resulted in sentences to probation and the one involving 100 days in jail is pending appeal. In the one case tried before Clifford, my client was acquitted of a first degree felony after a two day trial: the jury was out 50 minutes.

In sum, there is no room for Clifford to justify his *sui sponte* removal of me from the Plan on grounds of incompetence. Rather, in light of my successful recusals of Clifford from two felony matters [See original complaint to the SCJC], my challenging his practice of taxing court-appointed attorney fees to indigents without adhering to the statutory and common law conditions precedent [See original complaint and supplement] and my naming him as a "John Doe" defendant and setting him for deposition in the *Burress* civil rights action, I suggest there is sufficient basis to inquire if the removal is retaliatory. You must understand that Judge Clifford's elimination of me from the *List* successfully chills zealous advocacy in the 6th District Court. While it was apparently true that the attorney fee and *ex parte* issues existed before I got here in 2011 and no one was challenging them then, the message has certainly hit home now: challenge him and suffer the consequences.

The Franklin County Incident

Franklin County District Clerk Ellen Jagers [903] 537-8337 had an encounter with Clifford while he sat on the Franklin County bench that offended her so badly she immediately reported it to the Presiding Administrative Judge of her Judicial District and requested that he never return. On information and belief, Judge Ovard immediately called Clifford at the Franklin County courthouse. I understand he has not returned.

I called Ms. Jagers several months ago to discuss and confirm this incident. Unfortunately, Ms. Jagers was as fearful of repercussions as are many others who have conflicted with Clifford. She related her fear to me when she declined to describe it to me. She said she was afraid of losing her job and she is content with his never returning to Franklin County.

Please contact me if further information is requested.

Very truly yours,



G. Donald Haslam, Jr.

Encl. [Exhibit A: 3 pp., Exhibit B: 6 pp., Exhibit C: 3 pp., Exhibit D: 12pp.]

Exhibit A



Lamar County Courthouse
119 N. Main Street
Paris, TX 75460
or
P.O. Box 1118
Paris, TX 75461

ERIC S. CLIFFORD
DISTRICT JUDGE
Sixth Judicial District Court
Presiding in Lamar, Fannin & Red River Counties

(903) 737-2431
fax (903) 737-2483

August 29, 2011

William H. Mattoon
1915 Briar Oak Drive
Paris, TX 75462

Re: Dog Injuries

Dear Mr. Mattoon:

As per our previous conversations and your conversation with my assistant, this letter is to outline the costs incurred as a result of the incident wherein our dog, Lilly sustained injuries after an encounter with your dog. I submit the following:

May 18, 2011	Paris Veterinary Clinic	\$ 45.47
May 18, 2011	Crossroads Veterinary Clinic	\$601.57
May 18, 2011	Round Trip Paris/Greenville (126.54 miles @ .51 per mile)	\$ 64.53
June 6, 2011	Crossroads Veterinary Clinic	\$ 32.75
June 6, 2011	Round Trip Ft. Worth/Greenville (178.74 miles @ .51 per mile)	\$ 91.15
July 6, 2011	Crossroads Veterinary Clinic	\$ 58.80
July 6, 2011	Round Trip Ft. Worth/Greenville (178.74 miles @ .51 per mile)	\$ 91.15
August 3, 2011	Crossroads Veterinary Clinic	\$ 86.30
August 3, 2011	Round Trip Ft. Worth/Greenville (178.74 miles @ .51 per mile)	\$ 91.15

TOTAL DUE: \$1,162.87

I have provided a copy of the invoices for your reference. Please send a check for reimbursement of these costs no later than 30 days from the date of this letter. Your assistance is appreciated.

