

Comal County Courts Plan

Preamble

12/1/2009

Effective Date January 1, 2010

Be it remembered that on this date the below signed Administrative County Court at Law Judge of Comal County, Texas, (hereinafter referred to as the CCAL Judge) hereby adopts, orders, establishes and orders published these Court procedures, rules and orders for the timely and fair appointment of counsel for indigent accused persons in misdemeanor cases in Comal County, Texas. This document is the Comal County Court at Law Plan to conform to the requirements of SB 7 passed by the Texas Legislature and signed into law in 2001.

Prompt Magistration

12/22/2009

SHERIFF'S RESPONSIBILITY

The Sheriff of Comal County shall ensure that within 24 hours after arrest, every misdemeanant arrestee shall be brought before a magistrate to set bail and inform the accused person of their rights including the right to court appointed counsel if indigent.

MAGISTRATE RESPONSIBILITIES

The Magistrates of Comal County shall establish a plan and rotate holding magistrate's hearings each and every day by 5:00 p.m.

At the Magistrate hearing the responsible judge shall comply with Senate Bill 7 by:

1. admonishing the accused of the magistrate and Miranda warnings as provided by law;
2. notifying the accused of the indigent representation rights;
3. making a written record of the magistrate warnings and right to court appointed counsel for indigent accused persons: including informing the accused of the accused's right to request appointment of counsel; asking whether the accused wants to request appointment of counsel; and whether the person requested court appointed counsel.
4. notifying the accused of right the to counsel and right to court appointed counsel if indigent;
5. inquiring as to whether the accused is requesting court appointed counsel;
6. providing the accused with an Affidavit of Indigence and reasonable assistance in completing said form;
7. inquiring as to the accused's citizenship and give consular notice if necessary;
8. appointing counsel from the jail rotation approved by the CCAL Judge if the defendant meets the criteria for court appointed counsel; and
9. send all requests for court appointed counsel in misdemeanor cases to the Court Administrator for the County Courts at Law within 24 hours of the accused's request for counsel.

Any person arrested for a misdemeanor without a warrant must be released on bond in an amount no more than \$5,000 not later than 24 hours after arrest if the magistrate has not determined probable cause by that time.

The magistrates are hereby approved as an appointing entity to appoint counsel to indigent defendants. The individual County Court Judges also retain the ability to review magistrate indigence determinations and appoint or remove counsel based upon the defendant's circumstances then existing.

Indigence Determination Standards

12/17/2009

Procedures and Financial Standards for Determining Indigence Status

During magistration, each defendant shall be provided an opportunity to request court appointed counsel, if indigent. Each requesting defendant shall complete and file a sworn Affidavit of Indigent Status, in a form approved by the Comal County Judges. The Magistrate will ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided. If the defendant does not speak and/or understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31.

The magistrate making court appointments shall review the affidavit of indigence and such other information bearing of the financial status of the defendant and make a determination of indigence status and appoint counsel where required by law within 3 working days after receiving the request for court appointed counsel. The magistrate shall consider the following standards for determining indigence in addition to such reasonable factors as the court finds to have a bearing on the financial inability of the defendant to retain counsel:

1. Defendant's income from any and all sources;
2. Sources of defendant's income;
3. Assets of defendant;
4. Property owned by the defendant, or in which the defendant has an interest;
5. Outstanding legal obligations of the defendant;
6. Necessary expenses of the defendant;
7. The number and age of the defendant's legal dependents; and
8. Spousal income or community property assets of the defendant.

After considering the Defendant's circumstances, counsel shall generally be appointed to defendants whose expendable resources are less than \$300.00 per week if no dependents and for defendants with dependents whose expendable resources are less than \$300.00 per week plus \$50.00 per week per dependent. Exceptions shall be made in cases where the issues involved are of a nature such that the Court is aware that retaining private counsel will be beyond the defendant's means or where circumstances beyond the defendant's control demand expenditure of above average resources such as medical bills for the defendant or his/her dependents. The Judge shall not consider whether the defendant has posted bail, except as to the extent that it reflects on the defendant's ability to work and alters his financial circumstances.

