

**FAIR DEFENSE ACT  
INTERIM STANDARDS AND PROCEDURES FOR  
APPOINTMENT OF COUNSEL FOR INDIGENT AND NON-INDIGENT  
JUVENILE RESPONDENTS**

The Harris County Juvenile Board adopts the following interim plan for appointment of counsel for indigent juvenile respondents.

The plan establishes:

- 1) qualifications for attorneys to be on the appointment list to represent children;
- 2) procedures for inclusion and removal of attorneys from the list and appointment of attorneys from the list; and
- 3) requirements for indigent appointments, to the extent practicable, set forth in the Family Code and the Code of Criminal Procedure.

0.0 Terminology: As used in these procedures, the following terms and phrases will have the following meanings.

- 0.1 “Board” shall mean the Harris County Juvenile Board.
- 0.2 “Judges” shall mean the judges trying juvenile cases in Harris County.
- 0.3 “Referee” shall mean a duly appointed referee authorized to make attorney appointments to indigent individuals charged with juvenile offenses.
- 0.4 The pronouns “he,” “him,” and “his” shall refer to individuals of both genders.
- 0.5 “Respondent,” “Child” and “Juvenile” shall refer to an individual charged with a juvenile offense.
- 0.6 “Juvenile offense” shall mean conduct committed by a person ten (10) years of age or older and under seventeen (17) years of age that constitutes: (a) a misdemeanor punishable by confinement or (b) a felony.
- 0.7 “TYC” shall mean the Texas Youth Commission.
- 0.8 “CLE” shall mean Continuing Legal Education.

1.0 Standards for Determining Indigency. The indigency standards adopted by the board shall apply to each respondent equally.

- 1.1 In establishing procedures for indigent appointments, the juvenile board may include the following factors for the court to consider when determining indigency:
  - 1.1.1 the respondent's income;
  - 1.1.2 source of income;
  - 1.1.3 assets;
  - 1.1.4 property owned;
  - 1.1.5 outstanding obligations;
  - 1.1.6 necessary expenses;
  - 1.1.7 the number and ages of dependents;
  - 1.1.8 spousal income available to the respondent; and
  - 1.1.9 the income and assets of the child's parents

2.0 Procedures for determining indigency:

- 2.1 The child's parent or guardian shall cooperate by providing the court or referee with the information necessary to determine indigency.
- 2.2 A respondent is considered indigent for purposes of the Act if he is financially unable to hire counsel.
- 2.3 To determine whether a respondent is indigent, a judge or referee shall:
  - 2.3.1 review the information provided by the parent or guardian of the respondent in the completed indigency information form adopted by the board; and
  - 2.3.2 if necessary, hold an evidentiary hearing to determine whether respondent is indigent.
  - 2.3.3 Using the approved criteria, the judge or referee shall determine whether the respondent is indigent and make written findings.
  - 2.3.4 The judge or referee shall find respondent indigent and appoint counsel to represent him if the judge finds:
    - 2.3.4.1 the respondent's financial liabilities are more than his assets, or

2.3.4.2 the respondent is financially unable to pay for an attorney qualified to represent the respondent in the offense with which he is charged.

2.4 A respondent who has been found indigent is presumed indigent for the duration of the proceedings unless there is a material change in the respondent's financial circumstances.

**3.0 WHEN THE RIGHT TO APPOINTED COUNSEL ATTACHES, WHETHER INDIGENT OR NOT**

**3.1 Appointment of counsel when the juvenile *is in custody* and is *not* represented by retained counsel. At the first detention hearing:**

3.1.1 The detention center referee's determination of indigency shall be based on information collected by the juvenile intake division and / or based on evidence introduced at a hearing before the detention center referee.

3.1.2 The detention center referee shall appoint an attorney to represent the respondent if:

3.1.2.1 he makes a finding of indigency; or

3.1.2.2 the juvenile or his family request that an attorney be appointed to represent the juvenile; or

3.1.2.3 by the end of the next business day, the juvenile or his family has not hired an attorney to represent the juvenile.

3.1.3 The detention center referee shall appoint an attorney who meets the qualifications established under these standards to represent the juvenile based on the charges to be filed.

3.1.4 If needed, an interpreter shall assist during any indigency hearing.

3.1.5 If the juvenile or his parents ask that a lawyer be appointed to represent him, the referee shall instruct juvenile probation personnel to assist the respondent in filling out the financial information forms and respondent's request form for appointment of counsel.

