



RULES OF COURT

Harris County Criminal Courts at Law

As Amended May 14, 2009

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RULE 1. GENERAL PROVISIONS

On May 14, 2009, the duly elected and appointed judges of the County Criminal Courts at Law of Harris County, Texas, met and adopted the following rules to facilitate the efficient management of the courts' dockets. These rules take effect May 14, 2009.

These rules, in conjunction with the Code of Criminal Procedure, and the Government Code, govern proceedings in the Harris County Criminal Courts at Law. These rules shall not be construed as extending the jurisdiction of these courts, nor shall they be construed to overrule or conflict with the Texas Government Code, Texas Code of Criminal Procedure, Texas Penal Code, Texas Rules of Evidence, or Texas Rules of Appellate Procedure. These rules are intended to govern local proceedings where such rules are not in conflict with existing law and where such rules are consistent with state statutory law and rules promulgated by the Texas Court of Criminal Appeals and the Texas Supreme Court.

The district clerk shall not make any changes with regard to random filing, numbering of cases, docketing of cases, transfer of cases, assignment of settings, or any other matters that affect the distribution of work or the conduct of the business of the Harris County Criminal Courts at Law unless so directed by the judges of the County Criminal Courts at Law.

RULE 2. PROCEDURE FOR THE FILING OF CASES

A. Numerical Sequence

Each case filed and docketed into the county criminal courts at law shall be assigned a sequential number based on the following case number structure:

Beginning January 1, 2000 case numbers shall consist of seven numerical digits, the first case number filed on January 1, 2000 shall be "0978400." Case numbers shall continue sequentially thereafter, which scheme shall allow cases to be numbered through 9,999,999.

The following rules shall govern the assignment of misdemeanor cases and other matters within the jurisdiction of the County Criminal Courts at Law of Harris County, Texas:

B. Random Filing

All misdemeanor proceedings filed with the district clerk shall be randomly assigned by the district clerk to the various county criminal courts at law. This shall be accomplished by means of a blind filing process that provides for the equal distribution of new cases in such a manner that it cannot be determined to which court a case will be assigned until after the assignment occurs.

The primary means of assignment of cases shall be through the use of a computer program that provides for the random assignment and equal distribution of cases. The computer program shall be capable of maintaining a journal of filings and distribution of cases that will permit periodic or random audit to determine whether the program is assigning cases as intended.

If the primary means of assignment, the computer program, is not available, the district clerk's office shall use the manual random selection device for the filing of cases into the county criminal courts at law. Prior to each case assignment, the random selection device shall be rotated on its axis, and one ball therein shall be withdrawn. The court number indicated on the ball randomly chosen shall become the assigned court for the case. The district clerk shall add the ball back into the random selection device immediately, so as to not disturb the random filing and docketing of all other cases into the county criminal courts at law.

The clerk shall receive, assign and account for all cases in ascending numerical sequence.

1. How Cases Are Attracted To Courts

Before using the computer program or the manual random selection device to determine court assignment for a given case, the district clerk shall determine by research whether the defendant named in the misdemeanor information has a prior connection to an existing case in any of the county criminal courts at law. A prior connection is established when:

- (a) a defendant has been accorded misdemeanor probation in one of the county criminal courts at law and the probation has not been revoked or been terminated;
- (b) a defendant has prior pending misdemeanor charges in one of the county criminal courts at law, to include pending appeals of class C offenses from courts that are not courts of record;
- (c) a defendant is charged and the charge arose from the same criminal transaction that was the basis of a misdemeanor information previously filed in one of the county criminal courts at law;
- (d) a defendant has been accorded deferred adjudication in one of the county criminal courts at law and the deferred adjudication has not been terminated or adjudicated;
- (e) a defendant has been granted a restricted driver's license in one of the county criminal courts at law and is charged with a subsequent DWI (Driving While Intoxicated) or DWLI (Driving While License Invalid);
- (f) a defendant has not discharged his or her sentence;
- (g) a defendant was accorded probation or deferred adjudication and he or she has appealed the decision;
- (h) a defendant with a case on appeal is charged with a new offense; or
- (i) a defendant is charged with driving while intoxicated, boating while intoxicated, or flying while intoxicated and the defendant was charged with driving while intoxicated, boating while intoxicated, or flying while intoxicated during the last five (5) year-period immediately prior to the date alleged in the newly filed misdemeanor information, and the earlier charge resulted in a final conviction, whether the sentence was imposed or suspended.

If one or more of the above prior connections exists, the new misdemeanor case shall be attracted to the court in which the defendant has the prior connection.

In the event that a case is attracted to a court in error, then the coordinator of the court receiving the case in error shall complete a transfer order to be signed by the presiding or co-presiding judge that orders the case back into rotation. The order is then returned to the district clerk for compliance therewith.

2. Filing of Cases Charging Public Lewdness, Gambling Offenses, Prostitution, Violations of the Alcoholic Beverage Code, or County or Municipal Ordinances Relating to Sexually Oriented Businesses

There is no attraction by either codefendant or transaction in cases charging public lewdness, prostitution, violations of the Alcoholic Beverage Code, gambling offenses, or county or municipal ordinances relating to sexually oriented businesses. The clerk shall apply all other rules of attraction.

3. Appeals From Lower Courts

(a) City of Houston and City of Bellaire municipal appeals are filed into the courts on a rotation basis and are not attracted to an already pending misdemeanor, nor do such cases attract other misdemeanors.

(b) All other lower court appeals are trial de novo cases. They are attracted to other misdemeanors already pending against the same person and, likewise, attract other misdemeanors when pending. These cases are simply new county court cases.

(c) Each category attracts additional lower court appeals in its own category. For example, an appellee/defendant who, having a pending City of Houston municipal appeal, appeals another City of Houston case will have the newer appeal filed into the court where the extant appeal is pending. Similarly, an appellee/defendant who, having a pending appeal from a lower court other than a municipal court of the City of Houston, appeals another non-City of Houston case will have the newer appeal filed into the court where the extant appeal is pending.

(d) Finally, City of Houston and City of Bellaire municipal appeals do not attract other lower court appeals, and other lower court appeals do not attract City of Houston or City of Bellaire municipal appeals.

4. Re-files, Writs of Habeas Corpus, Mandamus, Prohibition, Restricted Driver Licenses, Fugitives

If a case is re-filed, it shall be assigned to the same court as the case it supersedes. The district clerk is then authorized to attract and set the re-filed case in the court where the initial misdemeanor information is or was pending. The setting date assigned to the re-filed case will be the same date as that of the initial pending case. If the initial case is no longer pending, the re-filed case shall be set in accordance with the rules governing the filing of new cases.

Motions for leave to apply for writs of habeas corpus, mandamus, or prohibition shall be filed pursuant to an order by the court agreeing to hear those matters. Petitions for

restricted driver licenses shall be filed in the court in which the conviction was entered and the driver license suspended. Petitions for restricted driver licenses filed by a Harris County resident that result from a suspension for an offense committed in another county (other than for driving while intoxicated or an offense or administrative violation that results in a suspension) shall be filed in any court agreeing to hear the matter, or as provided for in subsection B of Rule 2. Fugitive cases shall be filed in County Criminal Court at Law No. 10.

Unless the above categories of cases are later transferred by agreement of the judges or are transferred by authority of a separate order, all such assigned cases shall remain on the docket of the court of assignment until final disposition.

5. Assignment of Occupational License Petitions

(a) The case shall be docketed into the court in which the defendant's driver's license was suspended, or a previously filed petition for an occupational license was denied.

(b) In all other cases, the petition shall be filed according to the rules of attraction.

C. Application of Bail Schedule by District Attorney

The District Attorney shall apply the bail schedule in all cases, or shall provide the District Clerk with a signed order from a judge or judicial officer setting a bail other than the amount in the bail schedule.

D. Designation of Bail

The clerk shall enter the bail amount.

When the district clerk receives a complaint from the district attorney that is not accompanied by an order setting bail and the amount on the charge is not consistent with the bail schedule, the clerk shall enter the number "888888" in the bond amount field.

RULE 3. TRANSFER OF CASES

A. Research by Clerk

Upon filing and docketing of a misdemeanor indictment or information into the county criminal courts at law, the district clerk will determine by research whether the named defendant has a prior connection in any of the county criminal courts at law. This research shall be done in accordance with the criteria established in Rule 2.

B. Re-filing of Cases

All re-files of cases pending or dismissed shall be filed and docketed in accordance with statutory rotation. The district clerk is authorized to transfer and set the re-filed case in the court where the initial misdemeanor indictment or information is or was pending. If the initial case is pending, the setting date assigned to the re-filed case will be the same as that for the initial case. If the initial case is not pending, the re-filed case shall be given an appropriate setting in accordance with these rules.