Minimum Attorney Qualifications

12/22/2009

Responsibility of Court Appointed Counsel

Court appointed counsel shall make every reasonable effort to contact the defendant not later than the end of the first working day after appointment and to interview the defendant as soon as practicable.

Court appointed counsel shall comply with all laws, rules, procedures, and ethical provisions for providing reasonable assistance of counsel to their client.

Court appointed counsel shall maintain a high standard of ethical conduct and always be completely candid with the trial court.

Court appointed counsel shall timely inform their client of matters relating to the preparation, trial, and disposition of the case, appellate and writ rights, deadlines, and procedures for proper processing, and such other matters as necessary to provide reasonable assistance of counsel.

Court appointed counsel shall represent a defendant until the defendant is acquitted, appeals are exhausted, or the court, after entering a finding of good cause of the record, relieves the attorney and/or replaces the attorney with other counsel.

Court appointed counsel shall meet the following standards. Said attorney shall:

1. Be a member in good standing with the State Bar of Texas.
2. Professionally perform duties and responsibilities of a licensed attorney for the State of Texas;
3. Complete annually such Continuing Legal Education programs as required by the State Bar of Texas;
4. Complete a minimum of six hours of continuing legal education pertaining to criminal law during each 12 month reporting period. Continuing legal education may include activities accredited under Section 4, Article XI, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing; or be currently certified in criminal law by the Texas Board of Legal Specialization.
 - a. Continuing legal education activity completed within a one-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year.
 - b. 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 year only.
 - c. To be included on the appointment list, each attorney must annually submit an affidavit to the county detailing the criminal continuing legal education activities completed in the prior year. Alternatively, an attorney may annually submit documentation showing the attorney is currently certified as a specialist as a specialist in criminal law.

Prompt Appointment of Counsel

12/22/2009

Misdemeanor Appointment Procedure

In any case before the Court where indigence has not been determined, the County Court at Law Judge shall allow the defendant to submit an affidavit of indigence and if appropriate shall sign an Order Appointing Counsel and deliver same to the attorney. In any case where indigence has been determined, the Court Administrator shall immediately contact the attorney by phone, fax or in person and notify the said attorney of the appointment and the last known address of the defendant. In any case in which an attorney is appointed to an incarcerated defendant, and the defendant is released on bond prior to the being contacted by the attorney, the appointment shall be automatically withdrawn due to a material change in circumstance. Such defendant after being released from confinement shall have the ability to reapply for court appointed counsel at his arraignment, first court appearance or when adversarial judicial proceedings are initiated, whichever comes first, upon presentation of an updated affidavit of indigence and verification of his income by the court. Any unrepresented defendants, at arraignment, first court appearance or when adversarial judicial proceedings are initiated, whichever comes first, shall be advise of the right to counsel, and procedures for obtaining counsel.

During magistration, each defendant shall be provided an opportunity to request court appointed counsel, if indigent. Each requesting defendant shall complete and file a sworn Affidavit of Indigent Status, in a form approved by the Comal County Judges. The Magistrate will ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided. If the defendant does not speak and/or understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with the Texas Code of Criminal Procedure Articles 38.30 and 38.31.

The magistrate making court appointments shall review the affidavit of indigence and such other information bearing of the financial status of the defendant and make a determination of indigence status and appoint counsel where required by law within 3 working days after receiving the request for court appointed counsel.

Attorney Selection Process

12/22/2009

List of Eligible Attorneys for Service as Court Appointed Counsel for Indigent Accused Persons

The CCAL Judge shall distribute to, review and consider an "Affidavit of Licensed Attorney Residing in or Practicing Law in Comal County, Texas" upon the attorney's request to be placed upon the Court Appointment rotation for County Courts at Law. Said affidavit shall be available during working hours from the Court Administrator.

Each attorney desiring inclusion on the court appointment list shall return said affidavit to the County Court at Law Court Administrator on or before December 31, 2009.

The CCAL Judge shall on or before January 7, 2010, approve and post outside the Court Administrator's office such lists as set out below, of the names of attorneys approved to represent indigent accused persons in the Comal County Courts at Law. Such list shall remain posted for one week, after which it shall be maintained and updated by the Court Administrator and made available to the public for review upon request.

