

**2010 INDIGENT DEFENSE PLAN  
FOR DENTON COUNTY JUVENILE APPOINTMENTS**

**Prompt Detention Hearings**

**APPOINTMENT OF COUNSEL FOR CHILDREN IN DETENTION**

**A. INITIAL DETENTION HEARING**

1. If a child is taken into custody, then a detention hearing must be held by the second working day, or first working day if detained on Friday or Saturday.
2. Upon a decision by juvenile intake services to refer a child to the juvenile court for a detention hearing, the child's parent/guardian/custodian shall be informed of the child's right to hire an attorney immediately. The adult shall also be informed of the right to apply for a court-appointed attorney IF the child is detained by the court and IF the child's family cannot afford to provide an attorney (i.e. meeting indigent standards).
3. The court or the court's designee may appoint an attorney as counsel and/or as a guardian ad litem for the first detention hearing without a Motion for a Court-Appointed Attorney if there is no parent who appears with the child at the initial detention hearing. Such appointment shall remain in effect until there is a review of the family's ability to pay for an attorney or until the parent/guardian/custodian provides an attorney for the child and that attorney notifies the court of his/her representation of the child. The appointment shall otherwise continue from hearing to hearing.
4. If the juvenile is detained and the family has established it cannot afford an attorney, an attorney shall be appointed immediately by the court or the court's designee. Prior to the appointment, the court administrator shall inform the court if the child has already been represented by a Denton County court-appointed attorney. If the child already has been represented, the same attorney shall continue to represent the child, except for good cause shown.
5. If a family can afford an attorney, the court shall immediately ORDER, or the court's designee shall instruct, the family to provide an attorney for the child within two working days of the child's detention or appear in court to show why the adult(s) should not be held in contempt. The court coordinator will provide a case reset form for such hearing.
6. If the family does not qualify for a court-appointed attorney and has not provided an attorney within two working days after the child has been detained, the family must appear in court and may immediately submit a motion for a court-appointed attorney or show cause why they have not provided an attorney for the

child. Upon a showing of good cause, the court may appoint an attorney limited to the date of the child's next detention hearing or may appoint an attorney who is to represent the child until the case is resolved.

7. If a child is released prior to the initial detention hearing, the detention staff shall inform the child's parent/guardian/custodian of the child's right to move for court appointed counsel if charges are filed against the child. Forms to request a court-appointed attorney shall be provided to the juvenile or the juvenile's parent/guardian/custodian upon request. The detention staff shall provide a list of this court's appointed attorney list.
8. Upon appointment at a detention hearing, or later if good cause is shown by the parents ordered but unable to provide an attorney, the court administrator shall notify the attorney by FAX, E-mail or personal contact of the appointment and the next scheduled hearing time and date.
9. The appointed attorney shall make every reasonable effort to contact a child in detention by the end of the first working day after receiving the notice of appointment or inform the court that the appointment cannot be accepted. Contacting the child in detention may be by personal visit, including contact during a detention hearing, by phone, or by FAX. Contacting the court may be by FAX, E-mail, phone or personal visit.
10. A court-appointed attorney shall contact the child by personal visit, including a visit during a detention hearing, no less than once every ten working days the child remains in detention.
11. An attorney appointed for a detention hearing shall continue to represent the child except for good cause shown.
12. Court-appointed attorneys shall make every effort to comply with the Texas State Bar Code of Ethics for communication with a client.

#### B. SUBSEQUENT DETENTION HEARINGS

1. If a child is not represented by counsel at a subsequent detention hearing, the court may appoint an attorney limited to the date of the detention hearing.