Eric S. Clifford
/kc



Lamar County Courthouse
119 N. Main Street
Paris, TX 75460
or
P.O. Box 1118
Paris, TX 75461

ERIC S. CLIFFORD
DISTRICT JUDGE
Sixth Judicial District Court
Presiding in Lamar, Fannin & Red River Counties

(903) 737-2431
fax (903) 737-2483

October 13, 2011

William H. Mattoon
1915 Briar Oak Drive
Paris, TX 75462

Re: Dog Injuries

Dear Mr. Mattoon:

You have not responded to my letter dated August 29, 2011 outlining the expenses I incurred as a result of your dog attacking my dog on or about May 17, 2011. I relied, in good faith, upon your oral agreement to pay these expenses. To date I have not pursued any charges with the City of Paris, although I have been contacted by the City Attorney as to how I wish to proceed. This is my final effort to resolve this issue out of court. This letter is formal demand for payment of the total sum of \$1,162.87 as itemized in my previous letter. If I do not receive payment within 10 days from the date of this letter I will have no alternative but to pursue legal action and/or charges with the City of Paris.

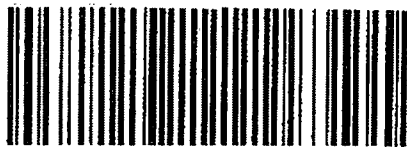
Respectfully,

Eric S. Clifford

Certified Mail No. 7008 0150 0001 0101 6967
Return Receipt Requested

ord - DISTRICT JUDGE
icial District of Texas
118
5461

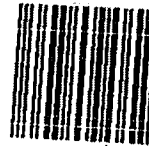
CERTIFIED MAIL



7008 0150 0001 0101 6967



1000



75462

U.S. POSTAGE
PAID
PARIS, TX
75460
OCT 13, 11
AMOUNT
\$5.59
00013321-17

William H. Mattoon
1915 Briar Oak Drive
Paris, TX 75462

R-10

1st NOTICE.....
2nd NOTICE.....
RETURNED.....

Exhibit B



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

FAX Cover Sheet

Law Enforcement Defense Division

P.O. Box 12548

Austin, TX 78711-2548

Phone Number: 512-463-2080

FAX Number: 512-495-9139

To:	Michael Mowla
Company/Agency:	
Date:	May 23, 2014
FAX Number:	972-692-6636
From:	David A. Harris
No. of pages (including cover):	3

Comments:

Confidentiality Notice:

If you have received this facsimile transmission in error, please note these documents may contain confidential information that cannot be disclosed without violating the criminal provisions of the Texas Open Records Act or Texas Penal Code 39.06. If you have received these documents in error, please call the sender at the number listed above to arrange for the return of the documents. Thank you.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2014

Via fax (972) 692-6636

Michael Mowla
445 E FM 1382 #3-718
Cedar Hill TX 75104

**Re: Civil Action No. 4: 14: cv-00035; *Ali Jo Burress v. Ronnica Blake, et al.*;
U.S.D.C for the Eastern District of Texas; Sherman Division.**

Dear Mr. Mowla:

Enclosed please find the **Agreed Acceptance of Service on the Subpoena and Agreement to Accept Witness Fee Waiver** signed by David.

Sincerely,

DAVID A. HARRIS
Assistant Attorney General
Law Enforcement Defense Division
(512) 463-2080 (512) 495-9139 Fax

/dmw
cc: File

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

ALI JO BURRESS,

PLAINTIFF,

v.

**RONNICA BLAKE,
BOBBY JOE HUNDLEY, JR., and
PAT BRACK, AND JOHN DOE
John Doe Defendant No. 1,**

DEFENDANTS.

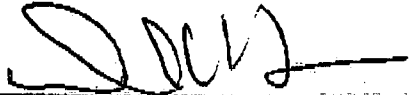
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CIVIL NO. 4:14-CV-00035

**AGREED ACCEPTANCE OF SERVICE OF THE SUBPOENA, NOTICE OF INTENT
TO TAKE DEPOSITION OF HONORABLE ERIC CLIFFORD,
AND THE WAIVER OF THE WITNESS FEE**

I hereby agree to accept service of the subpoena and the notice of intent to take deposition of the Honorable Eric Clifford, which is scheduled by agreement at The Moore Law Firm, 100 North Main Street, Paris, Texas 75460, commencing on June 19, 2014 at 10:00 a.m. I also agree to accept the witness fee of \$40.00 associated with this subpoena, payment made payable to Eric Clifford.