All writs of habeas corpus, contempt, and ex parte matters shall be filed and docketed in accordance with these rules. The district clerk is authorized to transfer and set the proceedings in the court where a prior case connection exists or, if no prior connection exists, to transfer the proceeding to the court wherein the hearing on such proceedings is to be conducted.

C. Docket Notation

When it has been determined that a case is to be transferred from one court to another, the judge of the sending court shall enter a docket notation that the case is to be transferred and shall specify the court to which the case is to be transferred.

D. Transfer Order

After the docket notation is completed, the clerk of the sending court will prepare a transfer order, obtain the judge's signature, and cause the signed order and court case file to be timely delivered to the clerk of the receiving court. The clerk of the receiving court will obtain the receiving judge's signature on the transfer order. At that time, the receiving coordinator will set the case in the receiving court and complete the setting information on the bottom of the transfer order.

E. Entry of Transfer Order

The clerk of the receiving court will deliver the completed transfer order and the court file to the district clerk's office. The transfer order will be entered and verified in the records maintained by the Justice Information Management System. The entries in the court case file will be completed prior to data entry/data verification of the transfer order. A copy of the completed transfer order bearing the transaction number will be filed in the court's case file. Duplicate copies of the transfer order shall also be provided to the clerk of the receiving court for delivery to the assistant district attorney assigned to that court and to the defense attorney of record.

F. Justice Information Management System Update

The district clerk shall update the Justice Information Management System records with the case setting date of the receiving court, and shall enter the reason for the transfer. At that time, the setting record remaining in the transferring court will be closed.

RULE 4. INITIAL SETTINGS

A. First Settings

1. First Setting on All Cases

The first setting date of the case shall be known as the arraignment setting, and it shall be provided by the district clerk on all cases except those filed as non-arrests, where instead a capias is issued for the defendant. The clerk shall set first settings in the following manner:

Cases filed on Monday through Thursday shall be set for arraignment on the same day of the following week. Cases filed on Friday, Saturday, or Sunday shall be set for arraignment on the following Friday.

Non-arrest cases shall be set for arraignment in accordance with the above rules upon the filing of an executed *capias*.

A defendant released from custody on a personal bond under the conditions described in TEX. CODE CRIM. PROC. ART. 17.033, shall be set to appear in the court in which the case is pending at 9:00 o'clock a.m. on the day of release for the purpose of holding a hearing as required by TEX. CODE CRIM. PROC. ART. 15.17. If a defendant is released from custody after 9:00 o'clock a.m., the defendant shall appear in court at 9:00 o'clock a.m. on the next business day.

The criminal law hearing officer ordering the defendant to be released shall, at the time the defendant signs a personal bond, order the defendant, in writing, to appear as provided above, and the hearing officer shall also direct personnel from the office of court services to provide the defendant with written notice of the date, time and place that the court will be in session.

The hearing officer who orders the defendant's release shall immediately notify, by e-mail, the judge and the coordinator of the court in which the defendant is set, notifying them of the defendant's release and pending appearance in that court.

The district clerk shall enter the first setting at the time the complaint and information are filed. The setting information shall be reflected on the complaint document above the misdemeanor charge literal in a manner that will provide the setting information on all copies of the indictment, information, and complaint. Further, when a bond is filed with the district clerk, the district clerk shall provide written notice of the case's first setting date to the person filing the bond.

B. Probable Cause Hearings for Further Detention

1. Appearance Before A Criminal Law Hearing Officer

When the district clerk files an indictment, information, or complaint alleging the commission of a misdemeanor offense within the jurisdictional limits of a county criminal court at law and the defendant is in the custody of law enforcement officials in Harris County, the district clerk shall update the electronic records in the automated system to reflect that charges have been filed. Further, by general order of the judges of the county criminal courts at law, all law enforcement officials in Harris County shall cause the pretrial detainees in their respective custody, who have been charged with a class A or class B misdemeanor, to be delivered to the criminal law hearing officer not later than 48 hours after arrest for the purpose of conducting a hearing to determine probable cause for further detention. Personnel and electronic files, along with original and hard copy files, where appropriate, from the district attorney, district clerk, and office of court services (pretrial services agency) necessary to conduct the hearings shall be present and made available to the criminal law hearing officer. All detainees will be deemed to have been "taken before a judge or judicial officer" if they are physically present at the hearing, or if their participation

is achieved by the use of high-speed, two-way audio/video transmission technology. In circumstances where audio/video technology is utilized, the entire hearing must be recorded on videotape and maintained by the court for a period of one hundred twenty (120) days after the hearing. A written record of the proceedings shall be made.

2. Hearing Actions

The criminal law hearing officer shall perform the following for every person for whom a hearing is conducted:

- a. inform the accused in clear, understandable language, or through the use of an interpreter consistent with TEX. CODE CRIM. PROC. ARTS. 38.30 and 38.31, as appropriate, of the charges against him and of any complaint or information that may have been filed against him;
- b. inform the accused of the accused's right to retain counsel; of the accused's right to remain silent; of the accused's right to have an attorney present during any interview with peace officers or prosecutors; of the accused's right to terminate police interrogation at any time; of the accused's right to request the appointment of counsel if the accused is indigent; inform the accused of the process for requesting an appointed attorney; ask the accused if the accused requests appointed counsel; and inform the accused that any statement the accused makes can and probably will be used against the accused at trial;
- c. if the accused affirmatively requests appointed counsel, the judicial officer shall, if assistance is requested, instruct Court Services personnel to assist the accused in completing the form. Court Services personnel shall assist the accused in completing the form.
- d. if the accused has not yet been interviewed, Court Services personnel shall promptly conduct an interview;
- e. record the fact that the accused does not request appointed counsel;
- f. immediately forward a request for appointed counsel to the judge of the court in which the case is pending;
- g. determine whether probable cause exists for the further detention of the accused on the charges filed, through the use of live witness testimony, affidavits, the arresting officer's testimony, an analysis of the written offense report, field notes, or other reports prepared by the arresting officer, except in those cases where arrest was pursuant to the issuance of a warrant;
- h. in cases involving the offense of stalking or family violence, determine whether a magistrate's order for emergency protection should be entered;
- i. enter the basis and results of the findings on the record and have the same included in the papers of the case file maintained by the district clerk;
- j. upon a finding that no probable cause for further detention exists, the criminal law hearing officer shall issue a signed order to the sheriff to immediately release the accused from custody in that case; and

- k. upon a finding that probable cause for further detention exists, the criminal law hearing officer shall, after determining whether the accused is currently on bail for a separate criminal offense, set the amount of bail required of the accused for release and shall determine the eligibility of the accused for release on personal bond, cash bond, surety bond, or other alternative to scheduled bail amounts, and shall issue a signed order remanding the defendant to the custody of the sheriff. A copy of such finding and return by the sheriff shall be retained by the district clerk in the case file.
- l. Judicial officers taking an action as identified above shall direct the clerk to make appropriate entries into the automated system as the facts and law require, as set out below:
 - i. PC FOUND. Used when probable cause is found (i.e. on "to be" warrants, or when defendant is not present)
 - ii. WARNS GIVEN. Used when the statutory warnings are given, PC has already been done.
 - iii. PC/WARNS DONE. Used when the Judge/Magistrate does both.

3. Initial Bail Schedule

The bail schedule maintained by the county criminal court at law judges for all misdemeanor offenses occurring within the courts' jurisdiction shall be referred to by the criminal law hearing officer. The initial bail amount may be changed on motion of the court, the hearing officer, or any party subject to the following criteria:

- (a) the bail shall be sufficiently high to give reasonable assurance that the defendant will comply with the undertaking;
- (b) the nature of the offense for which probable cause has been found and the circumstances under which the offense was allegedly committed are to be considered, including both aggravating and mitigating factors for which there is reasonable ground to believe shown, if any;
- (c) the ability to make bail is to be regarded, and proof may be taken upon this point;
- (d) the future safety of the victim and the community may be considered, and if this is a factor, release to a third person should also be considered; and
- (e) the criminal law hearing officer shall also consider the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds of the accused.

4. Monitoring of Incarcerated Defendants

It shall be the responsibility of the courts' coordinators to monitor daily the status of each detainee still in custody to determine whether the detainee has appeared before the criminal law hearing officer for a detention hearing. If a detention hearing has not been held, the court will hold a hearing as set forth above. The court will also consider the issue of appointment of counsel where raised by the defendant.

C. Incarcerated Defendants' Twenty-four Hour Setting

A twenty-four hour setting will be provided for all cases by the court in which the case is pending, wherein the defendant remains incarcerated in the Harris County Jail. These hearings will be conducted at regular docket calls on Monday through Friday. The defendant shall be docketed in accordance with the following schedule, and in such cases the initial seven-day setting shall be canceled.

