

**LUBBOCK COUNTY LOCAL FAIR DEFENSE ACT PLAN AND RULES
SECTIONS OF THE**

LOCAL ADMINISTRATIVE RULES

(As Amended on December 3, 2004)

**DISTRICT COURTS
and
COUNTY COURTS-AT-LAW
LUBBOCK COUNTY, TEXAS**

**FAIR DEFENSE ACT AMENDMENTS
AMENDING RULE 5.20
and
ADDING RULES 5.50 THROUGH 5.60**

**LOCAL ADMINISTRATIVE RULES
DISTRICT COURTS
and
COUNTY COURTS-AT-LAW
LUBBOCK COUNTY, TEXAS**

Rule 5.20 - CRIMINAL CASE MANAGEMENT FROM — CASE FILING TO

DISPOSITION

(A) An Initial Appearance Hearing pursuant to Article 15.17 of the Code of Criminal Procedure, for all defendants arrested and detained in the Lubbock County Jail shall be held within 24 to 48 hours of arrest in compliance with Article 14.06 and 15.16 and 15.17 of the Texas Code of Criminal Procedure, the Laws and Constitutions of the State of Texas, the United States Constitution, as interpreted by the Texas Courts and Federal Courts and established by the Legislature of the State of Texas and “The Fair Defense Act.” The Board of Judges made up of the District and County Courts at Law of Lubbock County and the 72nd District Court will perform their Judicial duties and supervisory powers through these Local Rules and procedures so that the ends of the aforesaid laws will be inviolate.

(1) The Lubbock County Jail is designated as the receiving agency for all arrestees for all State law enforcement agencies having custody of a person pursuant to 14.06, 15.16 and 15.17 for presentation of a defendant before a magistrate unless directly ordered otherwise by the Judge of said court (and with the exception of Class C fine only offenses, arrests by warrant and without warrant arrests of municipal entities, which in the case of simultaneous arrest for Class C and Class B and above offenses and cases for which the Municipal Court has no jurisdiction, the Class C shall be magistrated and processed without undue delay of presentation to the magistrating system at the Lubbock County Jail for the greater offenses), or unless the laws, statutes, and regulations are in specific conflict with the general directives (i.e. blood test and medical necessities).

(2) Article 15.17, C.C.P. - Initial Appearance Hearings shall be conducted at least twice daily (once on County holidays) for all arrests without warrant and arrests on warrant to assure compliance with Article 14.06, 15.16, and 15.17.

(B) An indigent defendant shall be appointed an attorney in compliance with the “Fair Defense Act” of 2001 and by the Procedures established in Local Rule 5.50.

RULE 5.50 - FAIR DEFENSE ACT LOCAL RULES.

Rule 5.51 - “Local Criminal Procedures” and designated Appointing Judge

(A) Definitions: “Local Criminal Procedures” are written procedural and administrative rules concerning all formal and informal procedures related to Article 15.17, 26.04 and 26.05 of C.C.P., and Government Code Section 74.093 and are filed and maintained in accordance with Local Rule 10.30.

(B) The Office of Lubbock County Magistrate (Government Code 54.876, Subchapter M) and the Judge of said Court, under the direction of the Board of Judges of Lubbock County, is appointed to coordinate the timely appointment of counsel through the procedures of the FAIR DEFENSE ACT and is designated the “Appointing Judge” (or any magistrate, Article 2.09 C.C.P. in his or her absence, provisions for which are in the local procedures and for referral by each court). The Judge of the Office of Lubbock County Magistrate is, under the direction of the Board of Judges, hereby appointed to coordinate all 15.17 hearings and to assure compliance with the FAIR DEFENSE ACT at and through the Article 15.17, C.C.P. process and the transmission of all requests for appointed counsel to the respective courts or designated appointing Judge.

(C) Lubbock County Criminal Magistrates

(1) Lubbock County Magistrates are appointed pursuant to Government Code, Section 54, Subchapter M, by the Board of Judges to assist with the administration of Article 15.17 hearings. The procedures to be followed by the Magistrates and the Lubbock County Jail are set forth in the Lubbock County Magistrates Manual/handbook prepared and maintained by the Lubbock County Magistrate’s Office for guidance for the Magistrates and others involved in the 15.17 process, the Fair Defense Act, these local Fair Defense Act rules and the local criminal procedures, and subsequent resolutions and procedures that are filed and maintained as provided in Local Rule 10.30.

(2) The Magistrate shall perform the duties required by Article 15.17 and 26.04, C.C.P. as set forth in these Local Rules and procedures established by the Judges of the District and County Courts at Law of Lubbock County, Board of Judges as adopted, amended and resolved subsequent hereto and filed per Local Rule 10.30.