Date: 5-23-14



David Harris
Office of the Attorney General
Law Enforcement Division
P.O. Box 12548
Austin, Texas 78711
Fax 512-495-9139
email david.harris@texasattorneygeneral.gov
Attorney for Eric Clifford

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the Eastern District of Texas

ALI JO BURRESS

Plaintiff

v.

RONNICA BLAKE, et al

Defendant

Civil Action No. 4:14-CV-00035

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: HONORABLE ERIC CLIFFORD

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (The Moore Law Firm, 100 North Main Street, Paris, Texas 75460) and Date and Time (06/19/2014 10:00 am)

The deposition will be recorded by this method: stenographic and video

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: SEE NOTICE OF INTENT TO TAKE DEPOSITION.

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/15/2014

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Ali Jo Burress

Michael Mowla, 445 E. FM 1382 #3-718, Cedar Hill, Texas 75104, 972-795-2401, michael@mowlalaw.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 4:14-CV-00035

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Don Haslam

From: Harris, David <David.Harris@texasattorneygeneral.gov>
Sent: Wednesday, October 08, 2014 6:52 AM
To: michael@mowlalaw.com; Woltersdorf, Deborah
Cc: ppearcej@mssattorneys.com; tdunn@mssattorneys.com; asemples@mssattorneys.com;
Don Haslam; Woltersdorf, Deborah
Subject: Burress v. Blake
Attachments: RE: Your letter regarding Clifford Deposition (27.3 KB)

Counsel

Thank you for agreeing to cancel the deposition set for today.

I actually went to Paris and met with Judge Clifford. He advised he was ok last week until Friday. He started feeling well, and was in bed all weekend. He did not look good, and admitted that he did not feel well. He has asked that we give him a couple more weeks. He is still troubled by infections, and after seeing his arm and leg, I understand why. He is on medication and I was of the opinion that his testimony might be impacted by his condition and pain meds. We will stay in touch.

Exhibit C

Marvin Ann Patterson

From: Kathy Coker <kcoker@neto.com>
Sent: Tuesday, June 25, 2013 11:14 AM
To: 'Marvin Ann Patterson'
Subject: Wheel for Court Appointed Attorneys

Judge Clifford is requesting that Don Haslam's name be temporarily suspended from the list until his current case load has been depleted. Please remove his name from the wheel until further notice.

Thanks!

Kathy Coker - Assistant
Office of Eric S. Clifford - District Judge
Sixth Judicial District of Texas



Lamar County Courthouse
119 N. Main Street
Paris, TX 75460
or
P.O. Box 1118
Paris, TX 75461

ERIC S. CLIFFORD
DISTRICT JUDGE
Sixth Judicial District Court
Presiding in Lamar, Fannin & Red River Counties

(903) 737-2431
fax (903) 737-2483

October 5, 2011

Marvin Ann Patterson
District Clerk, Lamar County, Texas

Re: Court Appointed Attorney List

Please be advised that I have this date reviewed the Application for Inclusion on the District Court Appointment List, submitted by Don Haslam. I have approved the application and I am requesting that you place Mr. Haslam's name on the wheel/list of court appointed attorneys so that he can begin receiving appointments.