Court Appearance Schedule			
Date Booked		24-Hour Appearance	
Sunday	0001-2400	Monday	0900
Monday	0001-2400	Tuesday	0900
Tuesday	0001-2400	Wednesday	0900
Wednesday	0001-2400	Thursday	0900
Thursday	0001-2400	Friday	0900
Friday	0001-2400	Monday	0900
Saturday	0001-2400	Monday	0900

At all other times (weekends, holidays, and nights), defendants booked into the county jail on any and all process pending in or issued out of the county criminal courts at law, shall be brought immediately before a criminal law hearing officer who shall determine if probable cause exists for the continued detention of the defendant.

D. Subsequent Settings

All subsequent settings of misdemeanor cases shall be the specific responsibility of the judge or coordinator of each of the county criminal courts at law, who will file a notice of setting in writing with the district clerk or provide notice by entry on the court's docket sheets. That notice is to be used by the clerk for recording data in the automated system.

1. Bond Reinstatement

When a case is again active because of the reinstatement of a bond, either with or without cost, the district clerk shall enter a seven-day setting, except when a setting already exists in the system. When a setting already exists, the date in the system shall prevail as the next setting date.

2. Bench Warrants and Attachments

Such documents shall have a setting date in the body of the document and the district clerk shall set accordingly.

3. Summons in Lieu of Capias

- (a) When a misdemeanor information is filed against a corporation in, for example, a pollution case, the process issued shall be a summons rather than a capias. The summons shall require that the corporation make an appearance

at 10:00 A.M. on the first Monday next following the expiration of twenty days from the date of service.

- (b) When a summons is used against a defendant in lieu of a *capias* in a misdemeanor information that is a re-file of an earlier-filed misdemeanor information, the appearance date on the newly filed case shall be set for the same date as the earlier filed case, except when the earlier filed case has no setting. In that event, both cases shall be set for seven days, and the setting in the re-filed case shall be for arraignment.
- (c) Neither a summons nor a *capias* may issue without a judicial finding of probable cause.

4. Notice of Appeal

The district clerk shall notify the court coordinator or judge of the court when a notice of appeal is filed in a case in which the court either has entered judgment or suspended the imposition of judgment. The court coordinator shall place the case on the court's docket as directed by the judge, or on the next regular business day. The court coordinator shall notify the defendant and the defendant's attorney-of-record of the setting (see form at Policies and Procedures, Appendix, Page A-6).

5. Notice to Court When Appeal Bond Not Filed

When a defendant has given notice of appeal and an appeal bond has not been filed in the papers of the cause within forty-eight hours, a report shall be sent to the court apprising the court that an appeal bond has not been filed. Upon receiving such a report, the court shall notify the appellant/defendant's attorney. If the appellant/defendant has no attorney, the appellant/defendant shall appear before the court. If the appellant/defendant does not post an appeal bond, the court shall issue a *capias* for the appellant/defendant.

6. Mandate of Abatement

The district clerk and court coordinator shall notify the staff attorney for the county criminal courts at law upon receipt of a mandate or order of abatement. The court coordinator shall set a date from fourteen (14) to twenty one (21) days from the date of receipt of order or mandate. The coordinator shall notify the surety, the principal, and the attorney-of-record by certified mail.

7. Mandates of Affirmance and Reversal and Remand

The district clerk, upon receipt of an order or mandate, shall determine whether the defendant is in the Harris County Jail. If the defendant is in jail, the case shall be set the next day court is convened. If the defendant is on bond, the district clerk shall immediately issue a *capias* for the defendant, provide a seven-day setting, and forward the information to the court coordinator. Immediately upon receipt of the information from the clerk, the court coordinator shall notify the attorney-of-record on appeal, the surety on the appeal bond, if one exists, and the appellant by regular

mail. The court coordinator shall also attempt to notify the above parties by telephone.

8. Violation of Post Judgment Orders

The Sheriff shall bring any person arrested for violating a post judgment order issued by a Judge of a County Criminal Court at Law before a Criminal Law Hearing Officer. The Hearing Officer shall determine the identity of the person, and conduct a hearing on the reasons for the person's arrest and enter such orders as provided by law.

9. Petitions for Non-disclosure

In accordance with Section 411.081(d) Texas Government Code (2003) petitions for non-disclosure are filed with the district clerk, a fee is paid, and the case is set.

Petitions filed under this section will be set by the district clerk, upon collection of the filing fee for fourteen days from the date the petition is filed, or as ordered by the court.

RULE 5. ADDING CASES TO THE DAILY DOCKET

Only the judge or the coordinator of the court may approve the addition of a case to the docket.

To request the addition of a case to the court's docket, the requesting party (district attorney, defense attorney, court clerk, sheriff, et cetera), shall submit to the court coordinator the case number, defendant's name and status (jail or bond), and the reason for the request.

Those cases approved for addition to the court's docket will be submitted via the county criminal courts at law add-on form to the clerk of the court by 3:00 p.m. of the day before the case(s) is/are to be added to the docket. Jail cases may be exempt from this time requirement.

RULE 6. DOCKETING OF MISDEMEANOR INDICTMENTS

Upon receipt of a misdemeanor indictment returned by a Harris County grand jury and certification that the case is to be transferred to the docket of the county criminal courts at law, the case shall be randomly filed and docketed into the county criminal courts at law in the manner prescribed by law and in accordance with these rules. The district clerk shall endorse the amount of bail upon the papers of the case in accordance with the bail schedule provided by these rules. The district clerk shall then issue a *caapias* to the sheriff of Harris County, who shall immediately attempt to apprehend the defendant.

RULE 7. DOCKETING OF NON-RECORD MUNICIPAL COURT AND JUSTICE COURT APPEALS

A. Original Case Numbers

All cases transmitted to the district clerk of Harris County, Texas, by municipal and justice courts for the purpose of appeal of misdemeanor convictions shall contain all

original papers filed, an appeal bond, and a certified transcript of all proceedings had in the transmitting court.

1. Notice To Appellant

Where the transcript is complete, the de novo appeal shall be set for arraignment and a pretrial hearing (as provided by Article 28.01, CCP) thirty (30) days from the date that notice of the hearing is sent via regular mail by the district clerk to the defendant at the address shown on his bond. If the bond shows no such address, the notice may be addressed to one of the sureties on the bond. The provisions of Article 28.01, CCP, shall control the filing and hearing of all matters and the conduct of the proceedings.

2. Contents of Notice

The notice shall contain the cause number assigned to the appeal and the court into which the case was assigned; the time, date, and location of the court in which the defendant is to appear; and shall contain the following statement:

"The court has scheduled your arraignment and a pretrial hearing in this case on the above date. At this setting you will be asked to enter a plea of not guilty, nolo contendere, guilty, or make any other special plea provided by law. In addition, the Court will hear any matters you or your attorney wish to raise prior to trial at this time. These matters must be raised by written pretrial motion filed with the clerk of the court not later than seven (7) days before the hearing date, unless you receive permission from the judge of the court to file them on another date."

3. Defendant in Custody

Where the defendant is in custody, the de novo appeal shall be set for arraignment on the next date the court is in session.

B. Filing and Attraction of Municipal and Justice Court Appeals.

Two types of municipal appeals, referred to in the system as MAPs, are distinguished: City of Houston and City of Bellaire municipal appeal; and all others, including justice court and non-record municipal cases.

(a) City of Houston and City of Bellaire municipal appeals are filed into courts on a rotation basis and are not attracted to a pending misdemeanor nor do such cases attract other misdemeanors.

(b) All others are trial de novo cases and are attracted to other misdemeanors already pending against the same person and, likewise, attract other misdemeanors when pending. These cases are simply new county court cases.

(c) Each category attracts additional MAPs in its own category. For example, an appellant/defendant who, having a City of Houston municipal appeal pending, appeals another City of Houston case will have the newer appeal filed into the court where the extant appeal is pending.

(d) An appellant/defendant who, having any other municipal or justice court appeal pending, appeals another non-City of Houston case will have the newer appeal filed into the court where the extant appeal is pending.

(e) City of Houston and City of Bellaire appeals do not attract other municipal appeals and other municipal appeals do not attract City of Houston appeals.

RULE 8. DOCKETING OF CASES: JUDGE RECUSAL OR DISQUALIFICATION

Upon granting a motion to recuse or disqualify, the Judge shall contact, or direct the coordinator to contact, the district clerk's office and request the random selection of another court in the same manner provided for the assignment of cases in these rules. The district clerk shall use the randomized computer filing system to assign the case to a new court, and inform the judge of the result. The court number indicated by the computer shall become the receiving court for the case. Should that selection reflect the number of the recused or disqualified court, to the random selection program, this process will be repeated as necessary until a court is selected that does not reflect the recused or disqualified court.