### **Indigence Determination Standards**

#### **DETERMINATION OF INABILITY TO AFFORD AN ATTORNEY**

- A. The juvenile's family may be eligible for an attorney if either parent's household income falls within the current Federal Poverty Guidelines as published in the Federal Register from time to time. The guidelines shall apply separately to each parent of

- the child if the parents do not live in the same household. If one parent is outside the poverty guidelines, that one parent can be ordered to hire an attorney for the child.
- B. If the parents do not live in the same household, each parent subject to the court's jurisdiction shall complete the motion and affidavit for court appointed attorney.
  - C. The presumption is that no parent whose household income comes within the Federal Poverty Guidelines shall be ordered to reimburse Denton County for attorney fees. The poverty guidelines shall apply separately to each parent of the child if the parents do not live in the same household.
  - D. A family is presumed to be eligible for a court-appointed attorney if the parent/guardian/custodian of the household in which the child resides has been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing. The presumption can be overcome if one parent is outside the guidelines in which case that one parent can be ordered to hire an attorney for the child.
  - E. If a family's income does not fall within the Federal Poverty Guidelines, the judge may appoint an attorney if the family income does not exceed 125% of the Federal Poverty Guidelines as established and revised annually by the Department of Health and Human Services and published in the Federal Register. Such families can be ordered to reimburse Denton County for all or part of the legal expenses or expert or other expenses.
  - F. The court may appoint an attorney in disregard of the financial guidelines when the interests of justice so require and the family will be required to repay all costs of representation except for good cause.
  - G. Any order for reimbursement of attorney fees shall have a beginning date effective after restitution has been paid unless the issue of restitution is severed for a separate hearing or mediation.
  - H. No statement of an adult or a child during the application for an attorney process shall be used against the child at any adjudicatory or dispositional phase of a child's case.

## **Minimum Attorney Qualifications**

### **QUALIFICATIONS**

#### **A. GENERAL QUALIFICATIONS**

1. Before being added to the list of court-appointed attorneys, either (1) pass the Texas Board of Legal Specialization Exam in Juvenile Law or (2) complete at

least one test on the computerized Juvenile Attorney Testing System (JJATS) through the Texas Juvenile Probation Commission (TJPC) with a minimum score of 70. To remain on the juvenile law court-appointment list either (1) remain in good standing as Board Certified in the field of Juvenile Law in Texas or (2) pass the JJATS test by December 15<sup>th</sup> with a minimum score of 70 for three consecutive years. All attorneys shall comply with paragraph IV.A.12.

2. All attorneys must be able to work independently within the Denton County juvenile justice system which includes a working knowledge of use of forms, working with juvenile probation and detention officers and the assistant district attorneys assigned to juvenile matters and must be familiar with the Juvenile Justice Code.
3. All attorneys must be familiar with the paperwork required for various hearings and must not use court staff to complete paper work.
4. Attorneys certified in Juvenile Law or Criminal Law by the Texas Board of Legal Specialization are qualified for any appointment.
5. All attorneys must be licensed by the State of Texas and in good standing with the Texas State Bar.
6. All attorneys must have an office in Denton County.
7. All attorneys must have a method of regularly receiving telephoned messages.
8. All attorneys must have either a functioning FAX machine, E-mail, or some electronic method of receiving and sending written messages.
9. All attorneys must have a technical means of producing printed motions and/or orders.
10. All attorneys must promptly notify the juvenile board administrator and juvenile court of any changes to the information on file with the juvenile board.
11. All attorneys shall promptly notify the juvenile board administrator and juvenile court of any matter that would disqualify the attorney from receiving appointments under these guidelines or under any other law, regulation or rule.
12. Attorneys must complete at least 6 hours CLE in juvenile law each year. This requirement is waived for the initial application process. All attorneys shall file a copy of his/her Continuing Legal Education annual report form. Such report shall reflect a minimum of six hours of juvenile law during each 12-month reporting period and be filed annually with the Statutory County Court Administrator no later than thirty days after receipt by the attorney of the form from the State Bar of

Texas, but in any case, no later than December 30th of each year. The Statutory County Court Administrator shall inform the chair of the juvenile board no later than January 15th of the following year about the status of compliance by each listed attorney.

13. All attorneys must provide some of their pro bono hours to juvenile matters with preference to representing a person on a total of any two cases of the following annually:

- (a) sealing records
- (b) guardian ad litem

The attorney shall report to the Statutory County Court Administrator the two pro bono cases annually along with the filing of CLE.

