

NOs. 416-81913-2015
416-82148-2015
416-82149-2015

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
V.	§	416 th JUDICIAL DISTRICT
	§	
WARREN KENNETH PAXTON, JR.	§	COLLIN COUNTY, TEXAS

PAXTON’S OBJECTION TO EXCESSIVE OR INTERIM PAYMENT OF FEES TO ATTORNEYS PRO TEM

TO THE HONORABLE JUDGE GALLAGHER:

WARREN KENNETH PAXTON, JR., (“Paxton”), pursuant to a request by the Court, files his *Objection to Excessive or Interim Payment of Fees to Attorneys Pro Tem* as follows:

I. INTRODUCTION

Paxton does not object to the payment of fees for pre-trial work to the Attorneys Pro Tem in this case if paid in accordance with the Texas Code of Criminal Procedure, the “Fair Defense Act,” and the “Collin District Court Plan” (“The Plan”). Paxton objects to any additional amounts or interim payments in violation of law.¹

¹Paxton has not been provided with or obtained a copy of any completed request for compensation. However, a Defendant must object to procedural errors with respect to attorneys pro tem or their fees or they are waived. *See Marbut v. State*, 76 S.W.3d 742, 749 (Tex.App.-

Paxton understands there is a secret deal by Collin County District Court Judge Scott Becker to allow legal fee payments to the attorneys pro tem that are far in excess of the rates and limits established by Collin County. Because of the lack of transparency in disclosing the details of these financial arrangements, Paxton must object to any excessive or interim payments as unlawful.

II. PROCEDURAL HISTORY

On April 21, 2015, Judge Scott Becker appointed non-governmental counsel Kent Schaffer and Brian Wice to serve as Attorneys Pro Tem.² According to statements made by Judge Becker to Collin County Commissioner Chris Hill on August 18 and 19, 2015, Becker **secretly** agreed to pay the Attorneys Pro Tem \$300.00 per hour.

Judge Becker amended the appointments to include violations of the Texas Securities Act On May 20, 2015.³

On July 7, 2015, Paxton was first indicted by the grand jury of the 416th District Court of Collin County, Texas. Paxton was indicted twice more on July 28, 2015, both of which were then dismissed and re-indicted on August 18, 2015.

Waco 2002, pet. ref'd), 749; see also *Stephens v. State*, 978 S.W.2d 728, 730 (Tex.App.-Austin 1998, pet. ref'd); and *Landers v. State*. See 402 S.W.3d 252 (Tex. Crim. App. 2013).

²Ex. A. This first order is not a part of the clerk's record and was not produced by Judge Becker despite a request for all documents relevant to the appointment under the Texas Public Information / Open Records Act. See Ex. B. Several other local judges produced it to Paxton's counsel pursuant to a similar request.

³Ex. C. Published at <http://lawflog.com/wp-content/uploads/2015/08/2015.05.20-Second-order-re-special-prosecutors.pdf> (last viewed December 23, 2015)

On September 18, 2015., a third attorney pro tem, another non-governmental attorney, Nicole Deborde, was appointed, though she took the oath of office on August 27, 2015.

III. ARGUMENT AND AUTHORITIES

These three private lawyers were vested with prosecutorial power pursuant to Article 2.07(a) and (c) of the Texas Code of Criminal Procedure (“CCP”). None are “attorneys for the state” in Collin or any other county as defined by Article 2.07(d) or (e) of the CCP. As a result, they “**shall** receive compensation” in the “same amount and manner” as an attorney appointed to represent an indigent person.” TEX. CODE CRIM. PRO. ART. 2.07(c) (emphasis added).⁴

Article 26.05 of the CCP governs payment for indigent defense in Texas. *See Id.* at ART. 26.05. The Court of Criminal Appeals has stated, “we can only construe article 2.07(c) as incorporating the provisions of Article 26.05 that govern the amount and manner of compensation; those provisions speak to the kinds of expenses and services of an appointed attorney, the methods of calculating the attorney's fee, the form of schedules and reporting, the method of approval, and the source of funding.” *Busby v. State*, 984 S.W.2d 627, 630 (Tex. Crim. App. 1998)(where reimbursement of attorney pro tem fees improperly assessed as court

⁴Collin County has in the past appointed attorneys pro tem from neighboring counties to prosecute cases on its behalf and also had the attorneys of the Texas State Securities Board prosecute violations of the Texas Securities Act in Collin County a half-dozen times since 2010, but Judge Becker chose to do neither with respect to Paxton.

costs). Under Article 26.05(b) “[a]ll payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the ... district courts trying cases in each county.” TEX. CODE CRIM. PRO. ART. 26.05(b). Collin County has adopted and published a fee schedule in accordance with this law and the “\$300.00 per hour” reportedly agreed upon by Judge Becker far exceeds the amounts in that fee schedule, which is “without exception.”

A. Indigent Defense Plan Fee Schedule is “Without Exception”

Collin County has a published “District Court Plan” (“The Plan”) for felony indigent defense adopted on October 22, 2013, amended effective October 28, 2015.⁵ Section 4.01 of The Plan states:

A. The District Judges adopt, pursuant to Article 26.05 Tex. Code of Crim. Proc., a fee schedule for appointed attorneys, attached hereto as "Fee Schedule for Appointed Attorneys."

B. Payment can vary from the fee schedule in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

- Ex. D, pg. 11.

Under The Plan, the rate of compensation in a first degree felony case is \$1,000.00 for a plea, \$1,000.00 for pre-trial preparation, \$500.00 per half day of trial, and a maximum upwards adjustment of \$1,000.00. Ex. D, pg. 12. According to the face of the fixed fee schedule, the fee schedule is “without exception.” *Id.*

⁵See Ex. D, at http://www.collincountytx.gov/indigent_defense/Documents/Felony_TFDA.pdf, last viewed December 23, 2015.

Notwithstanding Rule 4.01B of The Plan, the District Court Judges of Collin County regard the amounts in the schedule as inflexible and that they cannot be increased according to emails produced under the Open Records Act (“TPIA”). In that chain of emails, Judge Ray Wheelless of the 366th District Court stated as recently as September 8, 2015;

In May of this year, the District Judges had an occasion to discuss whether the fixed fee rates in indigent defense cases were to be followed or if there was some judicial discretion allowed. The enclosed email from Judge Oldner makes it clear that the prior “discretionary” language was amended by stating that **the fixed fee schedule was to be followed without exception**. I believe that the later adopted amendment controls.