The district clerk shall certify in writing the receiving court selected for the cause and transmit that certification to the judge of the court who has ordered the recusal or disqualification.

The recused or disqualified judge shall cause a transfer order to be initiated, with the transfer reason of "recuse" or "disqualified" indicated thereon, and shall transfer the cause to the court indicated by the clerk's certification of random selection. The certification of random selection shall be filed in the papers of the cause transferred.

If the judge of the receiving court determines that he or she must also recuse, he or she shall initiate the foregoing procedures to select a new receiving court.

A court receiving a recused case does not transfer a case to the recusing court.

RULE 9. SETTING AND MODIFYING BAIL SCHEDULE OF BAIL AMOUNTS

Pursuant to the agreed final judgment and order of the federal court in *Roberson v. Richardson* (No. H-84-2974), Southern District of Texas [1987]), the Harris County Criminal Court at Law Judges promulgate this initial bail schedule. The district attorney shall affix an initial bail amount at the time a complaint is filed in a county criminal court at law. The initial bail amount shall be determined by either presenting relevant information in the possession of the district attorney to a county criminal court at law judge, or Harris County Hearing Officer, or by applying the initial bail schedule. The district clerk shall record the bail amount set by the judicial officer or applied by the district attorney from the initial bail schedule in the case file. This shall be the exclusive means of setting the initial amount of bail, unless otherwise directed by the Judges of the Harris County Criminal Courts at Law.

Misdemeanor Bail Schedule

Class: B, Standard Offense	
1st Offense	\$500
2nd Offense	\$500, plus \$500 for each prior misdemeanor conviction plus \$1,000 for each prior felony conviction Not to exceed \$5,000
Class: A, Standard Offense	
1st Offense	\$1,000
2nd Offense	\$1,000, plus \$500 for each prior misdemeanor conviction \$1,000 plus \$1,000 for each prior felony conviction not to exceed \$5,000
Class: Family Violence or Threat of Violence	
1st Offense	\$1,500
2nd Offense	Plus \$2,000 for each prior conviction for a violent offense or threat of violence
Class: DWI	
First Offense	\$500
Subsequent Offense	\$2,500 plus \$1,000 for each prior conviction not to exceed \$5,000
Class: Any offense committed while on bond, community supervision, intervention, or parole.	\$5,000
Any motion to adjudicate or revoke community supervision.	\$5,000

The initial bail amount shall be determined by application of the bail schedule. In any case where the district attorney desires a bond higher than that on the bail schedule, the district attorney shall make a request to a judge of the county criminal court at law or a criminal law hearing officer. The order, when signed by the judge or hearing officer shall be provided to the district clerk along with the complaint and information for filing.

The district clerk shall apply the amount of bond from the bail schedule except in cases where the district attorney has provided the clerk with an order setting bail signed by a judge of a county criminal court at law or a criminal law hearing officer, in which case the clerk will apply the amount of bail provided for in the order setting bail.

If the clerk does not receive an order setting bail or if the amount of bail exceeds the amount provided for in the bail schedule, the clerk shall make an entry in the bail field as provided by Rule 2D, and bail will then be set by a judicial officer.

RULE 10. REFUND OF CASH BONDS

Unless a notice of appeal is given, cash bond deposits will be refunded to depositors other than the defendant upon final disposition of the criminal proceeding. If a notice of appeal is given, refunds will not be given until a replacement bond has been duly filed with the district clerk.

In the event the criminal proceeding is reversed and remanded to the trial court, no refund or assignment will be granted until a replacement bond has been duly filed with the district clerk.

RULE 11. BOND FORFEITURE REINSTATEMENTS, DISMISSALS, AND JUDGMENTS

All bond reinstatement orders, bond forfeiture dismissal orders, and agreed judgments, wherein payments of costs of judgments are involved, shall be presented in person by the bonding agency only to the judge of the court wherein the forfeiture occurred.

The total amount of the costs on bond reinstatements with costs, dismissals with costs, and in the case of agreed judgments the total amount of judgment and costs, will be delivered to the court along with the order of judgment by the bonding company.

Money orders, cashier's checks, and firm checks, payable to the Harris County district clerk, are the only tender that will be accepted. Cash payments may be made in advance and a receipt obtained from the district clerk and presented with the order or judgment.

All bonding agencies shall be required to obtain the future setting date from the court coordinator prior to presenting orders of reinstatement and costs. All future settings shall be seven days from the date of the reinstatement order.

Upon reinstatement, dismissal, or approval of agreed judgment by the judge of the court wherein the forfeiture occurred, the order, judgment, and the accompanying tender shall be delivered by the judge to the clerk of his court for delivery to the district clerk's office.

RULE 12. APPROVAL OF PERSONAL BONDS DURING NON-BUSINESS HOURS

A. Personal Bonds During Non-Business Hours

The following procedures will control the filing of personal bonds at the directive of a county criminal court at law judge by telephone, at night, on weekends, or on holidays. The only type of personal bond that will be accepted will be the court's personal bond:

1. The district clerk will verify the request with the judge or a criminal law hearing officer by telephone at a designated number (his home phone) or at a number provided by said judge at the time the district clerk receives the request.
2. The district clerk will determine where the defendant is incarcerated and will prepare all personal bond documents for defendant.
3. The district clerk will prepare the personal bond form, secure the defendant's signature on the bond and issue the court's directive (C-87) to effect the release of the

- defendant. If a call is received for a defendant in the city jail or outlying holding agency, the district clerk will process the personal bond and release as soon as the defendant is received in the Harris County Jail. One seeking or having an interest in the release of the defendant may take the bond to the city jail or other holding agency, have it signed by the defendant in the presence of a notary or the clerk of the court in which the case is pending, and return it to the district clerk, who shall then issue the appropriate court directive (C-87) to the sheriff.
4. The sheriff will issue a release for the defendant. If the defendant is incarcerated in the city jail or an outlying agency, the release may be carried there by a person having an interest in the release of the defendant. Otherwise, the defendant will not be released until after such time as the defendant is received in the Harris County Jail.
 5. The bond will be presented to the Judge, or to a Criminal Law Hearing Officer, if the Judge so directs, on the next regular working day for his signature.

RULE 13. SIGNING OF PLEADINGS

Every pleading, brief, or motion of a party represented by an attorney, shall bear the manuscript signature of at least one of the attorneys of record, in his individual name, along with his state bar card number, address, and telephone number. The pleading, brief, or motion shall further contain a certification that a copy of the document was mailed or hand-delivered to opposing counsel.

RULE 14. PREPARATION OF JUDGMENTS

The district clerk of Harris County, Texas, shall prepare the judgment in the case at the time the judgment is rendered, and present it without delay to the trial judge for approval and signature. Judgments in multi-count indictments or informations shall be prepared by the prosecuting attorney at the time the judgment is rendered and the prosecuting attorney shall present it without delay to the trial judge for approval and signature.

RULE 15. OCCUPATIONAL DRIVER LICENSES

A. Filing of Petition for Occupational License

A petition for an occupational driver license requested as the result of a conviction for driving while intoxicated and automatic suspension of a driver's license shall be filed with the criminal division of the district clerk's office. The clerk shall provide a case information sheet approved by the judges of the county criminal courts at law to each petitioner. The petitioner, or his representative shall complete the case information sheet and submit it together with the petition for occupational license to the district clerk.

B. Assignment of Occupational License Petitions

The case shall be docketed into the court in which the defendant's driver's license was suspended, or a previously filed petition for an occupational license was denied.

C. Setting

The district clerk shall set the petition on the court's docket seven days from the date it is filed, or on a date set by order of the Judge of the court with jurisdiction.

