THE STANDARDS AND PROCEDURES FOR
THE APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS
(Effective November 01, 2007)

PREAMBLE

WHEREAS, The Webb County Board of Judges seeks to ensure that indigent defendants continue to receive well-qualified and knowledgeable representation by their appointed counsel; and

WHEREAS, the 77th Texas Legislature passed the Texas Fair Defense Act effecting procedures and guidelines for the appointment of counsel for indigent defendants by amending the Texas Code of Criminal Procedure, section 6, article 26.04 to become effective January 1, 2004.

NOW BE IT RESOLVED that the Judges of the Webb County Board of Judges by formal action in compliance with and as mandated in the Texas Fair Defense Act hereby;

(1) Adopt standards for determining indigence,
(2) Establish procedure to compile a public appointment list of attorneys qualified to provide representation to indigent defendants,
(3) Establish a procedure to compile graduated lists of qualified attorneys,
(4) Adopt objective qualifications necessary for an attorney to be included on the lists and,
(5) Establish appointment procedures that shall ensure appointments are reasonably and impartially allocated among qualified attorneys pursuant to the Texas Fair Defense Act.

ACCORDINGLY, the Webb County Board of Judges hereby adopts the following plan as the interim plan for appointing counsel for indigent defendants and juveniles in the Courts of Webb County, Texas.

The Webb County Board of Judges further Orders this plan be incorporated into the local rules of the Judicial District courts of Webb County District Courts and the Webb Count Courts at Law.

1.15.00 **TERMINOLOGY**, As used in these procedures, the following terms and phrases will have the following meanings.

1.15.01 "Judges" or "Board of Judges" shall mean all the presiding judges of the District Courts and County Courts at Law in Webb County.

1.15.02 The pronoun "he" shall refer to individuals of both genders.

RULE 6.01 GENERAL

The rules in the Part govern practice in all justice of the peace, county, and district courts in this County notwithstanding any other local rule to the contrary.

RULE 6.09 WHEN THE RIGHT TO APPOINTED COUNSEL ATTACHES

6.09.01 The detaining authority must present the defendant before the magistrate within 48 hours of arrest for a felony, or 24 hours for a misdemeanor arrest.

6.09.02 The magistrate shall deliver admonishments, inform the defendant of his right to counsel, and make a finding of probable cause.

6.09.03 If needed, an interpreter shall assist during the hearing.

6.09.04 If the defendant asks that a lawyer be appointed, the magistrate or magistrate's designee shall assist the defendant in filling out the indigence information required on Defendant's Financial Affidavit and request for appointed counsel as attached hereto in Exhibit A.

RULE 6.10 REQUESTS FOR APPOINTED COUNSEL

6.10.01 All reasonable efforts will be made to communicate the following information to each person who is accused of a crime at a post-arrest hearing under Tex. Code Crim. P. art. 15.17, using a language that the arrested person understands:

a. "You have the right to a lawyer's help in responding to the accusation against you; "
b. "The county will pay a court-appointed lawyer to help you if you can't afford one;"
c. "You can request an appointed lawyer right now using the Magistrate's certificate attached as Exhibit B and called the Probable Cause, Rights, Bail and Attorney Request Form, which I will give to another judge who decides if you qualify, and then appoints a lawyer who will contact you within a few days;"
d. "If you need help filling out the form, I can get help for you;"
e. "Do you want to request an appointed lawyer?"

6.10.02 The Magistrate shall note the response on said Magistrate's Certificate. Magistrates will either make an electronic or written record of having communicated each item in Rule 6.10.01 above to each arrested person at each Article 15.17 hearing and maintain this record for at least 120 days. Either an electronic or written record such as Exhibit B, the Probable Cause, Rights, Bail and Attorney Request Form completed by the Magistrate can be the record of said request.

6.10.03 If a magistrate has reason to believe that a person is not mentally competent to decide whether to request counsel, the magistrate will enter a request for counsel on that person's behalf.

6.10.04 Magistrates shall transmit any request for counsel, that they receive, to the appointing Judge specified in Rule 6.11 below, or to the judge's designee.

RULE 6.11 APPOINTING JUDGE

6.11.01 The Board of Judges shall designate either a judge or the Jail Magistrate or an individual hired by the County to perform non-judicial duties required by the Fair Defense Act for all people accused of criminal offenses who request appointment of counsel. The duties of the appointing Judge are to:

(a) Follow Rule 6.12 to make an initial determination of whether a person requesting counsel is indigent.
(b) Follow Rule 6.01 to select and appoint counsel to represent each indigent defendant; or Local Rule 5 for juveniles.
(c) Follow Rule 6.14 to cause all interested parties to have notice of appointment decisions.

6.11.02 The Appointing Judge will complete these duties as to each request as soon as possible, but not later than the <u>end of the first day after</u> the defendant makes such request, excluding weekends of county and state holidays.

(a) The Appointing Judge may assign any of the non-judicial duties stated in these Rules to a county employee who is hired to address administrative matters associated with indigent defense.

(b) The Board of Judges shall assign Indigent Defense Services staff as needed to comply with the Fair Defense Act and they shall review all persons in the jail to insure that all persons are timely appointed counsel as per these rules and Texas law.

RULE 6.12 INDIGENCY DETERMINATIONS

6.12.01 A person in "indigent" and thus qualifies for appointed counsel in this county if the income of the person and the person's spouse totals less than 125% of the federal poverty level for the family, or the person's dependents currently received food stamps, public housing, Temporary Assistance for Needy Families (TANF), OR Medicaid, unless the person has net liquid assets worth over $2,500, excluding the value of one vehicle, pursuant to current Texas TANF guidelines.