- Ex. E, pg. 1 (emphasis added).

This email appears to have been a rebuke of Judge Becker. Earlier that same day, Judge Wheelless wrote;

It is clear that all of us, and specifically Judge Oldner, agreed as recently as May 25, 2015, that the fixed fee schedule was to be followed. **The language now being cited by Judge Becker at our recent meeting was previously rejected** in favor of the later amendment cited below.

- *Id.*

That inflexibility is consistent with Art. 26.05(b)’s requirement that “all payments” be paid under the schedule of fees. Even when a judge’s fee award is appealed and a fee is approved by the presiding judge of a judicial administrative region, it must still be “in accordance with the fee schedule for that county.” *See* Art. 26.05(c).

There is simply no statutory basis to deviate from the fixed fee schedule adopted by the judges and which they have strictly construed against local indigent defenders. Certainly, were Paxton indigent, his counsel would be held to these strict compensation limits in the *published* plan.

B. Only \$3,000 is Allowed for Pre-Trial in this Case After Final Disposition

Paxton is charged with two first degree felonies and one third degree felony. The two first degree felonies reportedly arise from the same alleged transaction or episode whereas the latter from entirely different relationship and set of events. There has been no trial in these cases. Accordingly, under the schedule of fees adopted by the judges and Articles 2.07(c) and 26.05(b) of the CCP, the Attorneys Pro Tem should be paid *at most* \$1,000 each for pre-trial per case under The Plan **after the final disposition** of the cases.

Rule 4.02 of the “Collin District Court Plan” states that applications for payment “**shall**” be submitted on the day of a non-trial disposition or within seven days of trial. *No* provision is made in the rules for payment of appointed attorney fees to the Attorneys prior to final disposition of a criminal case in Collin County under the existing plan. Any box for partial payments on the “Appointed Counsel Request for Compensation” form revised in 2007 is irrelevant as the form also applies to direct payments for non-attorney services (investigators, experts, etc.)

which are not governed by Rule 4.02. Besides, the form cannot trump the dictates of the law.

Paxton has no objection to any direct interim payments to non-attorney providers just as he has no objection to any payments made under the plan to the Attorneys Pro Tem - \$1,000 to each attorney in each case for *all* pre-trial matters *after* the final disposition of the case. However, that is not what Paxton believes is being sought at this time by the Attorneys Pro Tem who requested his position be stated in writing. Paxton believes the Attorneys Pro Tem seek immediate payment of an amount grossly in excess of the published fixed fee schedule for indigent defense pursuant to an agreement they reached with Judge Becker before they were even appointed.

C. Judge Becker Agreed to an Excessive Rate *Before* the Case Even Began and Planned to Keep it a Secret

Rather than follow the published fee schedule for indigent defense in Collin County as required by CCP articles 2.07 and 25.06, Judge Becker reportedly secured the services of Mr. Wice and Schaffer upon a \$300.00 per hour rate that was to be kept *secret* and *grossly exceeds the published rates* of the Collin County indigent defense plan, even for those facing the death penalty.

Chris Hill, Commissioner of Collin County Precinct 3, spoke with Judge Becker about the fee amount on August 18, and 19, 2015. Commissioner Hill's notes on the conversation were produced in response to a TPIA request. *See* Ex. F.

In their first conversation on August 18, 2015, Becker told Commissioner Hill, in part, that:

- I never intended to make the amount (per hour) public
- I wasn't planning to share the rate but I'll tell you since you asked
- I will figure it out and send it to you
- You understand there are just some people who don't need to know (the rate)
- Some people might be inclined to use the information in the wrong way

- Ex. F, pg. 2⁶

The next day, Judge Becker told Commissioner Hill that he had agreed to \$300.00 per hour with the Attorneys Pro Tem.

It is reasonable to infer that this unlawful compensation amount was offered by Judge Becker to Mr. Wice and Schaffer *prior* to Judge Becker signing their appointments.⁷ This **secret** rate to be paid the Attorneys Pro Tem violates both the spirit and the letter of the law as it is contrary to the **published** indigent compensation plan approved, adopted, and published by the judges of Collin County, and thereby Articles 2.07(c), Art. 26.05 of the Texas Code of Criminal Procedure.

⁶At various times, budgets of \$2,000,000 and \$285,000 for this prosecution have been reported by various media outlets. Collin County Commissioner's Court Minutes for August 24, 2015, reflect these amounts. The adopted budget for Fiscal Year 2016, reportedly includes a line item for \$100,000.00 for this prosecution.

⁷Defendant anticipates these matters will be substantiated by testimonial and other evidence including documents and other items responsive to pending TPIA requests for this information which Judge Becker and others have denied disclosure of and which denials are being appealed.

The provision of Local Rule 4.01B (which may violate Art. 26.05(b) on its face) cannot be applied to this case to pay an excessive rate. As the face of The Plan and the judge's emails demonstrate – the fixed fee schedule is “without exception.” Furthermore, Judge Becker cannot have known at the time he agreed to \$300 per hour what the *actual* circumstances of the prosecution would entail. Any discretion Judge Becker might have had to adjust the amount in excess of the \$1,000 per case in The Plan was before the appointments and cannot serve as a basis for paying any voucher at the rate agreed upon. Any amount in excess of The Plan is also inappropriate when compared to the amount paid to defend persons facing the death penalty and the amount earned by the professionals with the legal duty to investigate and prosecute violations of the Texas Securities Act.

D. \$300 Per Hour is Twice that paid for Death Penalty Defense and Thrice that paid to Professional Securities Fraud Prosecutors

Naturally, the private lawyers are entitled to command their market rates for *private* cases. However, with their appointments, they have stepped into the shoes of public servants and must be accountable to the *public* trust. The \$300.00 per hour rate is not only excessive under articles 2.07 and 25.06 of the CCP, but also when compared to any relevant amount. Under The Plan, appointed counsel in death-penalty cases in Collin County are paid half that amount, \$150.00 per hour. Counsel in non-death capitals murder cases are paid a third of that amount, \$100.00 per hour. All other serious first degree felonies, including murder,

aggravated sexual assault of a child, aggravated robbery, and even first-degree theft cases are limited to the \$1,000.00 per case amount.