Rule 5.52 - Initial Appearance, Article 15.17 Hearings

(A) Any arresting law enforcement officer, or agency, as defined by the Code of Criminal Procedure is required by law, without unnecessary delay and no later than 24 hours on a misdemeanor and 48 hours on a felony after arrest, to present the person before a magistrate for an Article 15.17 hearing. In Lubbock County (with exception of municipal Courts with their own magistrating procedures for Class C misdemeanors which shall be operated without undue delay to other charges and arrests), all custodial arrests are required to be timely brought to the Lubbock County Jail for processing through the 15.17 hearing (unless taken directly to the Judge or Magistrate issuing the warrant). When the arresting authority presents and turns over the person to the Sheriff, no arrestee on a warrantless arrest of any degree is to be left at the Lubbock County Jail without a probable cause report for the magistrate at the 15.17 hearing. When a person is placed in the Lubbock County Jail after arrest, the Sheriff's office shall immediately, after necessary security precautions, allow reasonable access to the telephone in the booking area to call his/her attorney.

Rule 5.53 - Magistrating Procedures 15.17

(A) The Initial Appearance/Article 15.17 hearing and compliance therewith are conducted pursuant to the laws of the State of Texas, Texas Code of Criminal Procedure, Resolutions of the Board of Judges and the local criminal procedures that are maintained and filed in accordance with Local Rule 10.30.

(B) Each magistrate performing the functions of a 15.17 hearing shall:

(1) Conduct the hearing in accordance with Article 15.17, C.C.P.

(2) Maintain a record of proceedings including the commitment form approved by the Board of Judges and individual log sheets of each person, which is maintained in the Lubbock County computer. Manual copies of the log sheets shall be maintained at all times by the Lubbock County Magistrate's Office.

(3) Each magistrate shall advise and assist at the 15.17 hearing with the request for attorney forms and financial information forms. (Interpreters, bilingual forms, and forms for the Interpreter for the deaf are addressed in the court procedures).

(4) Mentally impaired - The mentally impaired should be identified by the Magistrate, if possible, as well as other defendants with special needs. The mentally impaired and defendants with special needs are identified and assisted by the Sheriff's Office Program for the Mentally Impaired, governing codes

and regulations of the Jail and the local criminal procedures.

(C) Each magistrate at a 15.17 hearing will transmit the requests for attorney by the local procedures to the Lubbock County Magistrate's Office, which shall transmit to the Judges of the Courts or designated Appointing Judge of the Courts.

(1) Each request or non-request is retained at the magistrating room for the Lubbock County Magistrate's Office who shall at the beginning of the first working business day transmit immediately to the Court or designated Appointing Judge (Lubbock County Magistrate).

(2) All warrantless arrest and J.P. warrant requests for attorney shall be immediately transmitted to the designated Appointing Judge.

(3) Upon receipt of the requests for attorney, the respective courts shall appoint and notify the attorneys of appointment for all defendants in jail by the end of the 3rd working day of the receipt of the request. The procedures for notification are set forth in the local criminal procedures maintained pursuant to Local Administrative Rule 10.30.

(4) (a) By Motion and Order for good cause, the magistrate may extend the 15.17 hearing and review of Probable Cause up to 72 hours after arrest.

(b) If no probable cause determination on a felony arrest without warrant has been made within 48 hours or a misdemeanor arrest without warrant within 24 hours, the Sheriff shall release the defendant on \$10,000 bond on a felony charge or \$5,000 bond on a misdemeanor charge and assist the person with immediate access to a telephone to arrange bond. If bond cannot be posted by the defendant within a reasonable time, the Sheriff shall release the defendant on a Personal Recognizance Bond with conditions to report to pretrial services. The Sheriff's Office in accordance with the Local Procedural Rules shall always have emergency contact numbers for the Lubbock County Magistrates for prevention of the non-occurrence of a timely 15.17 hearing or probable cause determination. Provisions for daily hearings are addressed in these Rules and the Local Criminal Procedure Rules.

Rule 5.54 - Appointing Procedures

(A) Determination of who is entitled to and qualifies for a court appointed attorney shall be made under the uniform procedures of Local Rule 5.59.

(B) All defendants appointed an attorney shall report to Pre-Trial Services as a condition of bond pursuant to the procedures adopted in these Local Rules and the Local Procedural Rules.