6.12.02 Indigence determinations may be based upon the attached Exhibit G as submitted by the accused person, or any other evidence admitted by the appointing Judge.

6.12.03 **Procedures and Financial Standards for Determining Indigence Status**

A. At the magistrate's hearing each accused shall be provided an opportunity to request court appointed counsel, if indigent. Each requesting defendant shall complete a sworn affidavit of indigency form **{Exhibit A}**. The magistrate will insure that reasonable assistance is available in completing the necessary forms for requesting appointment of counsel.

The magistrate shall then review the information and follow the procedures for determining whether a defendant is indigent, as follows:

B. 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; and

(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.

The income levels in the following table represent 125% of the U.S. Department of Health and Human Services Poverty Guidelines for 2007 as published in 66FR 10695 (Feb. 16, 2001):

1 .....$12,763

2 17,113
3 21,463
4 25,813
5 30,163
6 34,513
7 38,863
8 43,213

For family units with more than eight members, add $4,350.00 for each additional member in the family when determining 125% of Poverty guideline.

(b) A defendant is considered indigent 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.

(c) A defendant is considered indigent if the defendant:

(1) 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

(2) has no non-exempt assets or property in excess of the amounts specified in paragraph two

(d) 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.

(3) Factors Not to be Considered

(a) 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.

(b) 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.

(4). Procedures for Determining Indigence

(a) As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, the Magistrate shall provide each arrested person who wants to request appointment of counsel with a form approved by the judges on which the arrested person will provide under oath the necessary information concerning the person's financial resources and will indicate that the person requests appointment of counsel. The Magistrate shall provide the arrested person reasonable assistance in completing the form.

(b) The form requesting appointment of counsel and containing the information concerning the arrested person's financial resources will be transmitted to the appointing judge or person(s) designated by the judges to appoint counsel.

(c) The appointing judge or person(s) designated by the judges to appoint counsel will determine whether the person meets the financial standards for indigence in paragraph 2. The determination will be recorded on the form requesting appointment of counsel and the form will be filed with the other orders in the case.

(d) The arrested person may be required by the magistrate, the appointing judge, or the judge presiding over the case to respond to examination regarding the person's financial resources.

(e) A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigence or to impeach the direct testimony of the defendant regarding the defendant's indigence.

(f) A defendant determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the defendant's financial circumstances occurs.

(g) A defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court proceeding based on evidence of a material change in the defendant's financial circumstances. A defendant's status as indigent or no indigent also may be reviewed in a formal hearing at any stage of a court proceeding based on additional information regarding financial circumstances, subject to the presumption. If a defendant previously determined to be indigent subsequently is determined not to be indigent, the attorney shall be compensated by the county in accordance with these Rules for time reasonably expended on the case.

5. Payment by Defendant

(a) A court that finds that 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.

RULE 6 SELECTION AND APPOINTMENT OF COUNSEL

6.01 NEW APPOINTMENT

(a) The Appointing Judge will identify which of the appointment lists (capital, felony 1, 2, 3 and SJF, misdemeanor and juvenile) specified in Rule 6.04 below best correspond to the known information about the accusations against each indigent person who requests counsel.

(b) The Webb County Public Defender's attorneys will also be classified as to which felony and misdemeanor appointments they are qualified to receive based on education and experience.

(c) The Webb County Public Defender's office will receive 75% of all of the felony and 75 % of the misdemeanor appointments. The Board of Judges may from time to time adjust the percentage of cases to be assigned to the Webb County Public Defenders' Office due to staffing availabilities. The rest of the appointments may be made from the applicable appointment list. The Appointing Judge will appoint a lawyer from the applicable list whose name is among the next five names in order so identified unless:
(1)The defendant requesting counsel does not understand English, in which case the judge will appoint the next lawyer who both appears next in order on the list and speaks

the clients' language, if one is available;

(2)The defendant has an attorney already appointed on a prior pending matter, the same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of case involved.

6.15 CHANGE OF ATTORNEY

Where a trial court is required to change counsel for good cause shown on the record;

(a) The judge exercises discretionary authority to appoint one of the attorneys whose name is among the next five names in order on the list; or

(b) In unusual circumstances, the appointing Judge upon a written finding of good cause may appoint any qualified willing attorney regardless of whether the attorneys name is on the list.

(c) Each time a lawyer is appointed out of order under the preceding paragraph, the lawyer who is appointed out of order shall not be appointed to a new case until all other eligible lawyers on that wheel have received an equal number of appointment, except the Public Defender, so long as the Public Defender does not receive more than 75% of all felony and 75 % of the misdemeanor cases.

6.03 TERM OF APPOINTMENT

6.03.1 Each attorney appointed under this rule is to represent the person through trial and appeal or including habeas corpus, until removed or replaced by court order.

6.03.2 If any attorney is appointed under this rule, and that attorney is not qualified for the new case, the judge shall appoint either a second attorney who is qualified or appoint proper qualified counsel on the new case. This applies to the Webb County Public Defender's staff as well.

6.04 LIST OF ATTORNEYS

6.04.1 The director of Indigent Defense Services shall maintain lists of qualified attorneys by alphabetical order, to be used by the appointing court or designee for 25% of the appointments at the felony and misdemeanor level, and where a conflict or multiple defendants require appointment of additional counsel. Upon a person being found indigent, the administrator shall inform the appointing court of the next name on the wheel. The wheel shall be constructed as per Rule 6.06 herein after. The attorney, who is selected, except for the Public Defender, shall be removed from the wheel lists until all other attorneys on the lists have been appointed a defendant. An attorney remains on the lists as next attorney until assigned a case.