RULE 16. ATTORNEY OF RECORD

- A. On the first appearance retained counsel shall complete the Attorney of Record form provided by the court. Upon appointment under the Fair Defense Act, counsel shall complete the appointment order signed by the Judge. Retained or appointed counsel shall file the attorney of record form, or the order appointing counsel with the clerk of the court before the conclusion of his first appearance. The district clerk shall use the attorney of record form, or the order appointing counsel as a source document for data entry into the Justice Information Management System. A written motion and order of the court will be required for withdrawal as attorney of record.
- B. The original attorney of record is presumed, under these rules, to continue as attorney when a notice of appeal is filed. When the original attorney of record does not continue to represent the defendant on appeal, then the original attorney of record shall file a motion to withdraw as attorney of record in the county criminal court in which the case is pending. At the time the motion to withdraw is filed, the original attorney of record shall also request a hearing date from the court coordinator who shall set the motion on the court's docket within seven (7) calendar days of presentment. The purpose of this hearing is to allow the court to rule on the motion to withdraw.
- C. When notice of appeal is filed and an attorney other than the attorney of record is retained to prosecute the appeal, then appellate counsel shall file a motion to substitute counsel in the county criminal court at law in which judgment was entered. The motion shall be filed at the time notice of appeal is filed, or not later than five (5) calendar days after the date counsel is retained or appointed. The appellate counsel shall also request a hearing date from the court coordinator who shall set the motion to substitute counsel on the court's docket within seven (7) calendar days of presentment. The purpose of this hearing is to allow the court to rule on the motion to substitute counsel.
- D. The written notice of appearance of counsel on appeal will be filed with the clerk for the case file and will become a part of the clerk's transcript on appeal.
- E. When an attorney is appointed to represent an indigent defendant, the order appointing counsel shall be the document used to attach the attorney's name to the case as an appointed attorney.

RULE 17. JUVENILE DEFENDANTS

- A. Any defendant who is charged with a misdemeanor offense within the jurisdiction of the county criminal courts at law of Harris County will be presumed to be an adult until a proper judicial determination is made to the contrary.

- B. In any case wherein proof is offered that a defendant may be a juvenile, the sheriff and/or the district attorney are requested to make the court in which the cause is pending aware of the style of the case in which the defendant is suspected to be a juvenile.
- C. The court will set the case as soon as possible for a hearing as provided by TEX. CODE CRIM. PROC. ART. 4.18, to determine if the defendant is a juvenile. Only after that determination will the defendant be released from custody, and the cause transferred to the juvenile court in accordance with TEX. CODE CRIM. PROC. ART. 4.18, and Section 56.08, Family Code.
- D. In all cases wherein a determination is made that a defendant is a juvenile, expeditious transfer of the case will be made to remove the case from the criminal court's docket.
- E. The defendant may be released from custody if evidence is provided to the sheriff or other holding agency that the defendant is a juvenile. The evidence effecting the defendant's release shall be presented to the court on the next court workday so that a judicial determination may be made and, if the court finds that the defendant is a juvenile, a transfer to the juvenile court will be immediately processed. Should the court find, however, that the defendant is not a juvenile, appropriate process will be issued for the defendant's arrest.

RULE 18. COUNTY CRIMINAL COURT MANAGEMENT PROGRAM

The presiding judge is chief executive officer, and is assisted by the co-presiding judge. The court manager assists the presiding and co-presiding judges and provides management, systems, and legal assistance to all courts, as well as training to the coordinators.

A. Court Manager and Coordinator System for Certain Harris County Courts

1. The courts in Harris County that have the same criminal jurisdiction may establish and maintain a court manager and coordinator system.
2. The judges of the courts to which this section applies may appoint a court manager, one or more court coordinators, and other staff as appropriate to the needs of the local jurisdiction. The judges shall by rule designate the qualifications and duties of the court manager and the coordinators to improve criminal justice and expedite the processing of the criminal cases through the county courts. The court manager and the coordinators shall cooperate with state agencies having duties relating to the operation of the courts to promote uniform and efficient justice.
3. The court manager and the coordinators serve at the pleasure of the judges.
4. The court manager and coordinators are entitled to reasonable compensation as set by the judges of the courts served. The court manager's compensation may not exceed sixty (60) percent of the salary paid the judges, unless the commissioners' court by order sets the court manager's compensation at a greater amount. The amount paid the coordinators may not exceed fifty (50) percent of the salary paid the judges.
5. On the judges' orders, the commissioners' court shall fund the court manager and coordinator system from fines collected by the courts served by the court manager

and coordinators. If the fines collected are insufficient to provide the total funding for the program, the county shall provide the additional funds needed.

6. This section does not diminish the statutory duties and powers of the sheriff, district attorney, clerk of the court, or any court officer.

B. Court Coordinators Training/Salary Plan

The Harris County Court Coordinators' Career Ladder Salary Plan was created by a joint order of the Judges of the District Courts Trying Criminal cases and the County Criminal Courts at ILw of Harris County, Texas. The plan became effective September 1, 1994.

1. Effective September 1, 1994, all court coordinators employed by a district court or a county court at law shall be placed in Step 7.0 of the plan and shall be exempt from the bachelor's degree requirement for Step 8.0 through Step 12.0. Court coordinators employed on or after September 1, 1994 must meet the annual requirement to attend sixteen (16) hours of continuing education to be eligible for step increases for Step 8.0 through Step 12.0. All persons employed after September 1, 1994 as a court coordinator in a district or county court at law will be paid in accordance with eligibility requirements for plan steps and incentive pay. As amended November 19, 2002, the steps are reduced from 12 to eight.
2. The anniversary date of the plan will be September 1st of each year.
3. The Administrative Office of the District Courts and the Office of Court Management for the county criminal courts at law will certify to the Harris County Budget Office on August 1st of each year the step level and incentive pay eligibility of each court coordinator.
4. Continuing education is defined as enrollment in, and completion of, sixteen (16) hours of continuing education in courses offered by the Administrative Office of the District Courts and/or the Office of County Court Management, or through attendance at programs offered by the Texas Center for the Judiciary, the Texas Association for Court Administration, the Justice Management Institute, the National Center for State Courts, the Institute for Court Management, the National Association for Court Management, the National Judicial College, the Criminal Justice Center at Sam Houston State University, or other approved programs. Continuing education hours are required in addition to any other educational requirement of this plan.
5. In addition to the basic salary provided in Step 1.0 through 12.0, incentive pay will be awarded to those persons meeting the minimum eligibility requirements. Similar to other benefits, such as longevity pay, incentive pay follows the "person," not the "position," and incentive pay is not considered when cost of living increases are calculated.
6. For completion of at least sixty (60) hours of college credit, or for attainment of an associate's degree, a person will be eligible for a step classification of 0.1 and incentive pay of \$75.00 per month. To be eligible for plan credit, at least half of the credit hours must be from the following subject areas: English, math, computer science, accounting, management or public administration, human resource or personnel management, psychology, sociology, criminal justice, law, government or

- political science, or a foreign language. All hours must be granted from an institution recognized by the Texas Higher Education Coordinating Board, or must be transferable to one of its recognized institutions. A person who has graduated from the Executive Development Program of the Institute for Court Management of the National Center for State Courts meets the minimum requirement for this incentive pay step.
7. A person who is multilingual and has been certified, through written and oral examination, to interpret in the courts is eligible for incentive pay step 0.1.
 8. For attainment of a bachelor's degree, a person will be eligible for a step classification of 0.2 and incentive pay of \$150.00 per month. The major area of study or at least half of the earned credit hours must be from one of the following subject areas: English, math, computer science, accounting, management or public administration, human resource or personnel management, psychology, sociology, criminal justice, law, government or political science, or a foreign language. All hours must be granted from an institution recognized by the Texas Higher Education Coordinating Board or be transferable to one of its recognized institutions.
 9. For attainment of a master's degree, a person will be eligible for a step classification of 0.3 and incentive pay of \$225.00 per month. The major area of study or at least half of the earned credit hours must be from one of the following subject areas: English, math, computer science, accounting, management or public administration, human resource or personnel management, psychology, sociology, criminal justice, law, government or political science, or a foreign language. All hours must be granted from an institution recognized by the Texas Higher Education Coordinating Board or be transferable to one of its recognized institutions.

C. Staff

1. Court Manager

The County Criminal Court Manager is chosen by a majority of the county criminal court at law judges and hired by the presiding judge. Although the court manager serves at the pleasure of the courts, the court manager's primary responsibility is to the presiding judge of the county criminal courts at law.

2. Assistant Court Manager (Project Analyst)

The assistant court manager is interviewed and hired by the court manager with the approval of the presiding judge. This person also serves as the project analyst for the county criminal courts at law.

3. Staff Attorney

The staff attorney for the county criminal courts at law is appointed by the presiding judge and hired by the court manager.

RULE 19. CODE OF JUDICIAL CONDUCT

All persons employed by the county criminal courts at law in any capacity shall, within the first thirty days of employment, be apprised of the contents of the Code of Judicial Conduct by the court manager, or by the staff attorney at the direction of the court manager, as the Code applies to the affected employee. The employee shall have an opportunity to ask appropriate questions related to the intent and meaning of the Code. When the meaning and intent of the Code of Judicial Conduct is understood by the employee, the acknowledgment on the following page shall be executed and signed with at least one witness present. The completed acknowledgment shall be filed in the employee's personnel file folder, and a copy shall be retained by the employee (see form at Policies and Procedures, Appendix, Page A-8).