As further comparison, The Honorable Greg Willis, Collin County Criminal District Attorney, is paid an annual salary of \$187,684, which, works out to approximately \$93.85 per hour.⁸ The executives and attorneys at the Texas State Securities Board, the experts in securities prosecution who have prosecuted cases in Collin County recently, make even less than Mr. Willis, with Director Ronak Patel receiving \$142,792 per year (\$71.40 per hour) and the General Counsel, \$127,504 (\$63.75 per hour).⁹ Yet, before a single pleading was filed in this case Judge Backer ignored previous appointments of prosecutors from other counties or the Texas State Securities Board and, instead, agreed to pay two career defense attorneys more than four times per hour what *full time professionals*, with the duty and expertise to prosecute violations of the Texas Securities Act, are paid.

The Attorneys Pro Tem should not be paid an amount that exceeds what is paid to local defense attorneys representing indigents in Collin County under the published fee schedule.

⁸Based upon a forty hour work week and fifty work weeks per year. Salary information published by Collin County Auditor at http://www.collincountytx.gov/county_auditor/FinancialTransparency/OfficialSalaryLib/Fiscal%20Year%202016/Elected%20-%20Appointed%20-%20Department%20Head%20Salaries%20FY%202016.pdf (last viewed December 22, 2015).

⁹ See <http://salaries.texastribune.org/state-of-texas/departments/securities-board/> (last viewed December 22, 2015).

CONCLUSION

PAXTON objects to any payment in excess of \$1,000.00 per case to each Attorney Pro Tem for all pre-trial work performed. Paxton has no objection if payment is made in accordance with the Statutes.

Respectfully submitted,

Dan Cogdell
Co-Lead Counsel
Cogdell Law Firm, L.L.C.
402 Main Street
Fourth Floor
Houston, Texas 77002
Telephone: (713) 426-2244
Facsimile: (713) 426-2255
dan@cogdell-law.com

Terri Moore
300 Burnett St., Ste. 160
Fort Worth, TX 76102-2755
Telephone: (817) 877-4700
moore@terrimoorelaw.com

Heather J. Barbieri
Barbieri Law Firm, P.C.
1400 Gables Court
Plano, Texas 75075
Telephone: (972) 424-1902
Facsimile: (972) 208-2100
hbarbieri@barbierilawfirm.com

HILDER & ASSOCIATES, P.C.

/s/ Philip H. Hilder
Philip H. Hilder
State Bar No. 09620050
Co-Lead Counsel
Q. Tate Williams
State Bar No. 24013760
819 Lovett Blvd.
Houston, TX 77006
Telephone: (713) 655-9111
Facsimile: (713) 655-9112
philip@hilderlaw.com
tate@hilderlaw.com

Bill Mateja
Fish & Richardson, P.C.
1717 Main Street, Suite 5000
Dallas, Texas 75201
Telephone: (214) 292-4008
mateja@fr.com

J. Mitchell Little
Scheef & Stone, LLP
State Bar No. 24043788
2600 Network Blvd., Ste. 400
Frisco, TX 75034
Telephone: (214) 472-2100
Facsimile: (214) 472-2150
mitch.little@solidcounsel.com
OF COUNSEL

ATTORNEYS FOR DEFENDANT,
WARREN KENNETH PAXTON, JR.

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2015 a true and correct copy of the above and foregoing was served on all counsel of record via electronic case filing.

/s/ Philip H. Hilder
Philip H. Hilder

IN RE	§	DISTRICT COURT
SECURITIES COMPLAINTS	§	IN AND FOR
AGAINST KENNETH PAXTON	§	COLLIN COUNTY, TEXAS

ORDER

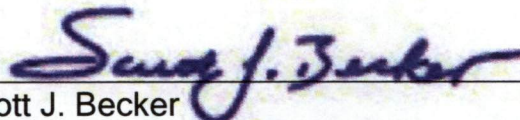
The Collin County Criminal District Attorney having recused his office from all matters involving the securities law complaints against Ken Paxton and there being good cause for such recusal, the Court, pursuant to Article 2.07, Texas Code of Criminal Procedure, hereby appoints:

1. Mr. Kent Schaffer
JP Morgan Chase Bank Building
712 Main Street, Suite 2400
Houston, Texas 77002
Phone: 713/574-9412
Fax: 713/228-0034
Email: kentschaffer@gmail.com
2. Mr. Brian Wice
440 Louisiana Street, Suite 900
Houston, Texas 77002
Phone: 713/524-9922
e-mail: wicelaw@att.net

to serve as Collin County Criminal District Attorneys *Pro Tem* in this matter for the purposes of assisting in the investigation and, if warranted, the prosecution of Ken Paxton for the securities law complaints currently under investigation by the Texas Rangers.

If necessary, this Court may make further additional appointments to assist the aforementioned individuals if requested, and it is deemed necessary and appropriate.

SIGNED THIS 21st DAY OF April 2015.

A handwritten signature in dark ink, appearing to read "Scott J. Becker", written over a horizontal line.