6.04.2 Should appointed counsel withdraw due to conflict of interest or any other reason except that the Defendant has obtained counsel, the appointing Judge or designee shall inform the Trial Court of the next five names for the Court to select. The Court may choose any one of the five attorneys, on the list as set out in Rule 6.04 above.

<u>RULE 6.14</u> <u>NOTICE OF APPOINTMENT DECISIONS</u>

6.14.01 If the Appointing Judge finds that a person who requests counsel is not indigent under Rule 6.12 above, the Appointing Judge will enter that finding on the form, cause it to be returned to the person, and cause a copy to be filed by clerk.

6.14.02 If the appointing Judge finds that a person who requests counsel is indigent, the judge will give notice of appointment by sending Order Appointing Attorney (attached as Exhibit C) to be issued to both the defendant and the appointed attorney, and to be filed with the district or County Clerk.

6.14.03 Notice to appointed counsel under this Rule will be provided by telephone, facsimile, electronic mail, or some other similar immediate means of communication by the District or County Clerk or Board of Judges or Designee.

6.14.04 When formal charges are filed against a person who has requested counsel, a copy of the application and order appointing counsel shall be filed by the District or County Clerk.

RULE 6.06 APPOINTMENT LISTS

6.06.01 The Appointing Judge shall maintain indigent defense appointment lists in this county:
1. Juvenile List as specified in Local Rule 5.04;
2. Juvenile certification or determinate sentencing as specified in Local Rule 5.04;
3. Lists to be used to select counsel for people other than those who are charged with misdemeanors, state jail felonies, felonies of the 3rd, 2nd, and 1st degree;
4. A Murder List to be used to select counsel for murder cases; and
5. A Capital List to be used to select counsel for Capital Murder cases.

6.06.02 All lists shall include the name of the Webb County Public Defender such that the Public Defender shall receive no more than 75% of all felony and 75 % of all misdemeanor appointments. The appointments for juvenile cases shall continue to be made from the list unless there are additional public defenders hired to represent juveniles.

(a) The Lists shall include all licensed attorneys residing in Webb County, Texas who have applied for and are qualified for appointment to felony and misdemeanor cases if the attorney has completed a minimum of 6 hours continuing legal education pertaining to criminal law during each calendar year; or currently certified in criminal law by the Texas Board of Legal Specialization. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing.

(b) An attorney who is qualified under the General List may be included on the Murder List or the Capital Murder List only after a majority of the judges who hear such cases approve adding the attorney's name to the lists after review of Webb County Application/Affidavit Criminal Felony, Misdemeanor or Juvenile Courts Attorney (attached as Exhibit D).

1. For the Murder List:

(a) The attorney has at least four years of experience in criminal litigation.
(b) The attorney has tried four criminal cases to a jury verdict as lead counsel.
(c) Has attended at least 10 hours MCLE in criminal law per year for three years prior to application, and annually thereafter;
(d) Has been appointed by the presiding judge of the Court to such a case in the past; or
(e) The presiding judge of the Court finds that the attorney is qualified to undertake such representation.

2. For the Capital List :

(a) The attorney must meet all the requirements set out in in Tex. Code Crim. P. Art. 26.052; and
(b) meet the standards for qualification adopted by the Fourth Administrative Judicial Region Capital Murder Case Committee.
(c) An emergency appointment may be made when no attorney is available who meets the continuing education or board specialization requirements by the time an attorney must be appointed in the case. The appointing judge or designee making the appointment shall given priority to attorneys with experience in criminal cases.

6.06.03 **Application for placement on lists.**

A. All attorneys are required to file the Webb County Application/affidavit Criminal Felony, Misdemeanor or Juvenile Courts Attorney by January 1, 2002. A grace period of 2 weeks shall apply. Thereafter, all attorneys are required to file a new application/questionnaire by October 1 of every year beginning October 1, 2002 and continuing annually until this rule is amended. Any attorney may apply to be placed on any of the felony, misdemeanor, juvenile certifications and determinate sentencing, felony murder or capital murder appointment lists by supplying this county's Director of Indigent Defense Services with all of the information necessary of the attorney's qualifications to determine if the attorney meets the requirements.

B. The Director will evaluate application to determine if each applicant is qualified for respective list. The judges if the district courts trying felony cases will review and may approve by majority vote qualified applicants for felony case lists. The judges of the statutory county court trying misdemeanor cases will review and may approve by majority vote qualified applicants for misdemeanor case list.

C. Each time an attorney is added, a new list will be supplied to the appointing judges.

D. Names on the list will be listed alphabetically.

6.06.04 **Grounds for Removal**

A. The Appointing Judge will remove an attorney's name from a list if:

(a) A majority of judges of the Board of Judges vote to remove the attorney;
(b) The attorney fails to meet the minimum qualifications needed to remain on a particular list;
(c) The attorney ceases to be an active member of the State Bar of Texas; or
(d) The attorney requests removal from the list.
(e) The Board of Judges may remove an attorney's name from the general misdemeanor or juvenile list if a majority of County Court at Law agrees.

6.06.05 **Procedure for Removal**

A. Referral

If a judge/member of the juvenile board believes that an attorney has violated any of the provisions listed in the paragraph above, the judge/juvenile board member may refer an attorney to the board of judges/juvenile board for removal from the appointment list. The referral must be in writing and shall clearly state the grounds that form the basis of the referral. No disciplinary action with respect to the attorney being retained or removed from the appointment list may be made without such a referral.