RULE 20. COURT REPORTERS

A. Absent and substitute court reporters.

A court reporter in a county criminal court at law will be allowed only that vacation and sick leave time as approved by the commissioners' court for Harris County employees. In the event of a court reporter's absence that is not covered by approved vacation or sick leave time, that court reporter will be responsible for paying the costs to provide the court with a substitute reporter.

During the approved absence of a court reporter, the Office of County Court Management shall be contacted to determine whether a reporter from another county criminal court at law is available before a substitute is hired, unless the court's reporter has made prior arrangements for coverage with another court reporter.

RULE 21. SATISFACTION OF JUDGMENT: ORDER PERMITTING PARTIAL PAYMENT ON FINES AND COSTS

The Sheriff of Harris County, Texas is directed to accept either the full amount or a partial amount of any fine, court costs or fees lawfully adjudged against a defendant. The sheriff or his designated deputy shall notify the judge of the court with jurisdiction over the defendant within 72 hours that partial funds were remitted, and shall include the (1) case number; (2) name of the defendant; (3) amount remitted; (4) date remitted; and (5) amount outstanding, as reflected in the records of the sheriff.

RULE 22. VIEWING AND COPYING DWI VIDEO TAPES

A *pro se* defendant or the attorney whose name appears on the court's Attorney of Record form required under Rule 16 shall be permitted to view and obtain a copy of a videotape made pursuant to Acts, 1983, CH. 303, §24, without an order. Either the *pro se* defendant or attorney of record may designate a third party to obtain a copy of a video tape by designating that person or company on the attorney of record form or separate motion to the court.

The Harris County District Attorney shall permit the pro se defendant, or the attorney of record or a third party to view and obtain a copy of a video tape at a time and place mutually agreeable to the parties.

To obtain a copy of a video tape the pro se defendant, the defendant's attorney or a designated third party shall provide the Harris County District Attorney with a blank video tape cassette or other recording medium agreeable to the parties and the court.

The district clerk shall enter the name of the designated person or company into the Justice Information Management System by utilizing an appropriate connection code that can be viewed on the computer transaction that shows parties connected to a case number.

Rule 22 is effective upon completion of changes in the Justice Information Management System that will facilitate compliance with these rules, but not later than the first day of August 1999.

RULE 23. RELEASE OF CLERK'S RECORD TO COUNSEL

- A. The attorney representing a defendant appealing a judgment of a county criminal court at law shall be permitted the use of a copy of the Clerk's Record. Before releasing a copy of the Clerk's Record, the District Clerk of Harris County or a deputy clerk shall determine from the records in his possession the identity of the attorney of record on appeal. The District Clerk or a deputy clerk shall only release a copy of the Clerk's Record to the attorney representing the defendant on appeal. If the identity of the attorney of record on appeal cannot be ascertained or is in dispute, the clerk shall refer the attorney to the judge of the court in which judgment was entered and shall not release a copy of the Clerk's Record without a written order from a judge of a county criminal court at law.
- B. The District Clerk shall develop procedures to ensure that copies of the Clerk's Record are released and returned in a timely manner and their location always known.

RULE 24. ALTERNATIVE PLAN FOR THE APPOINTMENT OF COUNSEL TO INDIGENT DEFENDANTS UNDER THE TEXAS FAIR DEFENSE ACT

A. DEFINITIONS

As used herein, the following terms and phrases shall have the following meanings:

1. Criminal Law Hearing Officer means a judicial officer created by Chapter 54, Subchapter L of the Texas Government Code (§§ 54.851 et seq.)
2. Defendant means a person detained, arrested, or otherwise in the custody of a law enforcement agency.
3. First-chair counsel means the attorney in charge of the case.
4. He or him refers to a male or female.
5. Judge means a Judge of a Harris County Criminal Court at Law.
6. Judicial Officer means either a Judge of a Harris County Criminal Court at Law, or a Harris County Criminal Law Hearing Officer.

7. Plan means the Alternative Plan adopted by the Judges of the County Criminal Courts at Law of Harris County, Texas, on May 29, 2003, and all successive amendments.
8. Majority of judges, means not less than 8 of the duly elected and qualified judges of the County Criminal Courts at Law of Harris County, Texas.
9. Probable cause means a reasonable ground, based upon the facts and circumstances, sufficient to warrant a prudent man to believe that the accused has committed each element of the offense charged and the accused is culpable, it being understood that if there is a sufficient defense established by testimony or documentation of the arresting agency, then there is no "probable cause".
10. Second-chair counsel means an attorney who is not eligible to be appointed as first-chair counsel, who volunteers for the purpose of gaining experience, knowledge, and competency in the representation of a defendant.
11. Taken before a magistrate shall mean either physically bringing the defendant before the judicial officer in person or by the use of high speed two way audio/video transmission technology as provided by TEX CODE CRIM. PROC. ART. 15.17(a).
12. Working day means Monday through Friday, except official federal, state, and county holidays.

B. PROCEDURE FOR TIMELY FILING AND DOCKETING OF CASES

1. Continuous Screening and Filing of Cases

As provided by Rule 2(A) and (B), and Rule 4(A), all misdemeanor proceedings in these courts shall be filed through the Central Intake Division of the offices of the Harris County District Clerk, and Harris County District Attorney to maintain a system of continuous screening and processing of class "A" and "B" misdemeanor cases.

2. Appearance Before a Judicial Officer

- (a) A person arrested pursuant to a warrant, or a person arrested without a warrant, shall immediately be taken before a judicial officer.
- (b) A person released from custody after a case is filed and prior to appearing before a judicial officer shall appear for arraignment seven days from the date the person was arrested, unless ordered to do so sooner.

C. RIGHT TO APPOINTMENT OF COUNSEL

An indigent defendant is entitled to have an attorney appointed to represent him in:

- (a) any adversarial judicial proceeding that may result in punishment by confinement; and
- (b) any other criminal proceeding if the judge concludes that the interests of justice require representation.

D. STANDARD FOR DETERMINING INDIGENCE

1. Standard

For purposes of appointing counsel, a person is indigent if the person is not financially able to employ counsel.

2. Applicability of Standard

The indigency standards shall apply to each defendant equally, regardless of whether the defendant is in custody or is released on bail.

3. Bail Not a Defining Factor

The judge shall not consider whether the defendant posted bail, except to the extent that it reflects the defendant's financial circumstances.

4. Factors For Consideration

A judge shall consider the following factors in determining whether a defendant is indigent:

- (a) the defendant's income;
- (b) the income of defendant's spouse;
- (c) property owned by defendant, or in which the defendant has an interest;
- (d) assets owned by the defendant, or in which the defendant has an interest;
- (e) financial resources of the defendant;
- (f) necessary expenses;
- (g) outstanding obligations;
- (h) the number of dependents supported by the defendant; and
- (i) an estimate of a reasonable fee set by an area lawyer qualified to represent the defendant.

E. PROCEDURE FOR THE TIMELY APPOINTMENT OF COUNSEL

A person arrested without a warrant shall be taken before a judicial officer not later than 48 hours after arrest.

1. Mental Health Screening

A representative of the Harris County Mental Health and Mental Retardation Authority is present to screen an arrestee to determine if he or she may be mentally ill, mentally retarded, or has previously received locally provided treatment.

2. Interview For Personal Bond

A member of the Office of Court Services is present to interview an arrestee to determine the arrestee's suitability for release on personal bond.

3. Interpreters For The Hearing Impaired

Qualified interpreters for the deaf and hearing impaired are available 24 hours a day.

4. Foreign Language Interpreters

Licensed court interpreters are available 24 hours a day.

5. Hearing to Determine Probable Cause for Further Detention

- (a) A criminal law hearing officer shall be continuously available to perform the duties and exercise the power provided by law for that office including those of a magistrate.
- (b) When an arrestee is brought before a judicial officer, the officer shall inform the person arrested, in clear language and either in person or by closed circuit television, of:
 - i. the accusation against him and of any affidavit filed therewith;
 - ii. his right to retain counsel;
 - iii. his right to remain silent, and that any statement made by him may be used against him;
 - iv. his right to have an attorney present during any interview with peace officers or attorneys representing the state;
 - v. his right to terminate the interview at any time;
 - vi. the person's right to request the appointment of counsel if the person cannot afford counsel; and
 - vii. the procedures for requesting appointment of counsel.
- (c) If the person does not speak and understand the English language or is deaf or hearing impaired, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate.
- (d) 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.
- (e) The magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the court's designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel.
- (f) In each case in which a person arrested is taken before a magistrate as required by Subsection (a), a record shall be made of:
 - i. the magistrate informing the person of the person's right to request appointment of counsel, if qualified;

- ii. the magistrate asking the person whether the person wants to request appointment of counsel; and
- iii. whether the person requested appointment of counsel.