3.1.6 If a juvenile is released at or prior to the initial detention hearing, the referee and /or juvenile probation personnel shall inform the juvenile and his parents of the right to request an attorney.

3.2 **Appointment of counsel when the juvenile *is not in custody*.**

3.2.1 The juvenile court shall determine whether the respondent and his family are indigent upon filing of:

3.2.1.1 a petition for adjudication; or

3.2.1.2 a petition for discretionary transfer; or

3.2.1.3 a motion to modify disposition that seeks to have the respondent committed to the Texas Youth Commission or confined in a secure facility.

3.2.2 If an indigent juvenile respondent is served with a petition or such a motion to modify is filed, the court shall appoint an attorney to represent the juvenile on or before the fifth (5<sup>th</sup>) business day after the motion to modify is filed or the petition is served on the respondent.

3.2.3 The juvenile courts may assign indigency determinations and hearings required under this section to the detention center referee.

3.3 A juvenile court or referee may appoint counsel for a non-indigent juvenile if either the parent(s) refuse to retain counsel for the juvenile or requests the juvenile court or referee to appoint counsel for the juvenile. In both cases, the court or referee shall require either reimbursement to the county for any attorneys' fees expended, or order payment directly to the attorney providing representation.

**4.0 APPOINTMENT OF COUNSEL TO REPRESENT INDIGENT JUVENILE RESPONDENTS - General Provisions:**

4.1 An attorney assigned to represent a juvenile respondent shall zealously represent a respondent until the respondent is acquitted, appeals are exhausted, or the court, after entering a finding of good cause on the record, relieves the attorney and / or replaces the attorney with other counsel.

- 4.2 If the court appoints an attorney, it is responsible for notifying the attorney of his appointment.
- 4.3 If the detention center referee appoints an attorney, the referee is responsible for notifying the attorney of the appointment.
- 4.4 The juvenile board's plan for appointment of counsel recognizes the differences in qualifications and experience necessary for appointments to cases in which the allegation is:
  - 4.4.1 conduct indicating a need for supervision; or
  - 4.4.2 delinquent conduct, and commitment to TYC is not an authorized disposition; or
  - 4.4.3 delinquent conduct, and commitment to TYC without a determinate sentence is an authorized disposition; or
  - 4.4.4 those cases in which determinate sentence proceedings have been initiated, or
  - 4.4.5 for proceedings for discretionary transfer to criminal court have been initiated.

## **5.0 LISTS OF QUALIFIED ATTORNEYS**

- 5.1 **MASTER LIST:** To be considered for placement on the **Master List**, each attorney must submit a completed application form and meet the following baseline criteria:
  - 5.1.1 Licensed and in good standing with the State Bar of Texas;
  - 5.1.2 Practiced law for at least one (1) year;
  - 5.1.3 Met the criteria for juvenile certification adopted by the board;
  - 5.1.4 Passed the juvenile certification test if one is offered; or attended an orientation course offered by the juvenile courts; or have been mentored through three (3) juvenile cases from beginning to end by an experienced attorney approved by the courts; or completed a CLE course offered or approved by the juvenile courts; or be board certified in Juvenile Law by the Texas Board of Legal Specialization;

- 5.1.5 Have observed adjudication, disposition, certification, and detention hearings in the courts in the juvenile trial division and the detention center;
- 5.1.6 Exhibited a commitment to providing quality representation to juvenile respondents;
- 5.1.7 Demonstrated professionalism and reliability when providing representation to juvenile respondents;
- 5.1.8 Average twelve (12) hours a year of continuing legal education courses or other training relating to juvenile law; and
- 5.1.9 Be approved by a secret ballot by a majority of the judges trying juvenile cases in Harris County, which can be appealed to the Juvenile Board as provided under Section 7.8.

**6.0 GRADUATED LISTS:**

6.1 **Class C List**: Attorneys may represent juvenile respondents in cases involving 1) conduct indicating a need for supervision and 2) delinquent conduct when commitment to TYC is not an authorized disposition.

6.1.1 To be eligible for **Class C** appointments, an attorney must meet the baseline criteria for inclusion on the **Master List**.

6.2 **Class B List**: Attorneys may represent juvenile respondents in cases of delinquent conduct in which commitment to TYC without a determinate sentence is an authorized disposition.

6.2.1 To be eligible for **Class B** appointments, in addition to meeting the baseline criteria for inclusion on the **Master List**, an attorney must have:

6.2.1.1 Have at least two (2) years experience in juvenile or criminal litigation;

6.2.1.2 Tried to conclusion thirty (30) misdemeanor criminal or juvenile cases, or tried to conclusion four (4) criminal felony or juvenile jury trials in the last five (5) years;

6.2.1.3 Taken an average of twelve (12) hours per year of continuing legal education courses or other equivalent training relating to juvenile law.