B. Notification/Hearing

Upon receiving an attorney referral, the board of judges/juvenile board shall notify the attorney in writing of the referral and inform the attorney of the grounds that form the basis of the referral. The notice shall also inform the attorney of the time and place the board of judges/juvenile board will meet to discuss the referral and give the attorney an opportunity to respond to the referral in writing or in person or both.

C. Action

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:

1. remain on the appointment list at the same level;
2. moved to an appointment list for indigent defendants charges with less serious offenses; or
3. be removed from appointment list altogether.

The attorney may be removed from the appointment list or moved to an appointment list for indigent defendants charged with less serious offenses by a majority vote of the judges/juvenile board members present. In addition, the majority of the judges/juvenile board members may also vote to require the attorney to take other rehabilitative measures. Removals from any list may be probated. For removal or probated removals, the judges/juvenile board members ordering the removal may require the completing of rehabilitative measures as a condition of probation or reapplication. 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" number 7 or 8 shall be immediately reinstated upon providing proof that the charges were dismissed or that the attorney was acquitted, unless other grounds for removal exist against the attorney that would prohibit reinstatement.

The decision of the board of judges/juvenile board is final and may not be appealed.

RULE 6.15 REPLACEMENT OF APPOINTED COUNSEL

6.15.01 An attorney may be removed from an appointment upon satisfying the appointing Judge that the lawyer has good cause for being excused and that the client will not be prejudiced, in which case the judge shall use Rule 6 to immediately appoint another qualified lawyer.

6.15.02 The judge with jurisdiction over a criminal case may replace appointed counsel after entering findings in the record showing good cause for the replacement and no prejudice to the defendant, including but not limited to the following:

a. Current information about the defendant and charges indicates that counsel of different qualifications would be appropriate for the defendant under these rules; or
b. Replacement is needed to comply with Tex. Code Crim. P. Art. 26.052 (e) in a capital felony trial.

6.15.03 The judge with jurisdiction over a criminal case will replace appointed counsel at the Defendant's request if:

a. The Defendant requests an attorney other than trial defense counsel for appeal or post conviction habeas corpus proceedings; or
b. The Defendant shows good cause for replacing appointed counsel.

RULE 10 CONTACT BETWEEN APPOINTED COUNSEL AND CLIENTS

a. To minimize costs to the county under these rules, magistrates will (1) insure that the county's sheriff knows how his policies may facilitate efficient communication between jailed clients and (2) attorneys without surmising the security of any detention facility, including policiesthat minimize the time that attorneys must wait for their clients at jail.

b. Appointed counsel will make every reasonable effort to interview their clients before the end of the day after the date the appointment is made, not including weekends and holidays. *It is a standing order of the Webb County Board of Judges that, upon request, the Sheriff shall permit contact visits between inmate defendants and their attorneys.*

RULE 11 FEE SCHEDULE

Each court shall pay appointed non-Public Defender attorneys reasonable fees in accordance with a uniform schedule of fees as adopted by the majority of the judges. The uniform schedule of fees shall take into consideration reasonable and necessary overhead costs, the availability of qualified attorneys, time and labor expended, complexity of the case, and the experience and ability of counsel. An attorney working under the Public Defender shall be paid by salary set by the Commissioner's court. See Exhibit E.

RULE 12.01 APPOINTED ATTORNEY COMPENSATION

A. All payments shall be paid after judicial approval, in accordance with the attached fee schedule and guidelines which were adopted by formal action of The Board of Court Judges, with copies sent tot he Commissioner's Court of Webb County. (See Exhibit G)

B. This fee schedule takes into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates.

C. A new voucher form and in-court and out-of-court itemization forms will be provided for appointed counsel to itemize the types of services performed. (See Attachment F) The appointed counsel must submit this voucher to the judge presiding over the case for which the appointed attorney seeks compensation, for the judge to approve the payment.

D. If the judge disapproves the requested amount of payment the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.

E. If the trial court grants the excess payment, the Local Administrative Judge (in felony cases) or the two County Court at Law Judges (in misdemeanor cases) or two of the juvenile judges, must also approve the *excess payments*. If approved, the orders will be submitted to Commissioner's Court for excess payments. If the request for excess payments is denied by the trial court, the case will be submitted to Commissioner's Court for payment of the case maximum.

F. An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region, as provided under Article 26.05(c) of the Code of Criminal Procedure. This motion must be filed within twenty (20) days from the date the attorney receives notice of the disapproval of payment.

G. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment and determine the appropriate amount of payment. In reviewing the disapproval, the presiding judge of the administrative judicial region may conduct a hearing. Webb County shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the adopted fee schedule.

Excess Payment: The Court may set a reasonable amount that will not exceed from the fee schedule adopted by the Plan.

H. Webb County will reimburse appointed attorneys for investigation and expert witness expenses incurred on behalf of an indigent defendant as provided under Articles 26.05(d) and 26.052 (f) through (h) of the Code of Criminal Procedure, and that is in accordance with the adopted fee schedule. These expenses must be pre-approved by the trial court:

1. The attorney must attach to the voucher an itemized statement of each expense listing the date, the kind and the amount of the expense and must supply supporting documents for any expense over $40.00;
2. Regarding computer assisted legal research the attorney must provide a statement of the issues researched, and estimate of the number of hours of attorney time required if the research has been done manually and a copy of the bill.

I. Payment of a fee in excess of the case maximum stated in the fee schedule as described in subparagraph E above may be made in the following kinds of cases:

(A) Extended cases: A case in which more time is reasonable required for total processing than the average case.