Scott J. Becker
Presiding Judge, 219th Judicial District Court
Local Administrative Judge
Collin County, Texas



Judge Scott J. Becker

219th Judicial District Court
Local Administrative Judge
Collin County Courthouse
McKinney, Texas 75071
Phone: (972) 548-4662 Fax: (972) 548-4456



October 9, 2015

Phillip H. Hilder
819 Lovett Boulevard
Houston, Texas 77006-3905

Via Certified Mail RRR # 7011 1150 0001 0408 6456

Mr. Hilder,

This Office received today, through Regional Presiding Judge Mary Murphy, the following request:

This is a request pursuant to the provisions of Rule 12 of the Rules of Judicial Administration, the Texas Constitution and Chapter 552 of the Texas Government Code. We request the below listed information existing in the records of the 219th Judicial District Court within ten (10) days:

1. Produce the following documents created, received and/or sent on or between January 1, 2015 and April 20, 2015:
 - a. Any and all documents and communications, including, but not limited to, electronic mail, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of all attachments), by, between, to, from, cc and/or bcc between Judge Scott Becker (sbecker@co.collin.tx.us or variations thereof), Brian Wice (wicelaw@att.net or variations thereof) and Kent Schaffer (*@biresandschaffer.com, kent@bsdlawfirm.com, kentschaffer@gmail.com or variations thereof).
 - b. Any and all documents and communications, including, but not limited to, electronic mail, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of all attachments),

by, between, to, from, cc and/or bcc between Judge Scott Becker (sbecker@co.collin.tx.us or variations thereof), and any other recipient regarding Ken Paxton, and/or the criminal, civil, administrative and/or regulatory cases involving Ken Paxton, or any variations of those terms.

- c. Any and all documents and communications, including, but not limited to, electronic email, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of all attachments) by, between, to, from, cc and/or bcc between Judges Scott Becker, Chris Oldner, Mark Rush, Ray Wheless, Cynthia Wheless, John Roach, Jr., Angela Tucker, Benjamin N. Smith, and Jill Willis relating to the position of Attorney Pro Tem and/or Kent Schaffer and/or Brian Wice and/or Ken Paxton, and/or Byron Cook or any variations of those terms.
 - d. Any and all documents and communications, including, but not limited to, electronic mail, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of all attachments), made by, between, to, from, cc and/or bcc between Andrea Stroh Thompson, Collin County District Clerk, or anyone on her staff, to or from Judge Keith Self, Commissioners Susan Fletcher, Cheryl Williams, Chris Hill, and Duncan Webb, Judges Scott Becker, Chris Oldner, Mark Rush, Ray Wheless, Cynthia Wheless, John Roach, Jr., Angela Tucker, Benjamin N. Smith, and Jill Willis, relating to the position of Attorney Pro Tem and/or Kent Schaffer and/or Brian Wice and/or Nicole DeBorde and/or Ken Paxton or any variations of those terms.
2. Produce the following documents created, received and/or sent on or between April 21 and April 22, 2015:
- a. Any and all documents and communications, including, but not limited to, electronic mail, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of any all attachments), by, between, to, from, cc and/or bcc between Judge Scott Becker (sbecker@co.collin.tx.us or variations thereof), Brian Wice (wicelaw@att.net or variations thereof) and Kent Schaffer (*@biresandschaffer.com, kent@bsdlawfirm.com, kentschaffer@gmail.com or variations thereof).
 - b. Any and all documents and communications, including, but not limited to, electronic mail, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of all attachments), by, between, to, from, cc and/or bcc between Judge Scott Becker (sbecker@co.collin.tx.us or variations thereof), and any other recipient regarding Ken Paxton, and/or the criminal, civil, administrative and/or regulatory cases involving Ken Paxton, or any variations of those terms.

- c. Any and all documents and communications, including, but not limited to, electronic email, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of all attachments) by, between, to, from, cc and/or bcc between Judges Scott Becker, Chris Oldner, Mark Rush, Ray Wheless, Cynthia Wheless, John Roach, Jr., Angela Tucker, Benjamin N. Smith, and Jill Willis relating to the position of Attorney Pro Tem and/or Kent Schaffer and/or Brian Wice and/or Ken Paxton, and/or Byron Cook or any variations of those terms.
 - d. Any and all documents and communications, including, but not limited to, electronic mail, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of all attachments), by, between, to, from, cc and/or bcc between Andrea Stroh Thompson, Collin County District Clerk, or anyone on her staff, to or from Judge Keith Self, Commissioners Susan Fletcher, Cheryl Williams, Chris Hill, and Duncan Webb, Judges Scott Becker, Chris Oldner, Mark Rush, Ray Wheless, Cynthia Wheless, John Roach, Jr., Angela Tucker, Benjamin N. Smith, and Jill Willis, relating to the position of Attorney Pro Tem and/or Kent Schaffer and/or Brian Wice and/or Nicole DeBorde and/or Ken Paxton or any variations of those terms.
3. Produce the following documents created, received and/or sent on or between April 23, 2015 and October 6, 2015:
- a. Any and all documents and communications, including, but not limited to, electronic mail, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of all attachments), by, between, to, from, cc and/or bcc between Judge Scott Becker (sbecker@co.collin.tx.us or variations thereof), Brian Wice (wicelaw@att.net or variations thereof) and Kent Schaffer (*@biresandschaffer.com, kent@bsdllawfirm.com, kentschaffer@gmail.com or variations thereof).
 - b. Any and all documents and communications, including, but not limited to, electronic mail, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of all attachments), by, between, to, from, cc and/or bcc between Judge Scott Becker (sbecker@co.collin.tx.us or variations thereof), and any other recipient regarding Ken Paxton, and/or the criminal, civil, administrative and/or regulatory cases involving Ken Paxton, or any variations of those terms.
 - c. Any and all documents and communications, including, but not limited to, electronic email, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of all attachments) by, between, to, from, cc and/or bcc between Judges Scott Becker, Chris Oldner, Mark Rush, Ray Wheless, Cynthia Wheless, John Roach, Jr., Angela Tucker, Benjamin N. Smith, and Jill Willis relating to the position of Attorney Pro Tem

and/or Kent Schaffer and/or Brian Wice and/or Ken Paxton, and/or Byron Cook or any variations of those terms.

- d. Any and all documents and communications, including, but not limited to, electronic mail, notes, texts, on-line chats, intra-mail, instant messaging, records, audio recordings, phone calls, agreements and/or writings, (and copies of all attachments), by, between, to, from, cc and/or bcc between Andrea Stroh Thompson, Collin County District Clerk, or anyone on her staff, to or from Judge Keith Self, Commissioners Susan Fletcher, Cheryl Williams, Chris Hill, and Duncan Webb, Judges Scott Becker, Chris Oldner, Mark Rush, Ray Wheless, Cynthia Wheless, John Roach, Jr., Angela Tucker, Benjamin N. Smith, and Jill Willis, relating to the position of Attorney Pro Tem and/or Kent Schaffer and/or Brian Wice and/or Nicole DeBorde and/or Ken Paxton or any variations of those terms

In response to your request under Rule 12 of the Texas Rules of Judicial Administration, the Court declines to produce the requested items based on Rule 12.5(a) and Rule 12.5(f) of the Texas Rules of Judicial Administration.