6.3 **Class A List**: Attorneys may represent juvenile respondents in cases in which determinate sentence proceedings or proceedings for discretionary transfer to criminal court have been initiated. To be eligible for **Class A** appointments, in addition to meeting the baseline criteria for inclusion on the **Master List**, an attorney must have:

6.3.1 At least three (3) years experience in juvenile and / or criminal litigation;

6.3.2 Tried to conclusion fifty (50) juvenile and / or criminal cases (stipulations or pleas), including six (6) contested juvenile and / or criminal trials, three (3) of which must have been to a jury;

6.3.3 Averaged a minimum of twelve (12) hours of juvenile CLE per year.

6.4 **Appellate List**: Attorneys may be appointed to represent juvenile respondents on appellate matters. In addition to the baseline criteria, appellate lawyers must:

6.4.1 be on the **Class A** or **Class B** List; and meet one of the following criteria:

6.4.2 be board certified in juvenile law by the Texas Board of Legal Specialization; or

6.4.3 have personally authored and filed at least three (3) appellate briefs; or

6.4.4 may submit a writing sample for approval by the judges.

## **7.0 COMPILATION OF MASTER LIST**

7.1 **Attorney Application and Approval**: Attorneys must complete and submit an application for inclusion on the **Master List**. Attorneys meeting the baseline criteria and who have been approved by a majority of the district court judges trying juvenile cases in Harris County will be placed on the **Master List**.

7.2 **Voting Will Be by Secret Ballot**. Judges will vote “approved,” “not approved,” or “abstain” as to each applicant.

- 7.3 Majority Vote for Inclusion: A majority vote of “approved” is necessary for an attorney to be included on the **Master List**.
- 7.4 Placement on Graduated Lists: Applicants approved by a majority of the judges for the **Master List** will be placed on the graduated lists according to adopted criteria. The judges will make appointments for indigent respondents only from the graduated lists of approved attorneys.
- 7.5 New Applications: The judges will consider new applications at least semi-annually in May and November of each year.
- 7.6 Annual Update: Attorneys shall report any material changes in their information before November 1 of each year. The Master List and graduated lists will be updated annually in May and November.
- 7.7 REMOVAL OF ATTORNEYS FROM THE MASTER LIST: A majority of the judges may remove an attorney from the Master List upon a finding of good cause or if the attorney intentionally or repeatedly does not fulfill his duties in representing indigent juvenile respondents.
- 7.8 Any vote that results in an attorney being excluded or removed from the master list may be appealed to the Harris County Juvenile Board.

## **8.0 METHOD FOR ASSIGNMENT OF ATTORNEYS AND PROCEDURES:**

- 8.1 METHOD FOR APPOINTMENTS: A court or referee shall appoint attorneys from the Master List or Graduated Appointment lists using a system of rotation. The court or referee shall appoint attorneys from among the next five (5) names on the appointment list in the order in which the attorneys' names appear on the list, unless the court or referee makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.
- 8.2 When submitting a request for an attorney, the court or referee shall designate:
- a. the ranking of the attorney needed;
  - b. the date of the assignment;



- c. any special requests (bilingual, etc.)
- 8.3 The court or referee shall choose an attorney from the next five (5) names on graduated lists of qualified attorneys for assignment as stated in 8.1, taking into account the availability of the attorney and the individual qualifications of the attorney with respect to the nature of the case.
- 8.4 The judges shall employ the Central Appointment Coordinator appointed by the judges trying criminal cases in Harris County to implement these interim appointment procedures.
- 8.5 APPOINTMENT PROCEDURES: The appointment procedures shall ensure appointments are reasonably and impartially allocated among qualified attorneys in a manner that is fair, neutral, and non-discriminatory.
  - 8.5.1 Judges must timely and fairly appoint counsel.
  - 8.5.2 If the respondent does not speak and / or understand English or is hearing impaired, the court shall make an effort to appoint an attorney capable of communicating in a language the respondent understands.
  - 8.5.3 An appointed attorney represents a respondent until the respondent is acquitted, all state appeals are exhausted, or the court, after entering a finding of good cause on the record, relieves the attorney and /or replaces the attorney.
  - 8.5.4 A court may replace an attorney if the appointed attorney does not make a reasonable effort to contact the respondent by the end of the first working day after appointment or does not interview the respondent as soon as practicable after appointment.
  - 8.5.5 Respondents charged with a jailable misdemeanor or felony offense must have an opportunity to confer with appointed counsel before commencement of judicial proceedings.
  - 8.5.6 A majority of the judges may remove an attorney from consideration for appointments if the attorney intentionally or repeatedly does not

fulfill the attorney's duties under the Family Code or Code of Criminal Procedure.