14. All attorneys must be approved by majority vote at a juvenile board meeting.
15. All attorneys must agree to be bound by and accept as a condition of their appointment the schedule for court-appointed attorney fees for the juvenile court of Denton County and other rules of this plan.
16. All attorneys must maintain records in a form adequate for application for taking the specialization exam for juvenile law and file a copy of the paper work with the juvenile board through the Statutory County Courts Administrator by December 30 of each year along with the CLE report.
17. Unless board certified in juvenile law, meet with the juvenile court judge within 30 days of the initial application to demonstrate knowledge of the collateral consequences of a juvenile court record on a person and to demonstrate knowledge of the forms used for the various court hearings.

**B. CINS:**

1. The applicant must have six months experience in juvenile law.
2. The applicant must observe or participate in at least 10 detention hearings, 5 agreed adjudication/disposition hearings and 2 contested adjudication and/or modification hearings.
3. The applicant must meet with juvenile court staff, juvenile probation department supervisors, and the assistant district attorneys assigned to the juvenile court.
4. After six months on the CINS appointment list an attorney will be automatically moved to the delinquent conduct list unless a juvenile court judge has suspended

the attorney from the list and submitted the name to the juvenile board for removal from the list. If not removed from the CINS list, the attorney will be placed on the delinquent conduct list.

C. DELINQUENT CONDUCT.

1. Complete the requirements for the CINS list.

D. TRANSFER TO CRIMINAL COURT/CERTIFICATION.

1. The attorney must be board certified in juvenile law or, having met other juvenile court-appointment requirements, must have been lead council in two contested juvenile transfer/certification hearings.

E. APPEALS

1. Attorneys for appeals shall comply with Family Code, Chapter 56, and supply the needed affidavits.
2. Notwithstanding that preference shall be given to the attorney who represented the child before the decision to appeal was made, attorneys appointed for an appeal shall have five years of juvenile law experience or one year of juvenile law experience with five years of criminal law experience.

**REMOVAL FROM THE LIST**

- A. An attorney subjected to discipline by the State Bar of Texas Code of Conduct shall immediately inform the juvenile court and the juvenile board in writing of the nature and the reason for the discipline.
- B. The juvenile court may temporarily suspend, subject to juvenile board action, an attorney from the list for the following reasons:
  - (a) noncompliance with the SBOT Code of Conduct
  - (b) failure to communicate with the child client

- (c) inappropriate interaction with a child
  - (d) deficient representation of a child including an inability to function independently within the juvenile system
  - (e) repeated failure to promptly attend hearings or to arrange a substitute attorney
  - (f) other good cause such as noncompliance with annual CLE, pro bono, or reporting requirements under this plan, submitting a claim for legal services not performed
  - (g) submitting a request for payment for an agreed hearing not in keeping with this plan
- C. The fact of temporary suspension shall be reported immediately to the members of the juvenile board and placed on the next juvenile board agenda for action. Upon majority vote of the juvenile board, the attorney shall be removed from the court appointment list for no less than three months. The juvenile court judge shall not participate in the juvenile board decision to remove an attorney. The attorney temporarily suspended by the juvenile court shall be given notice of the juvenile board meeting at which his suspension is to be considered and shall be given an opportunity to address the juvenile board before the decision regarding removal is made.

### **Prompt Appointment of Counsel**

#### **APPOINTMENT OF COUNSEL FOR CHILDREN NOT IN DETENTION**

1. The court, or the court's designee, upon motion and a finding that the family cannot afford an attorney, as determined by Federal Poverty Guidelines shall appoint an attorney on or before the fifth working day after the date a petition for adjudication, or for transfer/certification to criminal court, or a motion to modify disposition has been served upon the child.
2. If the family does not submit a motion for a court-appointed attorney prior to the first court appearance after a petition has been filed, a determination of the need for a court appointed attorney shall be made at the first court appearance in response to the summons for appearance and an attorney shall be appointed immediately upon a finding that the family qualifies for a court-appointed attorney.