(B) Complex case: A case in which the legal or factual issues are unusual, thus requiring expenditure of more time, skill, and effort than would be required in the average case.

(C) In no event shall the hourly in court and out of court rates specified above be exceeded.

(D) An attorney may obtain excess payments by certifying to the trial court that: (1) the case was extended, complex, or both and (2) excess payment is necessary to provide fair compensation.

(E) In order to approve excess payments, the trial court must make the following findings

(1) The case was extended, complex, or excess payment is necessary to provide fair compensation. On this issue, the following factors will be considered:

(a) Responsibilities of the attorney measured by the magnitude and importance of the case.

(b) Manner in which the attorney performed his/her duties.

(c) The attorney's knowledge, skill, efficiency, and professionalism.

(d) Judgment required of and used by the attorney.

(e) Nature of the attorney's practice and injury to it because of this case.

(f) Extraordinary pressure of time or other factors.

(g) Any other relevant factors.

J. Payment of a fee in a case presided over by a visiting judge also requires the approval of the trial court judge. The administrative judge may also approve payment in the event that the trial court judge is unavailable.

K. *Failure* to submit your voucher for payment 15 days completion of appellate proceedings will be deemed to be a donation of the attorney time and talent and will be pro bono.

RULE 12.09 VOUCHER FORMS

Payment will not be approved unless the proper form, a copy of which is attached as Exhibit is timely submitted within 15 days.

These Standards and Procedures for Appointment of Counsel for Indigent Defendants were amended by unanimous vote of the Board of Judges of Webb County, Texas at the regularly scheduled Joint District, Juvenile and County Court at Law Administrative Board meeting on October 3, 2007.

Signed this **3rd** day of **October**, 2007.

Alvino Morales,
County Court at Law I
Administrative Judge

Jesus Garza
Judge, County Court at Law II

Elma Teresa Salinas Ender,
341st District Court
Administrative Judge

Joe Lopez,
Judge, 49th District Court

Raul Vasquez,
Judge, 111th District Court

Oscar J. Hale, Jr.,
406th District Court

Danny Valdez,
County Judge

Signed this 3rd day of October 2007.

DEFENDANT'S FINANCIAL AFFIDAVIT

CASE NUMBER: _____**OFFENSE**: _____ F 1 __F 2 __ F3 __
SJF__MSD__

I am fully competent to make this affidavit.

Full Name: _____ **Age**: ___ **DOB:** __-___-___
(Paternal) (Maternal, if used) (First) (Middle)
Address: _____ **Social Security No**. __ __ __ - __ __ - __ __ __ __
_____ **TDL:** _____ **Home No.** _____

(Check Status) Married ___ Separated ___ Divorced ___Single ___ How many children do you have? _____
Name of Spouse (if applicable) _____
Employed _____ Unemployed _____ Retired _____ Student _____ Welfare _____$_____ PER_____
Social Security _____ $_____ per_____ Unemployment _____ $_____ PER _____
Name Employment: _____ Can Return after arrest: YES or NO (Circle One)
Employment Address: _____ Supervisor's Name and Phone No. _____
Salary $_____ Per _____ Other Income _____ Spouse Income $_____ PER _____
With whom do you live? _____Explain relationship_____
Spouse's Employer _____ Spouse's Employment phone no. _____
Do you *Pay or Receive* Child Support? YES or NO ***(Circle One)*** If Yes, how much? $_____ @ month bi-monthly weekly
(Circle One)
Home: Own___ Mortgage $_____ per _____ Rent_____ $_____ per_____
None of the above, boarding with _____
Auto: None ____ Own/Lease _____ Payment $_____ per _____ Make _____Year_____
Do you *own* real property? _____ If yes, value: _____
(Other than your residence)
Do you or your spouse own a vehicle? Yes No ***(Circle One)*** If so, what is the make and year of the vehicle_____
My Average Total Monthly Income From all sources: $_____
My Average Total Monthly Debt Payments: _____
(Include All Debts such as Loan Companies, Banks, Credit Cards, etc.)
My Average Total Monthly Expenses: _____
(Include Utilities and Any Other Expenses NOT included question above)
Total Cash on hand: _____
(INCLUDE checking accounts, savings accounts, life insurance policies, etc.)
I am currently: IN JAIL or ON BOND (CIRCLE ONE) TYPE OF BOND: Cash Personal Surety (CIRCLE ONE)
Do you have an attorney? _____ If yes, then what is your attorney's name: _____
In an Emergency, contact:
NAME_____ADDRESS_____Telephone no: _____
Next nearest relative:
NAME_____ADDRESS_____Telephone no: _____

AFFIDAVIT

STATE OF TEXAS §
COUNTY OF WEBB §

On this _____day of _____, _____, I have been advised by the_____ Court of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the Court to appoint counsel for me. I hereby, having been sworn upon oath, depose, state, and certify that the above information is true and correct.

Witness my signature on this the ____ day of _____, 200__.

_____
Accused
Print Name: _____

Subscribed and sworn to before me this the ____ day of _____, 200__.

(SEAL)

_____
Magistrate or Notary Public

Print Name: _____

WEBB COUNTY

Accused Declined to be Interviewed

The State of Texas, §

County of Webb. §

Before me, on the _____ day of _____, 200 __, at _____,appeared_____, whom I have informed of his/ her right to have counsel appointed to represent him/her. AT THIS TIME, the accused declined to be interviewed to determine if he/she is eligible for court appointed counsel.