His contact information (as provided on his application) is as follows:

Don Haslam
32 Clarksville Street, Suite 202
Paris, TX 75460
(918) 812-9183
Fax (903) 784-7187

Your assistance is appreciated

Eric S. Clifford
District Judge

xc: Don Haslam via facsimile (903) 784-7187

Attorney Pending Cases Report

TXLAMARPROD

Case Category: Criminal Case Type: Felony Indictment, Felony Case Subtype:

As of Date: 06/15/2013 Attorney Type:

District/Clerk: 6th District Court; 62nd District Court; County Court at Law

Hastorn, Don 3140 CLARK LANE
PARIS, TX 75660

Case Number	Style	Case Category	Case Type	Case Subtype	Attorney Type	Party Type	File Date	Case Status
23814	The State of Texas vs ALEXANDER NATHANIEL BRENES	Criminal	Felony Indictment	Felony Indictment	Attorney	Defendant	07/15/2010	Active

Group Count: 1

Exhibit D

Lamar District and County Courts Plan

Preamble

10/14/2013

Be it remembered that on this date the below signed District Judges of Lamar County, County Court-at-Law, County Judge of Lamar County, hereby adopt, order, establish and order published these countywide procedures and rules governing fair and timely appointment of counsel for indigent accused adult persons in Lamar County, Texas. This document constitutes the Lamar County Plan in conformity with the requirements of Senate Bill 7 passed by the Texas Legislature and signed into law in 2001, as amended.

Prompt Magistration

11/9/2009

I. RESPONSIBILITIES OF LAMAR COUNTY LAW ENFORCEMENT OFFICIALS

It shall be the duty of the Sheriff of Lamar County, the Chiefs of Police of any town or city in Lamar County, and/or any duly sworn or deputized law officers of Lamar County (hereinafter referred to as "Law Officers") to do the following:

(a) Upon making an arrest or upon receiving into custody a person who has been arrested, take the person arrested or have him taken without unnecessary delay, but no later than 48 hours after an adult person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of Lamar County, or, if necessary to provide more expeditiously to the person arrested the warnings described by Article 15.17 of the Code of Criminal Procedure and enumerated below, before a magistrate in a county bordering Lamar County.

(b) Provide to the magistrate before whom the adult person arrested is taken as required by subsection (a) of this paragraph sufficient information that said magistrate will be able to perform his/her duty pursuant to Article 15.17 C.C.P. This should include, but is not limited to, any offense report and warrant, if any.

II. RESPONSIBILITIES OF LAMAR COUNTY MAGISTRATES

It shall be the duty and responsibility of the magistrate before whom the adult person arrested is taken to inform said person, in clear language, the following:

- (a) admonishing the accused of the magistrate and Miranda warnings as provided by law;
- (b) notifying of indigent representation rights;
- (c) making of record of the magistrate warnings and right to court-appointed counsel for indigent accused persons;
- (d) notifying of right to counsel and right to court-appointed counsel if indigent;
- (e) inquiring as to whether the defendant is requesting court-appointed counsel; and
- (f) providing defendant with an Affidavit of Indigency and reasonable assistance in completing said forms.

If said person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31 C.C.P., as appropriate. With respect to paragraph II, the magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. Copies of the forms to be used are attached hereto and approved by the District Courts.

FELONIES:

It is the duty of said magistrate to ensure that all papers and forms relative to appointment of counsel for the indigent person in felony cases be transmitted to the office of Lamar County District Clerk within 24 hours of the execution of said documents by the indigent person. The magistrate shall then admit the person arrested to bail if allowed by law.

MISDEMEANORS:

It is the duty of said magistrate to ensure that all papers and forms relative to appointment of counsel for the indigent person in misdemeanors be transmitted to the office of the County Clerk of Lamar County within 24 hours of the execution of said documents by the indigent person. The magistrate shall then admit the person arrested to bail if allowed by law.

Indigence Determination Standards

10/8/2010

III. REVIEWS OF REQUESTS FOR APPOINTMENT BY PERSONS ARRESTED

Immediately upon receipt of a request for appointment by a person claiming to be indigent it will be determined by the judge presiding at the proceedings or the Clerk of the Court whether or not the accused is financially unable to retain adequate counsel. An accused is presumed indigent if the accused's net household income does not exceed 100% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register.