3. If a motion to modify disposition is filed, the attorney appointed on the original case shall continue to represent the child if the attorney is available except for good cause shown and assuming the child's family continues to qualify for a court appointed attorney. Appointment on a motion to modify is not an appointment for purposes of rotation on the appointment list.
4. The court administrator shall notify the attorney of the appointment no later than the end of the first working day after the appointment.
5. If the child is not in detention, the attorney shall contact the child within five working days after receiving notice of the appointment or shall within that time notify the court that the attorney cannot accept the appointment.
6. At a pre-trial setting with multiple families summonsed to appear, the court may utilize a separate rotation list and may appoint an attorney to multiple cases for the docket on a particular day. The court will maintain a separate rotation list for a multiple pre-trial hearings docket. The list will include all attorneys eligible for appointment of delinquent conduct cases. The rotation shall be based on the date of the pre-trial setting and not on the number of appointments resulting from the pre-trial setting.

## **Attorney Selection Process**

### **GENERAL PRINCIPLES**

#### **A. CONTINUITY OF REPRESENTATION**

1. If a child has been represented by a Denton County court-appointed attorney, preference will be given to appointment of the same attorney.
2. When an attorney is appointed, the attorney shall represent the child until the case is terminated or substitute counsel is appointed or hired.
3. Court-appointed attorneys shall obtain information at the initial meeting(s) with the child sufficient to the seal the case.
4. With notice to the court and to the child, a court-appointed attorney may arrange with another attorney on the court appointment list to have a substitute attorney for an individual hearing without a change of the attorney of record. The temporary substitution is not an appointment.

5. With notice to the court and to the child, a court appointed attorney may request the court to appoint a substitute attorney for one hearing. The temporary substitution is not an appointment.

#### B. CONFLICT OF INTEREST

1. An attorney who is a parent of a child may not represent the child or a co- respondent or a co-defendant of the child.
2. A court-appointed attorney representing a child may not also represent a co-respondent or co-defendant of the child except for judicial economy and the best interests of all parties.

#### C. GOOD CAUSE FOR APPOINTING AN ATTORNEY OUTSIDE THE ROTATION LIST

1. An attorney may be appointed outside the rotation if the interests of justice would be served by appointing an attorney already familiar to the child and the child's case(s).
2. An attorney may be appointed outside the rotation if the attorney has given notice he/she is not available due to illness, prior court scheduling, continuing legal education, vacation, military obligations, etc.
3. An attorney may be appointed outside the rotation list if the client has special needs such as interpretation or physical impairment and the attorney can accommodate those needs.
4. An attorney may be appointed outside the rotation list if the attorney has specialized experience such as familiarity with mental health issues.
5. An attorney may be appointed outside the rotation list if the child has an immediate need and the attorney appointed can attend the case immediately. Such an appointment can be for a limited purpose.
6. An attorney may be appointed outside the rotation list if the child needs to be able to meet with an attorney geographically close to the child's home or school.
7. An attorney may be appointed outside the rotation list if the child can work only with an attorney of a particular gender.

#### D. OTHER GENERAL GUIDELINES

1. A child with no parent in Denton County shall be presumed to require a court-appointed attorney until the parent/guardian/custodian provides an attorney or requests a court-appointed attorney.

2. The guardian/custodian of a child with no parent in Denton County shall be presumed to be unable to repay any of the costs of an attorney unless the court finds good cause for such reimbursement.
3. The court will not appoint an attorney to represent a parent except for the parent's contempt of court proceeding. The same attorney will not also represent the child.
4. The court will not appoint an attorney for a child if the parent(s) can afford to hire an attorney for the parent(s).
5. A person who has a court appointed-attorney on a criminal matter may request that the same attorney be appointed to any pending juvenile matter even if that attorney is not included on the juvenile appointment list. Any such appointment will not be made if an attorney on the juvenile appointment list has already prepared for trial or for another contested hearing in the matter.
6. An attorney appointed to represent a child at a detention hearing is presumed to be the attorney representing the child for any petition filed with the court.
7. Notice to the court by attorneys in order to comply with these procedures is preferred to be by FAX or E-mail or hand delivery or phone call to the court administrator.
8. Attorneys shall present their request for payment no later than the final hearing of a child's case.
9. For the purposes of rotation, the individual child and not the number of cases a child has, shall count as one appointment.