6. Mandatory Release

- (a) A person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$5,000.00, not later than the 24th hour after the person's arrest.
- (b) If the person is unable to post a cash or surety bond, the person must be released on a personal bond.
- (c) If a prosecutor files an application, a judicial officer may postpone the release of a defendant for not more than 72 hours after arrest.

F. HEARING ON REQUEST FOR APPOINTMENT OF COUNSEL

1. Authority To Conduct Hearing

Only the judge presiding shall conduct a hearing and determine the financial ability of a defendant to employ counsel.

2. When The Hearing Shall Be Held

- (a) A hearing shall be held not later than the end of the first working day after the date on which the judge receives the defendant's request for counsel.
- (b) If an indigent defendant is released from custody prior to the hearing, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.
- (c) A hearing shall be held prior to the arraignment of the defendant.

3. Procedure For Determining Indigence

To determine whether a defendant is indigent, a judge shall:

- (a) review any information provided by the defendant in writing under oath;
- (b) take oral testimony from the defendant under oath;
- (c) conduct an evidentiary hearing; or
- (d) a combination of the above.

4. Finding of Indigence

- (a) The judge shall find the defendant indigent and appoint counsel to represent defendant:
 - (i) if the judge finds the defendant's financial liabilities are more than his assets; and

(ii) if the judge finds the defendant is financially unable to pay for an attorney qualified to represent the defendant in the charged offense.

(b) A judge that finds a criminal defendant has financial resources to offset, in part or in whole, the costs of legal services provided under this plan may order the defendant to pay the county that portion of the costs of legal services, provided it makes a written finding of the defendant's ability to pay.

5. Finding of No Indigence

The judge, upon finding the defendant is not indigent, shall make a written entry of his finding on the docket.

6. Presumption of Indigence

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

7. Review of Indigence Status

A defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings.

G. STANDARD FOR QUALIFIED COUNSEL

1. General Qualifications

To be considered qualified, an attorney must submit a completed application form and meet the following criteria:

- (a) Licensed and in good standing with the State Bar of Texas for three consecutive years prior to submitting an application;
- (b) A history of consistently exhibiting proficiency and commitment to providing quality representation to clients charged with criminal offenses;
- (c) A history of consistently exhibiting professionalism and reliability while zealously representing clients;
- (d) Represented, as first-chair, not less than 50 cases punishable as Class "A" or Class "B" misdemeanors;
- (e) Possess the following litigation experience in cases punishable as Class "A" or Class "B" misdemeanors;
 - i. tried to verdict, as first-chair, not less than five (5) trials before a judge or jury;
 - ii. acted as second-chair in not less than ten (10) trials before a judge or jury; or
 - iii. a combination of first-chair and second-chair experience equal to five (5) trials punishable by confinement in the county jail or imprisonment in the Texas Department of Criminal Justice.

- (f) Maintain a telephone number, fax number, and a physical location, other than a public building, in which the attorney can confer with a client, witness, investigator, or others to ensure the confidences of the defendant will be preserved;
- (g) Attended 10 hours a year of continuing legal education, including one hour of ethics in criminal law matters, for the three consecutive years prior to filing an application;
- (h) Agree to attend and report 10 hours annually of continuing legal education including one hour of ethics as provided by this Plan;
- (i) Agree to attend continuing legal education programs as directed by the Presiding Judge of these Courts; and
- (j) Sign the attorney acknowledgment.

2. Qualifications For Special Assignments

In addition to the general qualifications, an attorney must have tried as first-chair:

- (a) an additional ten (10) jury trials; and
- (b) not less than five (5) competency hearings.

3. Qualifications For Appellate, Habeas Corpus, And Extraordinary Writs

In addition to the general qualifications, an attorney must have personally authored at least five (5) criminal appellate briefs and two (2) post conviction writs.

4. Continuing Obligation To Report Changes In Qualifications

- (a) A qualified attorney shall notify the Presiding Judge of these courts not later than 48 hours after any of the following events:
 - i. arrest for any state or federal offense punishable by confinement;
 - ii. placement on community supervision or intervention;
 - iii. disciplinary action by the State Bar of Texas including active or probated suspension; or
 - iv. entering a plea of guilty or no contest to an offense punishable by confinement.

H. APPROVAL OF ATTORNEYS

In addition to meeting the objective qualifications described in section 24G, an attorney must be approved by a majority of the judges.

1. Consideration of Qualified Attorneys

- (a) At each monthly meeting beginning in August, 2003, following submission of attorney applications, the judges shall consider new applicants for the approved list.
- (b) The judges may approve, by majority vote, those attorneys:

- i. who have met the objective qualifications; and
- ii. whom the judges consider to be competent to adequately handle misdemeanor cases.

2. Consideration of Approved Attorneys

- (a) An attorney may be removed from the approved list by a majority of the judges if the judges determine the attorney:
 - i. no longer meets the objective qualifications;
 - ii. is not fully competent to properly represent indigent defendants in the county criminal courts at law; or
 - iii. intentionally or repeatedly fails to make every reasonable effort to contact a defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed.
- (b) An attorney may request to be removed from the list of approved attorneys for a limited or indefinite period by making such request in writing, addressed to the Presiding Judge of the County Criminal Courts at Law.
- (c) An attorney may request reinstatement in the same manner as a request for removal.

I. REPORTING CONTINUING LEGAL EDUCATION ACTIVITY

Each attorney shall report his or her annual continuing legal education activity as provided herein.

1. Annual Reporting Period

An attorney's annual reporting period shall begin on October 31st and end on October 30th of the following year.

2. Form of Report

- (a) Continuing legal education activity shall be reported using the State Bar of Texas Minimum Continuing Legal Education Annual Verification Report. If the report is inaccurate, the attorney shall supplement it with additional documentation.
- (b) The completed report, shall be attached to an affidavit verifying the information is true and correct. A sample affidavit appears in the appendix of this Plan.
- (c) For purposes of the affidavit required by this subsection, the term " State Bar of Texas Minimum Continuing Legal Education Annual Verification Report" means the report prepared by the State Bar of Texas and the supplement with additional documentation.

3. Compliance

- (a) It is the responsibility of each attorney to ensure that his or her report and affidavit are received in the Office of County Court Management, 1201 Franklin Street, 7th Floor, Houston, Texas no later than the first Monday immediately following the last day of the reporting period.
- (b) An attorney who fails to timely report compliance with the annual continuing legal education requirement does not meet the objective qualifications of this Plan.

J. DUTIES OF APPOINTED COUNSEL

1. Initial Contact

An attorney appointed to represent an indigent defendant shall make every reasonable effort to contact the defendant not later than the end of the first working day and to interview the defendant as soon as practicable.

2. Duration of Appointment

Appointed counsel shall zealously represent a defendant until the case is dismissed, the defendant is acquitted, all direct state appeals are exhausted, or the court, after entering a finding of good cause on the record, relieves the attorney or replaces the attorney with other counsel.

3. Conduct of Counsel

Appointed counsel shall perform the attorney's duty owed to the defendant in accordance with the adopted procedures of this Plan, the requirements of law, and the Texas Disciplinary Rules of Professional Conduct.

4. Timely Appearance In Court

- (a) An attorney assigned to a court shall appear at 8:30 a.m. unless otherwise instructed by the judge presiding.
- (b) An attorney assigned to a court is subject to temporary reassignment to another court.
- (c) An attorney shall remain in an assigned court until expressly released by the judge presiding.
- (d) An attorney who fails to appear on time as directed is subject to immediate replacement.

5. Absence, Conflicts, Work Load

Appointed counsel shall inform the judge presiding when either of the following occurs:

- (a) counsel is unable to appear to discharge his or her duties according to the published schedule; or

- (b) counsel cannot represent an indigent defendant because of a legal or ethical conflict.

6. First- and Second-Chair Counsel

An attorney appointed to represent a defendant shall not formally or informally associate second-chair counsel without the written approval of the judge presiding. An attorney who provides legal services to an indigent defendant to whom the attorney has not been appointed is presumed to do so pro bono.

(a) First-Chair Counsel

- i. All motions filed in the case shall be filed in the name of first-chair counsel.
- ii. First-chair counsel shall appear on all matters before the Court and speaks for the defendant.
- iii. First-chair counsel may associate another attorney only with the written approval of the judge presiding.
- iv. After approval of second chair counsel by the judge presiding, first-chair counsel, may assign tasks to second-chair counsel on behalf of the defendant.