I am required to inform you that you have the right to appeal the denial of your request under Rule 12.9 of the Texas Rules of Judicial Administration. The Administrative Director of the Office of Court Administration is David Slayton. His address is:

PO Box 12066
Austin, Texas 78711-2066

Sincerely,



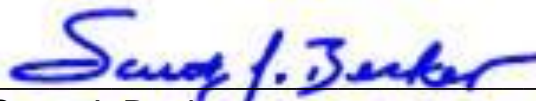
Scott J. Becker
Presiding Judge, 219th Judicial District Court

Paxton's alleged violation of the Texas Securities Act.

Furthermore, in the event the undersigned judge is not available for any reason, to sign any future orders necessary in this matter, or for any other matters that might require his attention, the following current judges are authorized to act his stead:

1. Judge Chris Oldner (416th District Court)
2. Judge John R. Roach, Jr. (296th District Court)
3. Judge Mark Rusch (401st District Court)

SIGNED THIS 20th DAY OF MAY, 2015.



Scott J. Becker
Presiding Judge, 219th Judicial District Court
Local Administrative Judge
Collin County, Texas

Collin District Court Plan

Prompt Magistration

10/28/2015

LOCAL RULES TO IMPLEMENT THE TEXAS FAIR DEFENSE ACT

2015-16 PLAN STANDARDS AND PROCEDURES RELATED TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN FELONY CASES IN COLLIN COUNTY

To implement the Texas Fair Defense Act (FDA, Acts. 2001, 77th Leg.), the following Local Rules of Administration are adopted under Texas Local Government Code Sec. 74.093, effective November 1, 2015.

SECTION ONE APPOINTING COUNSEL

1.01 Procedures for Timely Appointment of Counsel

A. Magistration

All persons confined in state custody in Collin County shall be magistrated as soon as practicable after their arrest, but no later than 48 hours after arrest. The magistrate shall deliver the warnings and admonishments and comply with all requirements contained in Article 15.17, Texas Code of Criminal Procedure, including making a record of:

1. Informing the accused of the accused's right to request appointment of counsel;
2. Whether the accused wants to request appointment of counsel; and
3. Whether the person requested court-appointed counsel.

As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, each arrested person who wants to request appointment of counsel shall be provided with a form 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 arrested person will be provided reasonable assistance in completing the form. A copy of the form is attached hereto as Affidavit of Indigency.

The form requesting appointment of counsel and containing the information concerning the arrested person's financial resources will be transmitted to the appointing authority within 24 hours of the request being made.

If a person has been identified as a person suffering from mental illness or mental defect, the magistrate shall promptly notify the Office of Collin County Mental Health Managed Counsel Program.

For persons arrested on out-of-county warrants, the magistrate will ask the defendant if he/she would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the arrestee with the appropriate forms for requesting counsel. The magistrate will ensure assistance in completing the forms at the same time. The forms will be transmitted to the appointing authority in the county issuing the warrant within 24 hours of the request being made. Regarding the appointment of counsel, persons arrested in other counties on local warrants must be appointed counsel in the county that issued the warrant within one working day of receipt of the request. Persons arrested on out-of-county warrants must be appointed counsel in the county of arrest if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of arrest. [Art. 1.051(c-1), CCP].

B. Appointing Authorities

The district courts trying criminal cases hereby designate the following individuals or offices as having authority to appoint counsel for indigent defendants charged with a criminal matter within the jurisdiction of the district courts:

1. The Office of the Indigent Defense Coordinator.
2. Any magistrate performing the duties under 1.01 (A) above that has authorized access to the county's electronic appointment system.
3. In cases where the defendant may be suffering from a mental illness or mental defect, the Office of Mental Health Managed Counsel Program.

Indigence Determination Standards

10/28/2015

PART THREE PROCEDURES FOR INDIGENCY DETERMINATION

3.01 Definitions

As used in this rule:

A. "Total income" shall include all income of the defendant and spousal income available to the defendant. Total income shall include wages, salaries, tips, taxable interest, dividends, capital gains, business income, IRA distributions, pensions and annuities, rental real estate, royalties, partnerships, S corporations, trusts, farm income, unemployment compensation, Social Security benefits, and all other income. Unless there has been a substantial change in income, total income will be determined from line 22 of the most recent U.S. Individual Income Tax Return or employment records accessible by the Office of the Indigent Defense Coordinator.

B. "Household size" shall be determined by the number of dependents claimed on the most recent U.S. Individual Income Tax Return or all individuals who are dependent on the defendant for financial support.

C. "Liquid assets" shall include but are not limited to cash, savings, checking accounts, stocks, bonds, certificates of deposit, and equity in real and personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.

3.02 Financial Considerations

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 defendant is considered indigent if:

A. their total income does not exceed 125% of the Federal Poverty Guidelines established and revised annually by the U.S. Department of Health and Human services and published in the Federal Register; or

B. the defendant and defendant's spouse were not required by law to file the most recent U.S. Individual Income Tax return (either 1040 or 1040EZ) due to gross income below the filing requirements; and

C. the defendant and defendant's spouse liquid assets do not exceed \$2,500;

D. liquid assets do not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged;

E. if defendant is currently serving a sentence in a correctional institution, is currently held in custody, is currently residing in a mental health facility, or is the subject of proceeding in which admission or commitment to such a mental health facility is sought; and does not have liquid assets in excess of 3.02 (C); or

F. at the time of requesting appointed counsel, the defendant or defendant's dependents have been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, public housing or Collin County Indigent Health Care.

3.03 Factors Not to be Considered

A. A defendant's posting of bail or ability to post bail may not be considered, except as provided by law, in determining whether the defendant is indigent. Even when a defendant has posted bail, the defendant's financial circumstances are measured by the financial standards stated in these rules.