(C) Each Judge of each Criminal Court in which the case is filed (transferred or assigned) shall conduct a hearing after due notice on all re-evaluations of indigency and/or material change of financial circumstances according to the law so as not to interfere with established attorney-client relationship, except for the appointment of another lawyer to represent the accused because of removal or disqualification of the attorney, the dereliction of duties of appointed counsel, the appointment of a qualified attorney on all cases of the defendant pursuant to local procedures, or the redetermination of indigency and order to hire appointed counsel on a case when retaining other counsel would prejudice the defense and/or order the defendant to reimburse the County court appointed lawyer fees.

(D) All indigent persons presented to the magistrate at Article 15.17 hearing procedures shall be appointed an attorney pursuant to these Local Fair Defense Act Rules and local criminal procedural rules maintained to further the purposes of the Fair Defense Act.

(E) All arrests on Adversarial Proceedings (Capias, Alias Capias, Indictment, Information or Complaint and Justice Court warrant for arrest) shall be taken to the Lubbock County Jail, if not directly to the Court pursuant to Local Rule 5.20 and the procedures adopted by the Board of Judges.

(F) Arraignments for all defendants in custody in the Lubbock County Jail should be conducted within and no later than 10 days of presentation of and filing of the indictment or information and complaint.

(1) All defendants in custody without a retained attorney or an attorney who has entered an appearance or without an appointed attorney will be appointed an attorney based upon their written request and presentation of financial information sheet or oral examination by the Court at arraignment according to the "Procedures for Arraignment," Local Criminal Procedural Rules and ordered to report to Pre-Trial Services as a Condition of Bond. If an attorney is retained after appointment, the defendant may be ordered to reimburse the

County for court appointed attorney fees.

(2) All arraignments for defendant out on bond are conducted according to the Code of Criminal Procedure, Fair Defense Act, and according to the local procedural rules.

(3) All defendants arrested on Applications to Revoke Probation or Motions to Proceed with Adjudication of Guilt are taken to the Lubbock County Jail upon arrest instead of “immediately to the Court in which filed” (C.C.P. Article 42.12 (2)(6)), for the procedures of a 15.17 hearing and the appointment of attorney procedures of the Local Rules unless directed by the Court in which it is filed prior to the next scheduled 15.17 hearing.

(G) Mentally Impaired Defendants.

(1) Mentally ill or impaired defendants shall be identified by: (a) the Lubbock County Sheriff’s Office Program and jail procedures “Memorandum of Understanding, MHMR Center, Lubbock County,” the Health Code and TACOMI; (b) each person arrested and booked into the Lubbock County Jail has a required mental assessment at booking and attention the mental needs and special needs should be brought to the attention of the magistrate at the 15.17 hearing, or if delayed by necessity of medical reasons the next available magistrate for 15.17 procedures, for appropriate orders and transmittal of all related information to the appropriate court.

(2) Mentally ill or mentally impaired defendants should not be released from the Lubbock County Jail after an arrest without warrant until any feasible prescribed medication has been administered and the person stabilized through the nursing staff of the Lubbock County Jail per (d)(1) and the applicable codes, rules, and regulations concerning the mentally ill and impaired and after review by a magistrate for appropriate conditions of bond.

(3) Diversion of identified mentally ill and mentally impaired defendants should be made to available programs established for mentally ill or impaired, as directed by regulatory codes and regulations.

(4) Every effort should be made to identify the mentally ill or possibly mentally ill or mentally impaired and other persons with special needs per the local procedures.

(5) Every mentally ill or mentally impaired indigent defendant will be appointed counsel qualified by Local Rule 5.55.01 to represent the mentally ill or impaired defendants.

(6) The public records procedures of the Lubbock County Sheriff for identifying the mentally impaired, its screening process, and services, nursing procedures, “letter” agreements are incorporated by reference into these Local Rules. All of the Local Rules, procedures and Sheriff’s procedures are intended to comply with all laws and procedures required by the Fair Defense Act and Mental Health Code. Every identified mentally impaired person, if released pursuant to Article 17 C.C.P., shall be released on condition to report to Pre-Trial Services. When “released” by the Sheriff, reasonable effort will be made to release only at a time and hour that Pre-Trial Services, a guardian or case workers can assist at the door upon release.

Rule 5.55.01- Rotating Court Appointed Attorney List

A. The court appointed lawyer and appointment procedure of the District and County Courts At Law is a master rotating list from which every appointment will be made:

- (1) The list is separated by jailable misdemeanor offenses and felony offenses.
- (2) Appointments on all cases by all courts and magistrates and designated appointing Judge shall be made from this list.