_____

_____ Accused/SID no.

Witness

Accused refused to sign:

_____

Magistrate

Remarks:

_____

_____

This hearing was interpreted by: _____

(Name of Interpreter)

Law Enforcement Agency:_____ Court #: _____

Date Of Arrest:_____ County/State: _____
Time Of Arrest:_____ Warrant #, If Any: _____
Place Of Arrest:_____ Bail Set: $ _____

HAS A PROBABLE CAUSE AFFIDAVIT BEEN FILED? ☐YES ☐ NO

MAGISTRATE'S WARNING

THE STATE OF TEXAS §
COUNTY OF _____ §

Before me, the undersigned, magistrate of _____ County, Texas on the _____ day of_____, at_____o'clock AM/PM., appeared _____. I gave said person the following warning:

- ☐ You are charged with the offense of _____ ☐ a felony ☐ a misdemeanor
- ☐ You have a right to hire an attorney to represent you.
- ☐ You have the right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- ☐ You have the right to remain silent.
- ☐ You are not required to make a statement, and any statement you make can and may be used against you in court.
- ☐ You have the right to stop any interview or questioning at any time.
- ☐ You have the right to have an examining trial (felonies only).
- ☐ You have the right to request appointment of counsel if you cannot afford counsel. *

*THE MAGISTRATE SHALL ENSURE THAT THE PERSON IS INFORMED OF THE FOLLOWING PROCEDURES:

a. That an application for a court appointed attorney must be completed to determine if he/she qualifies for a court appointed attorney;
b. That reasonable assistance will be provided to him/her when filling out the application for a court appointed attorney, if needed;
c. That a financial affidavit must be signed;
d. That an affidavit is a written or printed declaration or statement of facts made voluntarily and confirmed by oath before a person having authority to administer such oath;
e. That if he/she meets indigence standards he/she will qualify for court appointed attorney; and,
f. Attorney should attempt to contact him/her by the end of the first working day after appointment and to interview him/her as soon as practicable after appointment. If appointment is made when the accused is before the court, the accused will be given attorney's name, address, and phone number.

If you are not a United States citizen and you have been arrested or detained, you may be entitled to have us notify your country's consular representatives here in the United States. Do you want us to notify your country's consular officials?

☐ **NO.** _____ ☐ **YES.** _____

☐ If you responded **"YES,"** what country? _____.

If you are a citizen of a country that requires us to notify your country's consular representative, we shall notify them as soon as possible.

THE ACCUSED <u>DOES / DOES NOT</u> WANT TO REQUEST COURT APPOINTED ATTORNEY.
Circle One

I acknowledge that I was given the above warning (This is NOT an admission of guilt):

_____
Person warned

_____
Magistrate

Place of warning: _____
Time: _____
Date: _____

Accused refused to sign acknowledgement of warning:

_____
Magistrate

Witness (if any):
Name: _____
Address: _____
_____

Remarks:

This hearing was interpreted by:
_____ (Name of Interpreter)

Exhibit B

CAUSE NUMBER _____

STATE OF TEXAS **_____ COURT**

VS. **OF**

_____ **WEBB COUNTY, TEXAS**

ORDER APPOINTING/ DENYING ATTORNEY

_____I hereby APPOINT _____, to represent the defendant in the above numbered and entitled cause, and to continue to represent the Defendant until the case is concluded, including appeal, if any, or until released by written order of this Court.

_____ I hereby DENY appointment of counsel.

Signed this _____day of _____, 20__.

_____
Judge Presiding

NAME OF ATTORNEY : _____

PHYSICAL ADDRESS : _____

PHONE NO. : _____

FAX NO. : _____

EXHIBIT C

CAUSE NUMBER _____

STATE OF TEXAS **_____ COURT**

VS. **OF**

_____ **WEBB COUNTY, TEXAS**

NOTIFICATION TO COURT OF ATTORNEY'S FAILURE TO CONTACT THE ACCUSED

To the Honorable Judge of Said Court:

This is to notify you that _____,
(Attorney Name)
who was appointed on _____, has not contacted
(To be filled out by Clerk)
me as of _____.
(Today's Date)

_____
Signature of Accused

_____
(Print or Type Name)

_____
Street Address

_____
City, State, Zip, Country

_____
Day Phone

_____
Night Phone

_____
Cellular Phone

_____
Name, Address, and Phone No. of Relative

EXHIBIT "C-2"
(*Fold, seal and mail* or *Hand Deliver* or *Fax* this form to Indigent Defense Services at 956-523-5090 or call 956-523-4029.)

Front of Form

_____

_____

_____

Cornell Mickley -Webb County Indigent Defense Director
Webb County Justice Center
1110 Victoria Street - 5th Floor
Laredo, Texas 78040

Back of Form

WEBB COUNTY APPLICATION/AFFIDAVIT
Criminal Felony, Misdemeanor or Juvenile Courts Attorney Appointment List

PLEASE COMPLETE THIS ENTIRE PAGE

Date: _____

Name: _____ Birth Date: _____

Business Address: _____ Day Phone: _____

Home Phone: _____FAX No. _____

Cell Phone: _____

E-mail address: _____

*Note: You will receive notification of appointment by fax and e-mail.

EDUCATION

1. Undergraduate School: _____ Date Graduated: _____

3. Date licensed to practice law in Texas: _____ Bar Card No. _____

4. Are you fluent in any language other than English? Which language(s)?

   _____

5. Have you attended the Advanced Criminal Law Course within the last four years? _____ Yes _____ No

6. Have you had at least ten hours of CLE in Criminal Law or Juvenile Law in the last calendar year?____ Yes _____ No If "yes" where and when

   _____

   _____

   _____

7. Have you ever been sanctioned or reprimanded by the State Bar? __ Yes __ No If "yes" where and when _____

   Do you have any pending grievances? ____ Yes _____ No. If yes, explain.