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

C. A defendant may not be denied indigent status merely because the person is employed.

3.04 Procedures for Determining Indigence

A. As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, each arrested person who wants to request appointment of counsel shall be provided with a form 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 arrested person will be provided reasonable assistance in completing the form. A copy of the form is attached hereto as Affidavit of Indigency.

B. The form requesting appointment of counsel and containing the information concerning the arrested person's financial resources will be transmitted to the appointing authority within 24 hours of the request being made.

C. The appointing authority will determine whether the person meets the financial standards for indigence in Rule 3.02. 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 appointing authority, magistrate, 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. If there is a material change in the defendant's financial circumstances, the defendant or the defendant's counsel shall inform the court in which the indictment is pending of the change.

H. The District Judges hereby designate the Office of the Indigent Defense Coordinator to review and audit applications for court appointed attorneys in felony cases in accordance with these rules. A copy of the request form shall be transmitted to the Office of the Indigent Defense Coordinator for investigation and review. Income verification and

determination will be completed no later than the end of the first working day after the date on which the Office of the Indigent Defense Coordinator receives the defendant's request for appointment of counsel. The Office of the Indigent Defense Coordinator shall notify the defendant and the Court of the results of the review and audit.

I. An unrepresented defendant remaining in custody for 14 days after it has been determined they are not indigent shall have his indigency status reviewed.

3.05 Partial Indigency

A. The court may find a defendant to be partially indigent if the person is able to pay some part of the cost of legal representation and if the payment does not impose manifest hardship on the accused or the accused's household.

B. An accused person found to be partially indigent may be ordered by the court to pay, while the case is pending, monthly installments commensurate with the accused's ability to pay based upon his/her income and assets.

Minimum Attorney Qualifications

10/28/2015

SECTION TWO ATTORNEY QUALIFICATIONS

2.01 Procedures for the Fair Allocation of Attorneys

The appointing authority shall at all times comply with the Texas Fair Defense Act, and Article 26.04, Texas Code of Criminal Procedure.

2.02 Minimum Standards for Court Appointed Attorneys

The minimum standards for placement in the electronic appointment system shall be:

- A. Licensed and in good standing with the State Bar of Texas;
- B. Must have at least two years of experience in the practice of criminal law; and
- C. Must have completed at least ten hours of continuing legal education in the field of criminal law in the calendar year prior to application.

2.03 Graduated Lists

Applications will be received for, and lists approved for, the following graduated lists. Each list details the qualifications required for placement on the list:

A. SJF and Third Degree Felonies

1. Meet minimum qualifications of Rule 2.02, and
2. Board Certified in Criminal Law; or
3. At least four criminal jury trials as lead counsel in a court of record.

B. 1st and 2nd Degree Felonies

1. Meet minimum qualifications of Rule 2.02, and
2. Board Certified in Criminal Law; or
3. At least eight jury trials, including at least four felony jury trials, as lead counsel in a court of record.

C. Appeals and Non-Capital Writs

1. Meet minimum qualifications of Rule 2.02, and
2. Board Certified in Criminal Law or Criminal Appellate Law; or
3. Demonstrate objective competence in the field of criminal appellate law.

D. Mental Health Cases

In addition to the foregoing requirements, attorneys requesting appointment in criminal cases where the defendant may be suffering from a mental illness or mental defect must apply for appointment to the mental health electronic appointment system. The Program Attorney will submit the list of qualified attorneys proposed for appointment to the Mental Health Wheel to the Board of District Judges for approval by majority vote. Additional qualifications for appointment to the Mental Health Wheel include: Six hours of annual mental-health related CLE and at least eight felony jury trials.

2.04 Selection and Appointment of Counsel in Death Penalty Cases

A. Whenever a person is arrested for a capital offense, the appointing authority shall appoint one attorney qualified as lead counsel under Art. 26.052, Texas Code of Criminal Procedure, and on the approved list of attorneys maintained by the presiding judge of the First Administrative Judicial Region for capital cases.

B. If the State does not give notice in writing that they will not seek the death penalty as a sentencing option on or before the 60th day following the arrest of a person for a capital offense, or by the time charges are filed by indictment alleging a capital offense, the appointing authority shall appoint a second attorney from the approved list of attorneys maintained by the presiding judge of the First Administrative Judicial Region for capital cases, who is otherwise qualified under Art. 26.052, Texas Code of Criminal Procedure, or who is qualified on the electronic appointment system for first degree felony offenses.

C. At any time after being appointed to a capital offense, an attorney appointed under 2.04 (1) above may request, from the Local District Court Administrative Judge if no indictment has been presented or from the presiding judge of the court in which an indictment is pending, the appointment of a second chair attorney from the approved list of attorneys maintained by the presiding judge of the First Administrative Judicial Region for capital cases, who is otherwise qualified under Art. 26.052, Texas Code of Criminal Procedure, or who is qualified on the electronic appointment system for first degree felony offenses.

D. If the State gives notice that it will not seek the death penalty as a sentencing option after a second attorney has been appointed, the court shall remove the second appointed attorney, except for good cause shown by motion of the lead attorney.

2.05 Mental Health Managed Counsel Program – Continuity of Care Court Cases

A. All cases in which the defendant has been identified in the CARE match system and meet the other requirements for placement in Continuity of Care Court will be referred to the Managed Assigned Counsel Office for assignment of counsel to defendants who qualify for appointed counsel due to indigency. The court in which a criminal case is currently pending may also refer defendants to the Managed Assigned Counsel Office for assignment of counsel for defendants who may not be identified in CARE match or do not meet the other requirements for placement in Continuity of Care Court. The Managed Assigned Counsel may refuse to accept the case for assignment if:

1. A conflict of interest exists;
2. The Office has insufficient resources to provide adequate representation;
3. The Office is incapable of providing representation in accordance with the rules of professional conduct; or
4. The Office shows good cause for refusing appointment.

B. Appointed attorneys who represent defendants assigned through the MHMC Program may utilize the services of the MHMC Office case managers.

2.06 Annual Renewal and Review of Counsel

A. Counsel on the court appointment list shall be required to complete at least six hours of continuing legal education in the field of criminal law annually. Failure to complete the required continuing legal education may result in removal from the electronic appointment system.