(a) Each defendant shall be appointed the same attorney on all cases. In the event of conflicting appointments the attorney appointed and qualified to represent on the most recent highest grade of offense according to the qualifications adopted in Local Rules and substitution or removal of the other attorneys will be in accordance with C.C.P., the Local Rules and local criminal procedures unless immediate prejudice is brought to the attention of the appointing Judge of the Court making the appointment by the appointed attorney, accused, or Court in which the other appointment is made. No action on any pending case shall prejudice the rights of the accused to attorney representation required by due process, due course of law, and the Fair Defense Act. The rights of the accused on the greater most severe classified offense are superior to the lesser. Qualified attorneys will be appointed according to the greater offense. No docketing system is run, adopted or will be run under any

case management that conflicts with the principles of due process and due course of law or the objectives of these Local Rules and the Fair Defense Act.

(b) (1) The master list for felonies and master list for misdemeanors shall be coordinated. Any lawyer qualified on the felony appointment list is qualified for appointment on the misdemeanor list.

(2) The appointed attorney list is graduated according to qualification and maintained according to qualifications adopted by Local Rule 5.55.02.

(3) The master list shall be maintained on computer by the procedures adopted pursuant to these Local Rules for uniformity. In the event of computer failure, the appointments shall be made from hard copy of the list in the order on the list by each individual Judge's hard copy.

(4) The appointment shall be made by use of the graduated appointment list from the next five names appearing on the list available on the master rotating system unless good cause is found by the Judge or the attorney is not immediately available to assume responsibilities on the case. Skipping over to the next qualified lawyer to be appointed on the most serious offense or special needs is always good cause.

(5) The local procedures for staff, judges, and computer personnel are filed with local procedural rules revised and on file pursuant to Local Rule 10.30.

B. Duties of the Court Coordinator upon appointment of attorney.

The Coordinator for the Court shall notify appointed counsel of the appointment as immediately as reasonably practical on the date of the appointment. The duties and responsibilities of the attorney commence upon notice to his or her office by telephone, facsimile, or e-mail. The defendant shall be notified in writing as immediately as reasonably practical by means established by the local criminal procedures which are at a minimum delivery

to a defendant in jail of a copy of the appointment order and “Order to Report to Pre-Trial Services in event of making bond” by the end of the next working business day through the jail. Defendants out on bond who are not furnished copies at arraignment or an ARP docket shall be notified by mail. Defendants arraigned in jail (or ARP dockets) will be furnished copies as soon as practically possible. Failure of notification of the lawyer or availability of the lawyer shall be “good cause” to go to the next qualified lawyer immediately available to fulfill responsibilities and duties of court appointed counsel. All defendants in custody who request court appointed attorneys and make bond before receiving notice of the appointment and Order to Report to Pre-Trial are notified in the “Request for Attorney” form to report to Pre-Trial Services Program and by signs prominently posted in the booking area.

Rule 5.55.01 - Rotation Court Appointed Attorney List

(A) The rotating system is and shall be a graduated integrated system according to qualifications to represent defendants that provides for appointment of counsel qualified to handle cases as follows:

1st Degree Felony

2nd Degree Felony:

(1) violent (3g, aggravated cases, and sex offenders)

(2) non-violent

3rd Degree Felony

State Jail

Misdemeanors

Appeals

(B) Due consideration will be given by each appointing Judge to defendants identified as special needs and/or mentally ill or impaired in making the appointment.

Rule 5.56.01 - Qualifications of Attorneys

I. General Requirements for levels of cases

(A) An attorney seeking Court appointments in criminal cases shall certify in writing

on a yearly basis that they have obtained ten (10) hours of State Bar-approved continuing legal education (CLE) in criminal law within the past year. The hours shall be of the attorney's own choice but must be completed by June 1 of each year and filed before the re-application and review deadline of July 1.

II. Qualifications for Appointment in First Degree Offenses

(A) In addition to the ten (10) hours of CLE requirement outlined above, any attorney seeking to be appointed to represent a person charged with a First Degree felony or higher, or any felony offense classified as an "Aggravated" offense, more commonly known as a "3 G" offense, shall certify that they have:

1. Participated in the complete trial of no less than three (3) felony trials as the lead or second leading attorney. That is, the attorney must have been a First or Second Chair in three (3) felony cases.

OR

2. Participated in the complete trial of no less than two (2) of the following felonies: aggravated assault, any first degree felony or any 42.12-3(g) offense as the lead or second leading attorney.

OR

3. The attorney must have tried to completion five (5) misdemeanor trials as the lead attorney (First Chair).

OR

4. A sufficient combination of the trials listed above.

III. Qualifications for Appointment in Second Degree cases

(A) In addition to the ten (10) hours CLE requirement outlined above, any attorney seeking to be appointed to represent a person charged with a felony of the Second Degree or less shall certify that they have:

1. Participated in the complete trial of no less than two (2) felony trials as the lead or second leading attorney. That is, the attorney must have been a First or

Second Chair in two (2) felony cases.