   _____

   _____

EXPERIENCE-GENERAL

Briefly describe your legal experience and the type of law you have practiced including what percentage has been criminal law:

_____

_____

_____

EXHIBIT " D" – Page 1

EXPERIENCE-CRIMINAL

Have you ever served in a criminal prosecutor's office? Yes ____ No _____

If "yes," where and when: _____

_____

_____

Have you ever served as the lead counsel in the defense or prosecution of a criminal or juvenile case?

Yes__ No __ If "yes," how many times? ___ Misdemeanor ___ Felony ___ Juvenile

Type of juvenile case: _____

How many criminal or juvenile jury trials have you tried as lead counsel? ___ Misdemeanor ___ Felony ___ Juvenile In the last 12 months: ___ Misdemeanor ___ Felony ___ Juvenile

Type of juvenile case: _____

Have you ever tried a capital murder case where the State was seeking the death penalty? Yes___ No___

If "yes," specify case and when it was tried: _____

_____

_____

First Chair: _____ Second Chair: _____

Check those that apply.

___ Have at least five years of experience in criminal litigation

___ Have tried to verdict as lead defense counsel a significant number of felony cases (at least 5-10)

___ Have trial experience in the use of and challenges to mental health or forensic expert witnesses

___ Have investigated and presented mitigating evidence at the penalty phase of a death penalty trial

___ Have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases

EXPERIENCE-APPELLATE

Do you want to be assigned appellate appointments? Yes_____ No_____

Number of briefs filed: _____ Number of oral arguments: _____

EXHIBIT "D" – Page 2

SPECIAL QUALIFICATIONS

Are you board certified in criminal law? Yes _____ No _____

Are you board certified in juvenile law? Yes _____ No _____

Are you licensed to practice in federal court? Yes _____ No _____

If "yes," have you received an appointment from federal court in the last year? Yes ___ No ___

If you possess any additional special qualifications or experience you would like considered in lieu of those required by the qualifications to represent criminal defendants:

_____

_____

_____

Based on the Webb County Qualifications I am qualified to receive appointments on the following:

_____	Felony 3g/1st	___	Juvenile (Check those that apply):
_____	Felony 2nd/3rd	( )	Determinate or habitual felony, C&T, 3g/1st degree
_____	Felony SJF	( )	Other Felonies
_____	Misdemeanor	( )	Misdemeanors/CINS
_____	Appeals		

I do not qualify technically to receive court appointments for _____ cases because _____

_____

I wish to apply for an exception to the qualifications to receive court appointments for the following reason (s): _____

_____

_____

If you are applying for a grace period exception, please indicate when you will have your qualifications met _____

_____

_____

Do you want to be listed as a Spanish-speaking attorney? Yes ____ No ____

Are you willing to accept clients who speak the languages listed in question number four?

Yes ____ No ___

If you need additional space to answer any of the questions please place the answers on an additional page.

EXHIBIT " D" – Page 3

CERTIFICATION OF KNOWLEDGE OF STANDING RULES FOR PROCEDURES FOR TIMELY AND FAIR

APPOINTMENT OF COUNSEL FOR INDIGENT ACCUSED PERSONS IN WEBB COUNTY, TEXAS

I certify, under oath, that I have received, read, and understand the Webb County Plan and Standing Rules and Orders for Procedures for Timely and Fair Appointment of Counsel for December 20, 2001, and effective January 1, 2002 and will comply with said plan, rules, and orders.

I certify, under oath, that I shall maintain an office with a phone which is answered a receptionist or answering service from 8:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 5:00 p.m. Monday through Friday (except for Webb County holidays as set out in the official Webb County calendar approved by the Webb County Commissioner's Court) and by which a receptionist or/and answering service can promptly locate me and notify me of appointment or hearing setting. I agree I will maintain a FAX number to which FAXES may be received 24 hours a day, seven days a week, an email address and a physical address. These numbers are as follows:

Office Receptionist _____

Fax number _____

Cellular _____

E-mail address _____

Physical Address _____

I will give written notice of any change in these notification numbers to each County Court at Law, District Court and Juvenile Judge and Justice of the Peace in Webb County prior to the change.

I will make every reasonable effort to contact the defendant not later than the end of the first working day after the date of appointment and interview the defendant as soon as practicable as stated in Sec. 6, Art. 26.052 (j) (1) CCP.

I will represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or you are relieved of your duties by the Court or replaced by other counsel after a finding of good cause is entered on record as stated in Sec. 6, Art. 26.052 (j) (2) CCP.

The presiding Court may replace an attorney who violates this practice. A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate trying criminal cases in the county may remove from consideration for appointment an attorney who intentionally or repeatedly violates this practice as stated in Sec. 6, Art. 26.052 (k) CCP.

EXHIBIT " D" – Page 4

I, _____, certify, under oath, that I will zealously represent my Client, but always within the bounds of the law and legal ethics of Texas.

I understand that I must timely submit my bill for:

1. Indigent legal representation within 15 days of the date a case is disposed of by a plea or bench trial; or
2. Indigent legal representation within 15 days of the date of judgment in a trial; or
3. Indigent appeal representation within 15 days of the date a mandate is returned on appeal.

.

I understand and acknowledge that failure to comply, without showing of good cause, with these time requirements shall result in my waiver of right for such compensation and my services will have been performed PRO BONO.