B. No later than the 15th day of October of each year, an attorney that was appointed to represent a defendant under this plan must submit, through the Texas Indigent Defense Commission attorney reporting portal, the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30.

C. Counsel on the mental health appointment list shall be required to complete an additional six hours of continuing education in the field of mental health defense. Applicants must comply with MHMC program procedures.

2.07 Duties Of Court-Appointed Counsel

In addition to all other duties, appointed counsel shall comply with Art. 26.04(j).

2.08 Removal and Review of Counsel

A. Any District Judge trying criminal cases may remove an attorney from the electronic appointment system for:

1. failure to make reasonable efforts to contact the 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;
2. failure to provide effective representation to any person to whom they have been appointed; or
3. failure to comply with these rules, the Texas Disciplinary Rules of Professional Conduct or the Texas Code of Criminal Procedure.

B. Attorneys on the mental health appointment list may be removed in the best interests of the MHMC Program by request of the MHMC Program Director and approval of the designated judicial officer for the Mental Health Managed Counsel Program.

Prompt Appointment of Counsel

10/28/2015

C. Prompt Appointment of Counsel

Counsel shall be appointed as soon as possible to indigent defendants but no later than the end of the first working day after the date on which the appointing authority receives the defendant's request for appointed counsel.

If an indigent defendant is arrested in another county based on this county's warrant, counsel will be appointed within one working day of this county's receipt of the request for counsel.

If a defendant is arrested in this county based on another county's warrant, counsel will be appointed for the defendant if, on the eleventh day after the arrest, the defendant is still in this county's custody.

If a defendant wishes to request counsel prior to the initial appearance, the forms required to request counsel may be obtained at the Collin County website at http://www.collincountytx.gov/indigent_defense/Pages/default.aspx or at the Office of the Indigent Defense Coordinator. The defendant may submit these forms to the Indigent

Defense Coordinator or email to: ccIndigentDefense@co.collin.tx.us. The court will rule on all requests for counsel submitted in this manner.

D. Defendants Appearing Without Counsel

1. A defendant may voluntarily and intelligently waive the right to counsel. A waiver obtained in violation of Subsection D (2) or D (3) is presumed invalid.
2. In any adversary judicial proceeding that may result in punishment by confinement the attorney representing the state may not:
 - a. Initiate or encourage an attempt to obtain from a defendant who is not represented by counsel a waiver of the right to counsel; or
 - b. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:
 - i. Has been given a reasonable opportunity to retain and has failed to retain private counsel; or
 - ii. Waives or has waived the opportunity to retain private counsel.
3. In any adversary judicial proceeding that may result in punishment by confinement, the court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant:
 - a. Has been given a reasonable opportunity to retain and has failed to retain private counsel; or
 - b. Waived or has waived the opportunity to retain private counsel.

E. Waiver of the Right to Counsel

1. If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently made, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

"I have been advised this ___ day of ____, 2___, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel.
(signature of defendant).

2. A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court shall provide the appointed or retained counsel 10 days to prepare..

Attorney Selection Process

10/28/2015

1.02 Computerized Attorney Listing System

A. The District Judges direct that each appointing authority shall utilize the electronic appointment system and all appointments shall be made from the list as published within Collin County's Odyssey system. If the Odyssey system is unavailable, the appointing authority shall appoint an attorney from the written list of approved attorneys. The appointing authority shall select an attorney from among the list of the next five attorneys whose names are listed on the Odyssey system. If this procedure is not followed, the appointing authority must state in writing the good cause found for deviating from this requirement.

B. The computerized attorney listing system shall contain identifying information to indicate those attorneys who have been specially approved for appointment in cases involving mental illness or mental defect.

1.03 Admonishments Form

All magistrates shall use the approved Admonishment Form (Exhibit A) or a substantially similar form.

Fee and Expense Payment Process

10/28/2015

SECTION FOUR PROCEDURES FOR ATTORNEY COMPENSATION

4.01. Attorney Fee Schedule

A. The District Judges adopt, pursuant to Article 26.05 Tex. Code of Crim. Proc., a fee schedule for appointed attorneys, attached hereto as "Fee Schedule for Appointed Attorneys."

B. Payment can vary from the fee schedule in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

4.02 Payment Request Form

In cases disposed of by a guilty plea or similar pre-trial disposition, Counsel shall submit their requests for payment on the auditor's approved Payment Request Form on the date of the disposition. If the case is disposed of by trial, the Payment Request Form shall be submitted within seven days of the date the trial is concluded. Payment requests not submitted within thirty days of the date of disposition shall not be approved by the Court, absent extenuating circumstances.

4.03 Investigation Expenses

A. Appointed counsel may file with the trial court a pretrial *ex parte* motion for advance payment of investigative and expert expenses. The request for expenses must state:

1. the type of investigation to be conducted or the type of expert to be retained;
2. specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
3. an itemized list of anticipated expenses for each investigation or each expert.

B. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

1. state the reasons for the denial in writing;
2. attach the denial to the confidential request; and
3. submit the request and denial as a sealed exhibit to the record.

B. Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses only if they are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved. See, Articles 26.05(d), 26.052(f), (g), & (h), Code of Criminal Procedure.

Miscellaneous

10/28/2015

SECTION FIVE

5.01 Amendments

This plan is subject to amendment.

5.01 Availability of Forms

Forms provided for in this plan are available on the county website.

5.03 Effective Date

This plan is effective on the 1st day of November, 2015, and shall remain in effect until further order of the District Judges trying criminal cases.