OR

2. Participated in the complete trial of no less than three (3) misdemeanor trials as either the lead attorney or second leading attorney. That is, the attorney must have been a First or Second Chair in three (3) misdemeanor cases.

OR

3. A sufficient combination of the trials listed above.

IV. Qualifications for Appointment in Misdemeanor cases

(A) To receive appointments in misdemeanor cases, an attorney must meet the ten (10) CLE hours requirement outlined in paragraph I. above and be approved by the Judges of the Criminal County Courts-at-Law.

V. Appeals

(A) To qualify for appointment in cases on appeal, the attorney shall demonstrate to the Board on their application at least the equivalent experience above for qualification on the type of offense and experience with appeals or experience of having appealed and acted as counsel on appeal at least 3 civil or criminal cases. Capital appeals will be assigned only to attorneys with extensive experience in appeals of criminal cases and who meet the qualifications to serve as appointed trial counsel on the highest level felony. Capital appeals will be assigned only to attorneys with extensive experience in post-conviction practice, who have appealed at least on capital felony, and further, must meet the qualifications to serve as appointed trial counsel on capital cases.

Note: An attorney who is board certified in criminal law meets all qualification requirements listed above.
Rule 5.56.02 Court Appointed Attorney List

(A) The attorney appointment list (in Lubbock County) is a voluntary list as required by the Fair Defense Act. Attorneys who are qualified to represent indigent accused who by choice have not applied and are not on the list who are willing assume their ethical responsibilities to represent indigent accused may be appointed in extraordinary cases for good cause by the District and County Court at Law Judges. The “good cause reason” for deviation from the list should be noted in the record at a minimum on the order of appointment. No lawyer will be appointed who does not

meet the qualifications for court appointed attorneys in Rule 5.56.01.

(B) The appointment list entries and notation system is developed and programmed on the county computer system whereby the next names on the list will show to the appointing Judges. The entry of the appointment feeds into a database list of which lawyers have been approved to what cases and all case analysis and related systems. An additional database is programmed to record fees, requests and payment of fees, amounts of payment on each case, each individual lawyer's payments and the total of court-appointed fees paid to all attorneys on an accessible and retrievable database for persons administering the Fair Defense Act, including the County Auditor, and preparing annual reports required by the Fair Defense Act.

(C) To apply to be on the list, the lawyer must submit to the Board of Judges through the Court Administrator's Office (designating requests for the misdemeanor list and/or degrees for the felony list) the application form provided with the Local Procedural Rules.

(D) The Judges of the District Courts and County Courts at Law trying criminal cases pursuant to the division of courts with whom criminal cases are assigned shall approve placing an attorney on the respective appointment list by majority vote.

(E) Annually, by July 1, all attorneys wishing to remain on the list will certify to the courts their C.L.E. hours for the preceding year. By August 1, the Judges will review the list and re-consider qualifications of each attorney according to the graduated degree of seriousness of the offense for which the lawyer seeks to be appointed. An attorney shall file with the Director of Court Administration as secretary for the Board of Judges a copy of his or her State Bar of Texas - CLE. Report when received.

(F) Applications and qualifications shall be accepted, reviewed, approved, and re-evaluated throughout the year as requested by an individual attorney.

(G) An attorney may voluntarily remove his/her name from the list or designated degree(s) of offenses or advise the court if there is a need to be temporarily removed because of work load or other reasons by written statement to the court coordinator's office for the District Courts, County Courts at Law and Lubbock County Magistrate Office (designated appointing Judge.).

(H) The attorneys will be contacted immediately after appointment, advised of the

appointment and if the client is in jail or out. If the client is in jail, the attorney will also be advised of the orders to report to Pre-Trial Services and any Conditions of Bond Orders. The attorney shall, as required by C.C.P. 26.04, as amended, make every reasonable effort to contact the defendant not later than the first working day after the date on which the attorney is appointed and interview the defendant as soon as practical after the attorney is appointed. In the event the defendant is in jail at the time of appointment and released from jail prior to appointment and notification of the lawyer, the jail desk will furnish the attorney with the defendant's address, telephone number and bondsman and the attorney shall contact the defendant through one of those means and advise the defendant of his/her appointment and when or how to contact him/her for interview. On appointments in jail, the appointed attorney's office, at minimum for contact required pursuant to 26.04, may prepare a letter explaining his/her appointment and when or how the attorney will be arranging an interview, how to reach the attorney and mail or have delivered to the Sheriff's office for delivery to the defendant. The Sheriff's office shall arrange a system for daily delivery of these attorney representation/contact letters to the inmate. This includes letters delivered to the jail not through the post office. This Rule is administered through the local procedures on file pursuant to Local Rule 10.30, which provide further details.