(b) Second-Chair Counsel

- i. Under the direction and in the presence of lead counsel, second-chair counsel may prepare, present, or argue motions, examine witnesses, and participate in a hearing or trial.
- ii. Second-chair counsel shall complete and file an attorney of record form with the district clerk. The form shall state on its face that the attorney is second-chair counsel.
- iii. Second-chair counsel is not entitled to compensation from Harris County for work performed while acting in this capacity.
- iv. Second-chair counsel shall be present for the entire trial.
- v. Only one second-chair counsel is permitted on a case.

7. Substitution By Counsel Prohibited

An attorney shall not send another lawyer to appear in his place without prior approval of the judge of the court to which the assignment was made, or in which the case is pending.

K. ASSIGNMENT OF APPROVED COUNSEL

1. Assignment of Counsel

- (a) The Office of County Court Management is responsible for making random weekly and daily assignments to these courts.
- (b) Assignments shall be made quarterly.

2. Notice of Assignment

The judge or the judge's staff is responsible for notifying an attorney of a weekly or daily assignment.

3. Appointment To Indigent Defendant

- (a) Only the judge presiding may appoint counsel to an indigent defendant, or to another when the interests of justice require that counsel be appointed.
- (b) If the judge determines that the defendant does not speak and understand the English language, the judge shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.
- (c) If the judge determines a defendant is hearing impaired, or deaf, he shall follow the procedure applicable to interpreters for deaf persons in Article 38.31 code of criminal procedure (Vernon 2008) in addition to appointing counsel.

4. Method of Assignment

Each assignment shall be:

- (a) reasonably and impartially distributed among the approved attorneys in each category;
- (b) in a manner that, as nearly as possible, assures each attorney an equal number of assignments; and
- (c) based upon the needs of the courts and an individual attorney's willingness and availability to work during an assigned period.

5. Types of Assignments

(a) Weekly Assignments

An attorney is assigned to a court for a two-week period beginning on the first business day of a week and concluding on the last business day of the week, irrespective of holidays or other days when the court is not conducting its docket.

(b) Daily Assignment

An attorney is assigned to a court to appear on not more than two days during a specific week or weeks.

(c) Emergency Assignments

An attorney is assigned ad hoc from the list of approved attorneys by the judge presiding for the purpose of immediately:

- i. replacing an absent attorney; or
- ii. adding to the previously assigned attorneys to avoid exceeding the case limitations of this Plan.

(d) Specialized Case Assignment, Appeals, and Extraordinary Writs

An attorney from the list is assigned to a specific case based upon the severity and complexity of the case.

(e) Daily Case Limitations

Each attorney may be assigned between three and seven new clients daily, taking into consideration the complexity of the cases, or as directed by the judge presiding.

6. Substitution

- (a) After receiving a list, a judge may request one substitution from the list for each name appearing on the court's assignment list.
- (b) If requested, the Office of County Court Management shall assign the next attorney on the list who has not been assigned; or the judge of the court or the court coordinator, with the approval of the judge, may assign an attorney in the manner provided for emergency assignments.
- (c) The name of the attorney for whom the substitution was requested shall be returned to the list and shall remain next in order on the list. No additional substitutions are permitted, except as provided in this Plan.

7. Counsel Appointed In Pending Felony

The judge of the court in which the misdemeanor is pending may either appoint the attorney representing the defendant in the district court, or appoint an attorney as provided by this Plan.

L. REPLACEMENT OF APPROVED COUNSEL

1. Attorney Request

- (a) A lawyer may request permission to withdraw from an appointed case by filing a written motion with the court.
- (b) The judge presiding may grant the motion for good cause only after finding that the client will not be prejudiced by the substitution.
- (c) After granting the motion, the judge shall immediately appoint another qualified lawyer as provided by these rules.

2. For Good Cause

The judge presiding may replace counsel after entering written findings in the record showing good cause and that no prejudice to the defendant will result from the removal, including without limitation:

- (a) current information about the defendant and charges indicating that counsel of different qualifications is appropriate for the defendant under these rules; or
- (b) a violation of the attorney's professional responsibilities; or
- (c) a principled reason.

3. Defendant Request

The appointing judge may substitute counsel if:

- (a) at the conclusion of a trial, the defendant desires to prosecute a direct appeal and requests that the court appoint different counsel; or
- (b) the defendant shows good cause for replacing appointed counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

M. COMPENSATION AND REIMBURSEMENT

The Harris County Auditor shall not pay compensation or reimbursement to an attorney who is not on the list of attorneys approved for appointment in the County Criminal Courts at Law.

1. Fee Schedule

Appointed counsel shall be compensated for all time reasonably necessary to adequately represent the defendant according to the following fee schedule:

- (a) Daily Flat Fee Rate. To receive the daily rate, an attorney shall:
 - (1) appear for docket call at the time and place designated by the judge of the assigned court; and
 - (2) accept appointments in that court or any other county court to which the attorney may be assigned on that day;
 - (3) remain available to the judges of the county criminal courts at law until the courts' morning docket call is concluded, or the attorney is released by the judge of the court to which the lawyer is assigned; and
 - (4) provide professional services, including the resetting of cases, first to appointed cases in the county criminal courts at law.
- (b) Hourly Rate
 - i. Out-of-Court: \$25/hr. to \$50/hr.
 - ii. Motions, Hearings, and Competency Proceedings: \$50/hr. to \$90/hr.
 - iii. Trial: \$60/hr. to \$90/hr.

Hourly rates shall be paid for performing the appropriate statutory service defined in TEX. CODE CRIM. PROC. ART. 26.05(a), based on the criteria in that section.

- (c) Flat Fee Schedule
 - i. Weekly & Substitute Daily Assignments (appointment not required): \$225/day
 - ii. Non-Issue or Plea (two or more clients on unassigned day \$100 max): \$ 50.00
 - iii. Non-Issue or Plea (concurrent with weekly or daily assignment): \$ 00.00
 - iv. Appeal & Extraordinary Writs: \$750.00
 - v. Petition For Discretionary Review: \$350.00
 - vi. Oral Argument Before Court of Criminal Appeals: \$250.00

vii. (Travel expenses under county rates and policy, additional)

(d) Expenses

(i) Reasonable and Necessary Expenses

The County will reimburse appointed attorneys for reasonable and necessary expenses including investigation and mental health and expert witnesses incurred on behalf of an indigent client as provided under TEX. CODE CRIM. PROC. ARTS. 26.05(d) and 26.052(f), (g), and (h).

(ii) Documentation

Counsel shall submit the original invoice or receipt along with any request for reimbursement.

2. Concurrent Payments.

An attorney engaged in a weekly or daily assignment shall not be compensated for a non-issue or plea appearance that occurs on the same day the attorney is assigned to a court.

3. Additional Compensation

An attorney appointed to represent an indigent defendant shall not accept additional compensation for professional services performed on behalf of the defendant, as a result of the appointment, in any form from any source other than Harris County, Texas.

4. Judicial Determination of Attorney Compensation

The following procedures apply to the review and approval of attorney's fees:

- (a) Appointed counsel shall request payment on a form approved by the judges of the County Criminal Courts at Law and the County Auditor. Counsel shall submit the request for payment to the judge presiding over the proceedings of the court. The payment request shall list all services performed by the attorney on behalf of the defendant.
- (b) The judge shall either approve the amount requested or enter written findings stating the amount the judge approves and each reason for approving an amount different from the requested amount.
- (c) An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the Presiding Judge of the Second Administrative Judicial Region.
- (d) A judge may compensate an attorney at a rate exceeding a flat fee or hourly rate established by this Plan. Upon receipt, the auditor shall forward the order to the Office of County Court Management for review by the Presiding Judge or Court Manager.

5. Accounting of Attorney Hours

To be entitled to payment, appointed counsel shall provide the following information:

(a) Hourly Rate

i. Standard

Time must be itemized in quarter hour (15 minute) increments on a form approved under the Plan.

ii. Itemization

Counsel must prepare and maintain time records for each appointed client showing the date of service, nature of service rendered, and hours worked.

(b) Flat Fee Rate

The date and type of service performed.

6. Payment by County Auditor

The Harris County Auditor shall only pay claims submitted by attorneys whose names appear on the list of certified attorneys. The Office of County Court Management shall provide the county auditor's office with a current list of attorneys certified to accept appointments. The auditor shall send a claim submitted by an attorney who is not on the list of certified attorneys to the Court Manager.

(a) Reasonable and Necessary Expenses

The County will reimburse appointed attorneys for reasonable and necessary expenses including investigation, mental health and expert witnesses incurred on behalf of an indigent client as provided under TEX. CODE CRIM. PROC. ARTS. 26.05(d) and 26.052(f), (g), and (h).

(b) Documentation

Counsel shall submit the original invoice or receipt along with any request for reimbursement.