An accused who does not meet any of the standard above shall nevertheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused's dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:

1. the nature of the criminal charges(s);
2. anticipated complexity of the defense;
3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
4. the amount needed for the support of the accused and the accused's dependents;
5. accused's income;
6. source of income;
7. assets and property owned;
8. outstanding obligations;
9. necessary expenses;
10. the number and ages of dependents; and
11. spousal income that is available to the accused.

Factors NOT to be considered in determining indigence:

- i. The resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent.

In felony cases, unless the appropriate judge decides to make the determination of indigency and appoint counsel as appropriate, the District Clerk or one of his/her deputies shall immediately make a determination of defendant's indigency and if found indigent shall appoint the next eligible, qualified attorney on the approved list for felony appointments, except for capital murder cases or any other cases in which the District Clerk is of the opinion that the question of indigency and appointment of counsel should be referred to the appropriate judge. In that event the District Clerk shall contact the judge or the court coordinator of the court to which the person arrested shall be assigned with all relevant information concerning said person's qualifications for appointment.

In misdemeanor cases, unless the appropriate judge decides to make the determination of indigency and appoint counsel as appropriate, the County Clerk or one of his/her deputies shall immediately make a determination of defendant's indigency and if found indigent shall appoint the next eligible, qualified attorney on the approved list for misdemeanor appointments. The County Clerk may refer any case to the appropriate judge as may be deemed appropriate by the County Clerk.

It shall be the duty of the reviewing judge or Clerk to decide the question of indigency based upon the information provided and the definitions as set forth in this order.

Minimum Attorney Qualifications

10/14/2013

III. Minimum Attorney Qualifications for Adults (Small Sized Counties)

- A. The Judges hearing criminal cases shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists. To be eligible for an appointment list, an attorney must meet the following minimum requirements:

- i. Misdemeanor Qualification Requirements:
 1. All attorneys on the appointment list must ensure all information on their application is correct;
 2. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;

3. An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission/form prescribed by the Texas Indigent Defense Commission to the court administration office in the county.
 4. An attorney shall complete a minimum of 6 hours of CLE in the area of criminal law and procedure each year. All attorneys on the appointment list must file a certificate with the court administration office each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in criminal law. Continuing legal education activity completed with-in a one year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum of 6 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;
 5. An attorney must have a minimum 1 year experience in criminal law;
 6. An attorney must maintain an office capable of receiving email, fax, and telephone calls;
 7. An attorney must have the ability to produce typed motions and orders;
 8. An attorney shall notify the court administration office promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.
- ii. State Jail and Third Degree Felony Case Qualification Requirements

1. An attorney must meet general requirements for misdemeanor appointments;
2. An attorney must have a minimum 2 year(s) experience in criminal law;

iii. First and Second Degree Felony Case Qualification Requirements

1. An attorney must meet the general requirements for State Jail and Third Degree Felony appointments.
2. An attorney must have a minimum 4 year(s) experience in criminal law;
3. An attorney must have experience as 1st or 2nd chair in at least 3 criminal case(s) tried to verdict before a jury. At least 1 of the trial(s) must have been felonies. The styles and cause numbers of these cases must be listed in the District Courts appointment application form.

iv. Capital Case Qualification Requirements:

1. Lead trial counsel must be on the list of attorneys approved by the local selection committee of this Administrative Judicial Region for appointment as lead counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
2. Second chair counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as lead trial counsel or second chair counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
3. Appellate counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as appellate counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.

v. Appeal Qualification Requirements - An attorney must meet at least one of the following criteria:

1. Be currently board certified in criminal law by the Texas Board of Legal Specialization; or
2. Have personally authored and filed at least three criminal appellate briefs or post-conviction writs of habeas corpus; or
3. Have submitted an appellate writing sample approved by a majority of the judges; or
4. Have worked as a briefing clerk of an appellate court for a period of at least one year.