(I) Attorneys on the appointment list appointed on defendants in jail are to advise, discuss and determine with their clients immediately, possibilities of bond reduction, provisions of CCP Article 17.151, if applicable, Writs of Habeas Corpus, and any Pre-Trial Services or other conditions of bond. Attorneys shall understand the law that the making of bond does not in and of itself disqualify a person's eligibility for court appointed counsel.

(J) If appointed counsel is hired, he/she is to immediately contact, in writing, the Court through the Court Coordinator's office and Pre-Trial Services if the defendant had been ordered to Pre-Trial Services.

(K) The court appointed attorney is obligated on behalf of the client to advise the court of any change in the defendant's indigence status or material change in financial circumstances.

Rule 5.56.03 Removal

(A) Every Judge should immediately call to the attention of the other Judges a lawyer

who has not been exhibiting the qualifications necessary to represent the accused, of necessity to remove an attorney from the list for repetitive non-compliance with duties to contact and interview the client or other neglect and/or complaints. These matters shall be brought to the attention of the Board of Judges and any required hearing will be held at the next bi-monthly meeting of the Board of Judges. On majority vote of the Judges, the attorney, after notice and opportunity to be heard, may be removed from the list or other remedial action taken pursuant to this rule. Designation of qualification according to the degree of seriousness of the offense on any individual attorney may be changed in a Judicial Working Session without notice to the attorney. Such determinations of necessity must be made in executive session to warrant a fair and frank discussion of the attorney's qualifications and abilities to assure adequate and effective representation of the criminally accused (or juvenile). After notification of the change, the attorney may ask to raise the matter before the entire Board of Judges.

Attorneys, after notice and opportunity to be heard as provided herein, may be removed from the appointment list for any of the following non-exclusive grounds for removal:

- (a) The attorney requests removal from the appointment list
- (b) The attorney does not have the qualifications required for appointment
- (c) The attorney fails to contact or interview and timely perform the duties required by the Texas Fair Defense Act
- (d) The attorney has been found by a court to have provided ineffective assistance of counsel

- (e) The attorney has violated a rule of professional responsibility or otherwise disqualified by the State Bar Rules
- (f) An attorney shall be automatically removed for non-compliance with Rule 5.56.02(E) herein
- (g) For other good cause.

An attorney may voluntarily be temporarily removed from the appointment list by request.

(B) All officers of the court, staff, and personnel are obligated to the Court to report any misconduct of an attorney directly to the Judge presiding over the matter. Any misconduct, violations of ethics, neglect of duties to client, or actions or omissions

reflecting on qualifications to serve as court appointed counsel receiving appointments shall be brought to the attention of the Board of Judges during Judicial Executive Session. Any reporting obligations of the Judge presiding on any case to which the lawyer has been assigned to the State Bar is that particular Judge's individual responsibility but for such conduct as reflects on ability and qualifications to remain on court appointed attorney list.

(C) Upon receiving a report or request for review for removal for one of the causes or good cause herein, the Board shall cause to be drafted and forwarded to the attorney reasonable notice informing the attorney of the of the ground or grounds for removal, the time and place the Board of Judges will meet to discuss the grounds for removal and give the attorney an opportunity to respond in writing, in person or both.

(D) After the Board of Judges/Juvenile Board meets and gives the attorney an opportunity to be heard, the Board of Judges/Juvenile Board shall determine whether the attorney should, by majority vote:

1. Remain on the list at the same levels,
2. Moved to less serious level, or
3. Removed altogether.
4. In addition , the majority of the Board of Judges/Juvenile Board may also vote to require the attorney to take other rehabilitative measures.

(E) Removals from any list may be probated. For removal or probated removals, the Board may require the completion of rehabilitative measures as a condition of probation or re-application. An order of removal should state in the order the earliest date at which the attorney may apply for reinstatement. An attorney who was removed from an appointment list under grounds for removal related to violations of ethics or State Bar Rules will be reinstated upon providing proof that the actions have been dismissed or resolved favorable to the attorney, unless other grounds for removal existed or exist against the attorney that would prohibit reinstatement.

(F) The decision of the Board of Judges/Juvenile Board is final and may not be appealed.