The list shall consist of the names of approximately thirty attorneys who have submitted affidavits requesting inclusion on the court appointment list and who have been mutually approved by the Judges of the County Courts at Law to represent indigent defendants in said courts. The list shall be capped at thirty-five names due to the impracticality of managing a larger list and in order to create an economy of scale for the attorneys on the list. Preference shall be given to attorneys:

1. who maintain a local office because of the necessity to contact jailed defendants within 24 hours of appointment;
2. who are known to the judges to provide a superior level of service to their retained and court appointed clients;
3. who possess bilingual skills;
4. who are prompt and prepared with announcements at the call of the docket and who apprise the Court if they will be inordinately delayed for the docket call; and
5. who are willing and able to try the case if the interests of justice so demand.

To ensure an equitable rotation, attorneys shall be appointed from the appropriate list by the appointing Judge or magistrate in the order in which their names appear. Exception may be made in cases in which:

1. An attorney is already appointed to represent a particular defendant in another matter and appointing that attorney would serve justice and judicial economy;
2. The magistrate finds that the defendant requires specialized skills because of mental illness or mental retardation, nationality or language skills, and the attorney appointed possesses requisite experience in said area;
3. There is a conflict of interest because the next available attorney has previously represented or currently represents interests adverse to the defendant in the case or in another matter; and
4. The magistrate finds that appointing an attorney out of rotation would serve the ends of justice.

When an attorney is appointed out of order, the skipped attorney remains next on the rotation and the appointed attorney is skipped to ensure an equitable number of appointments to each attorney.

The Court shall maintain an additional rotation of attorneys who shall be on call on short notice to attend to the jail dockets which shall be scheduled periodically. At such dockets, any inmates who have not previously requested court appointed counsel shall have the option of applying and having counsel appointed. Such dockets shall be scheduled as jail conditions require and as courtroom space shall allow. Not more than five attorneys shall comprise the jail rotation and shall be considered for inclusion by virtue of their prompt attendance to incarcerated clients. The list shall be updated at least semi-annually by the CCAL Judge. Any attorney who desires to be considered for addition to the following semi-annual list shall notify the Court Administrator by June 1 or December 1 prior to reconstitution of the list. Any attorney who wishes to be removed from the following semi-annual list shall notify the Court Administrator by June 1 or December 1 prior to reconstitution of the list.

Judicial Removal from Case:

- i. The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:
 1. Counsel's failure to appear at a court hearing;
 2. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
 3. Counsel fails to make an effort to contact the defendant by the end of the first working day after receiving the appointment, or does not interview the defendant as soon as possible;
 4. Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;
 5. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
 6. The defendant requests an attorney, other than trial counsel, for appeal; or
 7. The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

- ii. Appointment of Replacement Counsel - Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

Fee and Expense Payment Process

12/22/2009

- A. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the judges hearing criminal cases in the county.

B. Payment Process: No payment of attorney's fees will be made other than in accordance with the rules set forth below.

- i. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered.
- ii. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.
 1. If a judge disapproves a request for compensation, 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.
 2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.

C. Payment of Expenses:

- i. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth below. Whenever possible prior court approval should be obtained before expenses are incurred.
- ii. Procedure With Prior Court Approval:
 1. Appointed Counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state the below, as applicable:
 - a. The type of investigation to be conducted or the type of expert to be retained;
 - b. 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

- c. An itemized list of anticipated expenses for each investigation and/or each expert.
 2. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:
 - a. State the reasons for the denial in writing;
 - b. Attach the denial to the confidential request; and
 - c. Submit the request and denial as a sealed exhibit to the record.
 - iii. Procedure Without Prior Court Approval: Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred.
Unreasonable or unnecessary expenses will not be approved.

Plan Documents

Comal County Court Affidavit of Indigence.doc (12/17/2009 4:26:23 PM) [view](#)
Comal County Court Attorney Fee Schedule.docx (7/16/2010 5:47:12 PM) [view](#)
Comal County Court Attorney Fee Voucher.doc (12/22/2009 2:43:19 PM) [view](#)
Comal County Court Waiver of Counsel.doc (12/22/2009 2:44:14 PM) [view](#)