B. Approval for Appointment Lists

- i. Misdemeanor List – An attorney must be approved by a majority of the Statutory County Court Judges hearing criminal cases.
- ii. State Jail and Third Degree Felony, First and Second Degree Felony List, Capital Case List, and Appeal List - An attorney must be approved for each list by a majority of the District Court Judges hearing criminal cases.

C. Removal from Appointment List - The judges will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges.

D. Reinstatement to Appointment Lists

- i. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the

attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan.

- ii. An attorney who was removed from the appointment list for not submitting the attorney's annual practice time report may be immediately reinstated upon submission of the report so long as the attorney otherwise meets the other qualifications under this Plan.
- iii. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

E. Duties of Appointed Counsel - Appointed Counsel shall:

- i. Notify the court within 72 hours of the receipt of appointment;
- ii. Make every reasonable effort to:
 - 1. Contact the defendant by the end of the first working day after the date on which the attorney is appointed; and
 - 2. Interview the defendant as soon as practicable after the attorney is appointed;
- iii. Represent the defendant until:
 - 1. Charges are dismissed;
 - 2. The defendant is acquitted;
 - 3. Appeals are exhausted; or
 - 4. The attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.

- iv. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
- v. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
- vi. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
- vii. Be prepared to try the case to conclusion either with or without a jury;
- viii. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
- ix. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case; and
- x. Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case; and
- xi. Perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics.
- xii. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

Prompt Appointment of Counsel

11/9/2009

V. Prompt Appointment of Counsel

- (a). Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the third working day after the date on which the appointing authority receives the defendant's request for court appointed counsel. Working day means Monday through Friday, excluding official state holidays. Counsel must be appointed whether or not a case has been filed in the trial court.
- (b). If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

Attorney Selection Process

11/9/2009

VI. If the arrested person is found to be indigent, the judge in whose court the case is assigned or the Clerk shall cause to be appointed an attorney from a list promulgated and maintained as set forth in Paragraph IV below.

Appointments from the list of attorneys approved by the judges shall be in the order in which they appear on the list unless otherwise ordered by the judge of the court making said appointment.

Fee and Expense Payment Process

9/30/2010

VII. Following are the Fee Structure for Adult Criminal Proceedings, to-wit:

A. The following are set as the minimum and maximum allowable fees for appointed Lead Counsel:

1. Proceedings to Dispose of Criminal Penal Charges, Motions to Revoke Probation, Motions to Adjudicate Guilt and Writs of Habeas Corpus:

a. \$350.00 for first degree felonies and second degree felonies until trial; \$250.00 for third degree felonies and State Jail Felonies until trial.

b. \$125.00 to \$200.00 per case for Class A and Class B. misdemeanors until trial.

c. Motions to Revoke and Motions to Adjudicate shall be presumed to be the same degree or class of felonies and misdemeanors that caused the defendant to be placed on probation.

d. \$100.00 to \$300.00 for plea bargained dispositions of Writs of Habeas Corpus to be set at the sole discretion of the trial Judge based upon the complexity and seriousness of the criminal charges.

e. \$25.00 to \$100.00 per hour for trial and preparation time to be determined at the sole and reasonable discretion of the trial judge based upon the complexity and seriousness of the criminal charges and Writs of Habeas Corpus.

f. The rate for the most serious accusation made against the defendant will be paid whether or not the most serious accusation is dismissed before or after either a plea or a trial.

g. Concerning felonies, only one fee will be paid for multiple counts in one indictment but each separate felony contained in a separate indictment or felony information disposed of by plea bargain involving the same defendant will be compensated at the rate of \$75.00 each. The County Judge who executes the dismissal documents shall compensate misdemeanors that are included in a felony court plea or agreed dismissal.