I understand that I have a continuing duty to file an Amended Affidavit within 30 days of the date any of the above information changes.

I hereby, have been sworn upon oath, depose, state, and certify that the above information is true and correct.

Witness my signature on this the ____ day of _____, 200__.

_____
AFFIANT

Print Name: _____

Bar No. _____

Subscribed and Sworn to before me this the _____ day of _____, 200__.

_____
NOTARY PUBLIC / PERSON AUTHORIZED
TO ADMINISTER OATHS
Print Name: _____
Capacity: _____

Seal

EXHIBIT " D" – Page 5

Webb County Request for Payment of Attorney Fees

1.Jurisdiction	2. County	3. Cause Number	Offense	4. Proceedings
☐ 49th ☐341st ☐ 406th ☐County Court at Law I ☐County Court at Law II ☐Justice of the Peace: _____		_____ _____ _____	_____ _____ _____	☐Trial-Jury ☐Trial-Court ☐Plea-Open ☐Plea- Bargain ☐Other _____

5. In the case of:
State of Texas v _____

6. Case Level
☐ Felony 1 ☐ Felony 2 ☐ Felony3 ☐ Felony 3g ☐ State Jail Felony ☐ Misdemeanor ☐ Juvenile ☐ Appeal ☐ Capital Case

☐ Revocation – Felony ☐ Revocation – Misdemeanor ☐No Charges Filed ☐ Other _____

7. Attorney (Full Name)		9. Attorney Address (Include Law Firm Name if Applicable)	10. Telephone
8. State Bar Number	8a. Tax ID Number		11. Fax

12. Flat Fee – Court Appointed Services				12a. Total Flat Fee
				$

13.	**In Court Services**		Hours	Dates	13a. Total In Court Compensation.
	Rate per Hour =	Total hours			$

14.	**Out of Court Services**		Hours	Dates	14a. Total Out of Court Compensation.
	Rate per Hour =	Total hours			$

15.	**Investigator**	Amount	15a. Total Investigator Expenses
			$

16.	**Expert Witness**	Amount	16a. Total Expert Witness Expenses
			$
	`		

17.	**Other Litigation Expenses**	Amount	17a. Total Other Litigation Expenses
			$

18. **Time Period of service Rendered:** From _____ to _____
Date Date

19. **Additional Comments**	20. Total Compensation and Expenses Claimed

21. Attorney Certification – I, the undersigned attorney, certify that the above information is true and correct and in accordance with the laws of the State of Texas. The compensation and expenses claimed were reasonable and necessary to provide effective assistance of counsel.

☐Final Payment ☐Partial Payment _____
Signature Date

22. SIGNATURE OF PRESIDING JUDGE:	Amount Approved:
Reason(s) for Denial or Variation	

23.APPROVAL FOR PAYMENT Auditor's Signature Date G/L Account No.

Exhibit E

Exhibit G

WEBB COUNTY FEE SCHEDULE -Adopted 12/06/03; Amended 11/14/07

Vouchers should be itemized on 1/4 hour basis

	Juveniles/ Child Protective Cases		Misdemeanors				Felonies	
	Misd/Felonies	Cert/Discret	Regular	DWI's	SJF/3rd	2nd	1st	Capital
Magistrates (J.P.) Cases-Flat Fee ***Only cases disposed at Magistrate Level***			$100	$100	$100	$100	$100	$100
Initial Jail Visit	$75	$75	$100	$100	$100	$100	$100	$100
Court Appearance (Hourly Rate)	$75/appearance	$75/appear	$75	$75	$75	$85	$100	$100
Evid. Hearing & MTR's (Hourly Rate)	$75/hr.($150.00 cap	$85/hour	$75/hour	$85/hour	$85/hour	$85/hour	$100/hour	100/hour * *cap/600@day 1st ch *cap/300 2nd chair
Trial (Hourly Rate) See cap	$75/hour cap $400/day	$85/hour 600/day	$75/hour $400/day	$75/hour $400/day	$85/hour $500	$100/hour $600	$125/hour $750	150/hour-1st ch 120/hour-2nd ch cap/25,000 - 1st ch cap/15,000 - 1st ch
Out-of-Court Time (Hourly Rate) *Need prior approval to exceed hours on regular	$50/hr.(10 hrs max)	$60/hr (10hrs max) 10 hours	$50/hour 10 hours	$60/hour 10 hours	$50/hour 10 hours	$60/hour 15 hours	$75/hour 30 hours	$100/hour-1st chair $80/hour-2nd chair Capped @ 120 hours
Flat Fee for Pleas	$100.00	$500.00	$500.00	$500.00	$500.00	$750.0	$1000.00	1st ch - 3500 2nd ch - 2500
Investigator Fees-Capped at (Approval required)	$100	$750	$300	$300	$500	$750	$1,500	Approval Required

APPEALS AND P.D.R.'s

Non-Capital	Hourly Rate	Total
Appeal	$75/hour	$2,250
Appeal-Trial>5 days	$75/hour	$4,500

PDR	$75/hour	$750	
New Brief after PDR granted	$75/hour	$1,500	
Oral Argument-Ct. Crim. Appeals	$75/hour	$300	
Travel expenses for Oral Argu	receipts req		
Other: Prior approval required			
Capital	Out of Court	In Court	Pres. Max
Appeal-Death Penalty not sought	$100	$150	$4,500
Appeal-Death Penalty sought	$150	$200	$15,000
Travel expenses			
Other:			
Prior approval required	receipts req		