Rule 5.56.04 - Obligations of attorney

(A) An attorney shall never accept an appointment if he or she cannot meet the immediate demands of the C.C.P. and Fair Defense Act. Every attorney appointed

shall be familiar with the Local Procedural Rules including but not limited to:

- (1) Timely contact and interview procedures of the defendant.
- (2) Training of staff to alert the Court Coordinator upon first contact that the attorney cannot assume timely the immediate responsibilities of the appointment or has a conflict.
- (3) The duties of counsel concerning bond reductions.
- (4) Immediately contacting the Court a change of indigence of an appointed defendant or of being hired on an appointed case.
- (5) The duty of the defendant to report any material change of financial circumstances.
- (6) The duty to notify the Court immediately of any conflict in representation of the accused.
- (7) Instruct office to immediately advise the court or court coordinator of inability to comply with these Rules and local procedure rules.
- (8) Enter appearance on the case per the Local Rules.
- (9) The attorney should be informed of pending out of county, out of state, or Federal charges.

(B) Each attorney wishing to remain on the list shall comply with the duties of appointed counsel prescribed by the Code of Criminal Procedure, these Local Rules and local procedure rules, the Fair Defense Act, case law, and the Rules of Ethics.

Rule 5.56.05 - Notice of Appearance

All attorneys retained or court appointed are required to immediately upon undertaking representation on any case, file a notice of appearance with the Court Coordinator's Office of that Court or on cases on which adversarial proceedings have not been filed with the "Designated Appointing Judge" Coordinator.

Rule 5.58 - Compensation

(A) Appointed counsel shall be compensated for all work, on behalf of a defendant, including habeas corpus proceedings, appellate work, and motions for rehearing. The counsel shall be paid based on the time and labor required, the complexity of the case, and the experience and ability of counsel. Appointed counsel shall be paid a reasonable attorney's fee for performing the following services: (1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited; (2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires; (3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and (4) reasonable expenses. Submission of the request for pay shall be on the form provided by the Local Criminal Procedural Rules itemizing the services performed to the Judge presiding over the proceedings.

(B) The County shall pay appointed counsel for all time and expenses reasonably necessary for adequate representation. The fee schedule may be amended by the Procedures for Amendments of these Local Rules.

The fee schedule for Lubbock County is:

1. Misdemeanors -

(A) (1) Minimum hourly out of court rate \$ 65.00.

(2) Minimum hourly in court rate \$ 65.00.

(B) Minimum flat fee rate court time:

Minimum Plea \$ 150.00

Minimum Pre-Trial \$ 150.00

Minimum Jury Trial \$ 450.00 per day.

2. Felonies -

(A) (1) Minimum hourly out of court rate \$ 75.00.

(2) Minimum hourly in court rate \$ 75.00.

(B) Minimum flat fee rate court time:

Minimum Plea \$ 300.00

Minimum Pre-Trial \$ 300.00

Minimum Jury Trial \$ 450.00 per day.

Expert and investigative expenses shall be itemized and submitted with the Request for Payment unless pre-ordered by the Court. Law Clerks, runners, office investigators, para-legals, outside ordinary overhead expenses and copying expenses shall be billed separately on the form to be reviewed by the court. The Judge of each Court shall make docket entries of the time in Court for all pre-trial proceedings and time in Court in trial. Requests for pay shall be submitted on the approved form for all courts as provided in the local procedure rules. All of the cases to which the attorney was appointed shall be billed on one request and submitted to the presiding

judge over the last hearing of greatest offense. The Requests for itemized fee (more than flat plea fee) must be accompanied by the itemized statement form. Fee requests shall be submitted at the time of a plea or conclusion of the case. All fee requests, requesting more than the “flat” fee options above, shall submit the itemized fee request form. The Judge shall state reasons on the itemized form for disallowance of any hours or expenses. The request for payment and the Judge’s order authorizing payment will be forwarded to the County Auditor. The original fee order, along with the request for payment and itemized statement form shall be filed in the court file. The attorney has the right to appeal the fee to the Presiding Judge of the Judicial District after payment of the fee without prejudice to the appeal by receipt of the payment. Fees are approved and ordered on the form. The Texas Task Force on Indigent Defense’s “Model Rules for the Appeal of a Trial Court’s Disapproval of Requested Court Appointed Attorney’s Fee” and forms are incorporated in the local procedures and filed pursuant to Local Rule 10.30 and should be used for the formal appeal process.

Rule 5.59 Indigence Standards and Uniform Rules for Determination

(A) Determination of indigence shall be based upon:

(1) The defendant’s income; (2) source of income; (3) assets; (4) property owned; (5) outstanding obligations; (6) necessary expenses; (7) number and ages of dependents and; (8) spousal income available to the defendant. The courts will not consider whether the defendant has posted bail except to the extent that it reflects the defendants financial circumstances.