In misdemeanors, only one fee will be paid for multiple counts in one information but each separate misdemeanor contained in a separate information disposed of by plea bargain involving the same defendant will be compensated at the rate specified in (b) above with no reduction based on the number of cases a defendant has.

h. The Judge of the trial court shall award trial fees based upon personal knowledge and experience for the preparation and time in court, complexity of the trial and post-trial proceedings.

2. Ad Litem, Parental Termination and Contempt of Court:

a. \$100.00 to \$300.00 retainer with trial fees ranging from not less than \$25.00 per hour up to \$75.00 per hour to be determined at the sole discretion of the trial judge based upon the seriousness and complexity of the proceedings.

3. Death Penalty Cases:

a. The lead counsel shall be compensated for all preparation time and all court time at the rate of \$50.00 to \$125.00 per hour and assistant counsel at the rate of \$50.00 to \$100.00 per hour. The rate of compensation will be determined solely at the discretion of the trial judge based upon the complexity of the case and the financial necessities of the defense counsel.

b. Counsel will be paid weekly, bi-weekly or monthly based upon counsel's submission of time records for the period of time for which fees are requested.

4. Appeals:

a. The trial counsel is required to handle the appointed case through time for giving Notice of Appeal; thereafter an appellate attorney will be appointed from the approved list of attorney on the felony appeal appointment list.

b. By the hour not to exceed \$100.00 per hour for the Court of Appeal and to the Court of Criminal Appeals or Texas Supreme Court. The amount shall be determined based upon the complexity and seriousness of the criminal charges.

5. Other:

a. For all other fees for appointed counsel for procedures not mentioned above (as, for example, a writ of mandamus or for reasonable compensation where the attorney is removed in favor of an earlier appointed counsel for representation of a defendant who has multiple cases), the court shall set a fee based upon the complexity and seriousness of the procedure of not less than \$25.00 per hour nor more than \$100.00 per hour in the sole discretion of the trial judge.

b. Expenses incurred without prior approval shall be reimbursed if expenses are reasonably necessary and reasonably incurred [Art 26.05(d) & 26.052 (h) CCP].

6. Multiple Case Appointments:

a. Attorneys who represent a defendant who has additional cases or motions to revoke or adjudicate shall be appointed in all additional cases against the same defendant. In the event more than one attorney has been appointed in different cases, the court shall appoint the earlier attorney and remove the later attorney from representation of the defendant with reasonable compensation according to time expended as provided above.

Miscellaneous

2/26/2010

This Plan shall be administered and maintained by Kathy Coker, Court Coordinator - 6th Judicial District Court of Lamar County, Texas or such other individual for each court as may be designated by the Judge of said Court. The administrator of the plan is responsible for the following:

- A. Gathering the necessary factual information to permit the establishment and operation of the Plan for the appointment and removal of attorneys for the stated purposes of the Plan.
- B. Maintaining and updating the records on the attorneys who have been approved and disapproved by the judges for appointments.
- C. Investigating attorney qualifications.
- D. Having access to the records of the County and District Clerks and the County Auditor of attorney payments and related records.
- E. Aiding in the investigation of extraordinary claims for fees.
- F. Maintaining the list(s) of attorneys and cases for which they are deemed to be qualified under this Plan.
- G. Providing liaison with the office of court administration, the Task force on Indigent Defense and other agencies.
- H. Coordinating the reporting requirements for the Plan with the judges and the County and District Clerks.

Plan Documents

- Lamar District and County Court Affidavit of Indigence.tif (11/9/2009 4:13:35 PM) [view](#)
- Lamar District and County Court Attorney Application for Appointment.doc (11/9/2009 3:11:28 PM)

view

Lamar District and County Court Attorney Fee Schedule.wpd (9/30/2010 11:20:12 AM) view

Lamar District and County Court Attorney Fee Voucher.doc (11/9/2009 3:08:57 PM) view

Lamar District and County Court Magistrates Warning Form.doc (11/9/2009 3:09:37 PM) view