## **Fee and Expense Payment Process**

### **COMPENSATION**

- A. Attorneys will be paid a flat fee based on the petition filed according to the following schedule:
  1. Board certified in juvenile law:
 

Detention/furlough/release hearings	\$95
Guardian ad litem	\$70
Agreed misdemeanor adjudication	\$150
Agreed felony adjudication	\$160
Uncontested disposition	\$150

Uncontested modification	\$270
Certification/Transfer Hearing, agreed	\$260
Agreed post-disposition de-registrations	\$260

2. Board certified in criminal law:

Detention/furlough/release hearings	\$90
Guardian ad litem	\$65
Agreed misdemeanor adjudication	\$140
Agreed felony adjudication	\$150
Uncontested disposition	\$140
Uncontested modification	\$250
Certification/Transfer Hearing, agreed	\$250
Post-disposition de-registration	\$250

3. Not board certified:

Detention/furlough/release hearings	\$80
Guardian ad litem	\$55
Agreed misdemeanor adjudication	\$130
Agreed felony adjudication	\$140
Uncontested disposition	\$130
Uncontested modification	\$240
Certification/Transfer Hearing agreed	\$230
Post-disposition de-registration	\$230

4. The presumed maximum for investigation/expert fees is \$500 with prior court approval of the employment. “Experts” do not include appointment of psychologists or psychiatrists mandatory for the hearing.

5. Incidental expenses related to research, jail visits, conferences with clients and/ or witnesses including parents, mail and copying expenses, courier fees or any other miscellaneous expense(s) associated with your appointed case will not be paid separately. All expenses, except expert fees or investigation expenses, are included in the rates set out above. The court will consider reimbursement for extraordinary out of pocket expenses.
6. Upon good cause shown, the Court may approve an amount which exceeds the above rates for compensating a court-appointed attorney based upon the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel.
7. If multiple cases for a child are on the docket and heard at the same time, an additional \$45 for board certified and \$40 for other attorneys shall be added for each case adjudicated, considered or consolidated or heard at the same hearing.
8. For contested hearings the following rates may apply:

Hourly Rates

<u>Activity</u>	<u>Minimum</u>	<u>Maximum</u>
Out of Court Services	\$75/hr	\$125/hr
In Court Services	\$75/hr	\$125/hr
Appeals	\$75/hr	\$125/hr

9. If a judge disapproves a request for compensation, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.
10. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60<sup>th</sup> day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.
11. **Investigators, Experts, Necessary Expenses.** Counsel appointed in a non-capital case shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior court approval shall be reimbursed, according to the procedures set forth below. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.

12. ***Procedure Without Prior Court Approval:*** An attorney shall be reimbursed for reasonable and necessary expenses including expenses for private investigators licensed in Texas, mental health experts and other incurred on behalf of the appointed client as provided by TEX CODE CRIM. P. ARTICLE 26.05(d), 26.052 and case law.

A. COURTROOM PROTOCOL

1. During a hearing or while in the clerk's office the child's attorney shall remain close enough to the child that the child can quickly access legal expertise.
2. The attorney shall not leave the courtroom until all paperwork, including a completed Order of Release or a case reset form for each case is signed and copies distributed.
3. If a subsequent hearing is needed, the attorney shall not leave the courtroom until a date to return is obtained from the court administrator, a case reset form is filled out and signed, and copies are made for the family and others. One copy shall be given to the assistant district attorney. The defense attorney is responsible for gathering the signatures and delivering a copy to the State.
4. If the hearing is the final hearing, the attorney shall not leave the courtroom until the request for payment has been submitted to the court.
5. Only necessary case-related conversation with the assistant district attorneys or court staff is permitted while the court-reporter is making a record or the court is conducting business. Conversations with clients should occur outside the courtroom.

Approved and adopted this the \_\_\_\_ day of August, 2010 by a quorum of the Denton County Juvenile Board.

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Darlene A. Whitten, Juvenile Board Chair

Pursuant to Article 26.04 of the Texas Code of Criminal Procedure this plan for the appointment of counsel to represent indigent defendants in the juvenile court of Denton County, Texas is hereby approved on this the \_\_\_\_ day of \_\_\_\_\_, 2010.

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The Honorable Jeff Walker

Presiding Judge

8<sup>th</sup> Judicial Administrative Region