(B) The defendant will be appointed an attorney upon receipt of the Request for Attorney and Financial Information forms and, if required by the court, upon oral examination of the accused.

(C) Definitions. As used in this rule:

(a) “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.

(b) “Non-exempt assets and property” means cash in hand, stocks and bonds, accounts at financial support.

(c) “Household” means all individuals who are actually dependent on the defendant for financial support.

(d) “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.

(D) Financial Standards for Determining Indigence. The financial standards set forth below 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;

(2) the value of the non-exempt assets and property owned by the defendant:

(i) does not exceed \$2,500.00;

(ii) does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

(iii) does not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.

(3) 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;

(4) if the defendant is currently serving a sentence in a correctional institution, is currently held in custody, is currently 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 has no non-exempt assets or property in excess of the amounts specified above.

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.

(E) Appointing Counsel for Partially Indigent Defendants.

(1) A defendant determined to be partially indigent may be eligible for appointment of counsel but may be ordered to reimburse the County based on ability to pay by order of the court making the appointment and ordered to Report to Pre-Trial Services. If a defendant determined to be partially indigent pleads or is found guilty, the court may order the defendant to comply with a payment schedule to reimburse the county for all indigent defense costs in the case.

(F) Factors Not to be Considered.

(1) A defendant's posting of bail or ability to post bail may not be considered in determining whether the defendant is indigent or partially indigent. Even when a defendant has posted bail, the defendant's financial circumstances are measured by the financial standards stated in this rule.

(2) The resources available to friends or relatives of the defendant may not be considered in determining whether the defendant is indigent. Only the defendant's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

Rule 5.60 Selection and Appointment of Counsel in Death Penalty Cases

(A) Whenever a capital felony case is filed, the presiding judge in the district court in which the case is filed shall appoint two attorneys at the time the initial appointment is made, unless and until the state gives notice in writing that the state will not seek the death penalty.

(B) Qualifications of Lead Counsel. To be assigned as lead counsel in a death penalty case an attorney must:

(1) Be on the list of attorneys approved by the local selection committee of the administrative judicial region for appointment in death penalty cases as provided in Article 26.052 of the Code of Criminal Procedure;

(2) Have met the qualifications for placement on the felony list of the highest level and meet all "special needs" qualifications in this county as set forth in these local rules, whether or not the attorney has ever applied for placement on that list;

(3) Have tried to verdict at least 15 felony jury trials as lead counsel;

(4) Have attended and completed in the last two years of appointment an approved CLE capital case seminar;

(5) Have in the last 12 months completed at least 16 hours of approved

CLE related to the trial of a punishment phase in a capital case;

(6) Have tried to verdict two death penalty cases as first or second chair defense counsel; and

(7) Be approved for appointment in the case by a majority of the felony judges in the county.

(C) Qualifications of Second Chair Counsel. To be assigned as second chair counsel in a death penalty case an attorney must:

(1) Be on the list of attorneys approved by the local selection committee of the administrative judicial region for appointment in death penalty cases as provided in Article 26.052 of the Code of Criminal Procedure;

(2) Have met the qualifications for placement on the felony list of the highest level and meet all “special needs” qualifications in this county as set forth in these local rules, whether or not the attorney has ever applied for placement on that list;

(3) Be approved for appointment on capital cases by a majority of the felony judges in the county; and

(4) Attend an approved CLE capital case seminar, before, at, or reasonably near the time of appointment; and

(5) Have in the last 12 months completed at least 16 hours of approved CLE related to the trial of a punishment phase in a capital case.

FORMS:

- (1) Local and Procedural Rules, Criminal Cases
- (2) Fee Order and request for pay
- (3) Arraignment Order
- (4) Report to Pre-Trial
 Out on bond
 In jail if make bond
- (5) Commitment form
- (6) Request for Attorney form
- (7) Financial Information form
- (8) Cover letters re appointment
- (9) Conditions of Bond form
- (10) Order to Show Cause and Application form
- (11) Magistrate Manual
- (12) Resolution of the Board of Judges, May 22, 2001
- (13) Local Procedural Rules
- (14) Instructions to Magistrate Coordinator
- (15) Local D.C.M. draft
- (16) Order on Request for Attorney
- (17) Order of Appointment of attorney form
- (18) Magistrate Court Coordinator Duties and Responsibilities

- (19) Current Court Appointed Attorney list - hard copy posted as required
- (20) Current Court Appointed
Attorney list for Capital Death Cases - hard copy posted as required
- (21) Model Procedure for Appeal of Disapproval of Requested Counsel Fee