8.5.7 A majority of the judges may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

8.5.8 If the attorney does not provide proof of completion of the minimum continuing legal education (CLE) required by the state bar, the judges may remove his name from the list.

8.6 ATTORNEY REQUESTS FOR APPOINTMENTS. Attorneys whose names appear on the Master List of Qualified Attorneys shall submit requests to be considered for appointments to the Central Appointment Coordinator by way of computer in the District Court Administrative Office or through the Internet. An attorney may access the sign-up program by entering his bar card number. Before the system will accept the request, the attorney must enter a current telephone and / or pager number and, when applicable, an updated address and contact information. All requests must include the following information:

8.7 Name and bar card number;

8.8 Telephone, pager, and fax numbers and e-mail address (if available); and

8.9 Specific dates available.

8.9.1 Restrictions: Attorneys may not accept appointments to represent more than **three (3)** juvenile respondents in one day.

8.9.2 Duties of Newly Appointed Attorney: Each appointed attorney shall make every reasonable effort to contact the respondent no later than the end of the first working day after the appointment and to interview the respondent as soon as practicable.

8.9.3 Attorney Requests for Individual Case Assignments. Attorneys requesting individual case assignments shall submit their requests to the Central Appointment Coordinator.

- 9.0 **Fee Schedules.** The Juvenile Board adopts the following fee schedules:
- 9.1 **For Conduct Indicating a Need for Supervision and Misdemeanor Delinquent Conduct.** The fee schedule adopted by the County Criminal Courts at Law in Harris County, Texas; and
  - 9.2 **For Felonies.** The fee schedule adopted by the District Courts Trying Criminal Cases in Harris County, Texas.
- 10.0 **Appointed Attorney Compensation**
- 10.1 Appointed counsel shall be compensated for all work on behalf of a respondent, including habeas corpus proceedings, appellate work, and motions for rehearing.
  - 10.2 Compensation shall be based on:
    - 10.2.1 the time and labor required;
    - 10.2.2 the complexity of the case; and
    - 10.2.3 the experience and ability of counsel.
  - 10.3 Appointed counsel shall be paid a reasonable attorney's fee for performing the following services:
    - 10.3.1 time spent in court making an appearance on behalf of the respondent as evidenced by docket entry;
    - 10.3.2 time spent in trial;
    - 10.3.3 time spent in a proceeding in which sworn oral testimony is elicited;
    - 10.3.4 reasonable and necessary time spent out of court on the case, supported by any documentation the court requires;
    - 10.3.5 preparation of an appellate brief, preparation and presentation of oral argument to a court of appeals, the Court of Criminal Appeals; and / or the Texas Supreme Court; and
    - 10.3.6 preparation of motions for rehearing.
  - 10.4 An attorney shall not be paid until the attorney submits to the judge presiding over the proceedings a completed, itemized form detailing services rendered. The judge must approve payment.

- 10.5 If the judge disapproves the requested amount, the judge shall make written findings stating the amount of payment approved and the reasons for approving an amount different from the requested amount.
- 10.6 The attorney whose request for payment has been disapproved may, by written motion, file an appeal with the presiding judge of the administrative region. The presiding judge may conduct a hearing on the matter.
- 10.7 Not later than the 45<sup>th</sup> day after the date an application for payment of a fee is submitted, the commissioners court shall pay the amount approved by the presiding judge in accordance with the county fee schedule.
- 10.8 Counsel shall be reimbursed for reasonable and necessary expenses, including expenses for investigation, mental health experts and other experts.
- 10.9 Expenses incurred with prior court approval shall be reimbursed in the same manner provided for in the Code of Criminal Procedure for capital cases.
- 10.10 Expenses incurred without prior court approval shall be reimbursed in the same manner as provided in capital cases under Article 26.052(h) of the Code of Criminal Procedure.
- 10.11 A majority of the judges who established the qualified attorney list may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

**The Interim Standards and Procedures for Appointment of Counsel for Indigent Respondents** were adopted by 2/3 vote of the Harris County Juvenile Board on December \_\_\_\_\_, 2001.

Signed: \_\_\_\_\_, \_\_\_\_\_