Fee Schedule For Indigent Defense Court Appointed Attorneys

In all felony cases, except as hereafter provided, counsel shall be paid according to the following fee schedule, without exception:

PLEAS:

Death Penalty:	\$150.00 per hour
Capital, non-death penalty:	\$100.00 per hour
First Degree Felony:	\$1,000.00
Second Degree Felony:	\$750.00
Third Degree & State Jail Felonies:	\$500.00
Additional cases:	\$250.00 (per case at discretion of the judge)

TRIALS:

Pre-Trial preparation:	\$1,000.00
------------------------	------------

Trial, per ½ day: \$500.00

APPEALS:

Appeal from trial: \$3,500.00

Other appeal: \$2,000.00

DISCRETIONARY ADJUSTMENT

Per case adjustment, not to exceed: \$1,000.00

Child Advocacy Center cases and all cases with a minimum 15 year sentence:

Per case adjustment, not to exceed: \$3,000.00

Cases involving serious mental illness, competency or mental defect under the direction of the mental health program managing attorney:

Per case adjustment, not to exceed: \$1,750.00

Plan Documents

Collin District Court 2009 Federal Poverty Guideline Percentages.pdf (11/30/2009 2:44:15 PM) [view](#)

Collin District Court 2015 Federal Poverty Guidelines.xls (10/21/2015 11:11:56 AM) [view](#)

Collin District Court Affidavit of Indigence.doc (10/22/2013 4:11:30 PM) [view](#)

Collin District Court Attorney Annual Renewal Application for Appointment.pdf (10/21/2015 10:41:59 AM) [view](#)

Collin District Court Attorney Application for Appointment.docx (10/22/2013 4:12:14 PM) [view](#)

Collin District Court Attorney Application for MHMC Program Appointment.docx (10/25/2013 9:42:13 AM) [view](#)

Collin District Court Attorney Fee Schedule.docx (11/8/2013 11:42:19 AM) [view](#)

Collin District Court Attorney Fee Voucher.pdf (10/22/2013 4:12:56 PM) [view](#)

Collin District Court Collin District Court 2013 Federal Poverty Guidelines.docx (4/9/2013 2:22:07 PM) [view](#)

Collin District Court Contract amendment for Indigent Defense Services.pdf (10/21/2015 11:15:43 AM) [view](#)

Collin District Court Contracts for Indigent Defense Services.pdf (11/7/2013 12:27:01 PM) [view](#)

Collin District Court Local Rules To Implement The Fair Defense Act.pdf (12/8/2009 11:27:41 AM) [view](#)

Collin District Court Magistrate's Warning Form.doc (10/22/2013 4:03:45 PM) [view](#)

Collin District Court Managed Assigned Counsel Plan of Operation.docx (10/31/2013 7:52:21 AM) [view](#)

Collin District Court Waiver of Counsel.docx (10/23/2013 4:36:27 PM) [view](#)

Good morning,

In May of this year, the District Judges had an occasion to discuss whether the fixed fee rates in indigent defense cases were to be followed or if there was some judicial discretion allowed. The enclosed email from Judge Oldner makes it clear that the prior “discretionary” language was amended by stating that the fixed fee schedule was to be followed without exception. I believe that the later adopted amendment controls.

Judge Ray Wheless
366th District Court
Collin County, Texas 75071
972-548-4574

From: Judge Ray Wheless
Sent: Tuesday, September 08, 2015 9:57 AM
To: Judge Angela Tucker; Judge Benjamin N. Smith; Judge Cyndi Wheless; Judge Jill Willis; Judge John Roach Jr.; Judge Mark Rusch; Judge Oldner; Judge Ray Wheless; Judge Scott Becker
Subject: FW: Enrique Acosta

It is clear that all of us, and specifically Judge Oldner, agreed as recently as May 25, 2015, that the fixed fee schedule was to be followed. The language now being cited by Judge Becker at our recent meeting was previously rejected in favor of the later amendment cited below.

Judge Ray Wheless
366th District Court
Collin County, Texas 75071
972-548-4574

From: Judge Oldner
Sent: Tuesday, May 26, 2015 9:23 AM
To: Judge Angela Tucker
Cc: Judge Ray Wheless
Subject: RE: Enrique Acosta

In all felony cases, except as hereafter provided, counsel shall be paid according to the following fee schedule, without exception:

PLEAS:

Death Penalty:	\$150.00 per hour
Capital, non-death penalty:	\$100.00 per hour
First Degree Felony:	\$1,000.00
Second Degree Felony:	\$750.00
Third Degree & State Jail Felonies:	\$500.00
Additional cases:	\$250.00 (per case at discretion of the judge)

TRIALS:

Pre-Trial preparation:	\$1000.00
Trial, per ½ day:	\$500.00

APPEALS:

Appeal from trial:	\$3,500.00
Other appeal:	\$2,000.00

DISCRETIONARY ADJUSTMENT

Per case adjustment, not to exceed: \$1,000.00

Child Advocacy Center cases and all cases with a minimum 15 year sentence:

Per case adjustment, not to exceed: \$3,000.00

Cases involving serious mental illness, competency or mental defect under the direction of the mental health program managing attorney:

Per case adjustment, not to exceed: \$1,750.00

Our fee schedule, which is attached to the FDA plan and incorporated in it, says without exception. The degree to which this is followed, I do not know. The language in the plan is:

4.01. Attorney Fee Schedule

A. The District Judges adopt, pursuant to Article 26.05 Tex. Code of Crim. Proc., a fee schedule for appointed attorneys, attached hereto as "Fee Schedule for Appointed Attorneys."

B. Payment can vary from the fee schedule in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

This language seems to have more flexibility, but I recall our agreement was to strictly follow the fee schedule. We removed the language that permitted a BODJ appeal, but the plan does not specifically prohibit it.

This may not be much help, not I would not object to this being brought to the BODJ to remove the pressure she is putting on you. Likewise, if you wanted to say "appeal to Judge Murphy," that is fine with me, too.

Judge Chris Oldner
416th Judicial District Court
2100 Bloomdale, Ste. 20030
McKinney, TX 75071
(972)548-4520
(972)548-4525 fax
http://www.co.collin.tx.us/district_courts/index.jsp

NOTE: All email correspondence relating to pending cases will be filed with the District Clerk for inclusion in the record of the case. Any communication to the Court or staff via email must comply with Rules 21 and 21a, T.R.C.P., and to do so by the fastest means available to the other affected parties or counsel. The provisions of Canon 3B.(8) of the Code of Judicial Conduct should be carefully reviewed before any person connected with a case attempts any communication with the judge or court personnel.

-----Original Message-----

From: Judge Angela Tucker
Sent: Tuesday, May 26, 2015 8:32 AM
To: Judge Ray Wheless; Judge Oldner
Subject: FW: Enrique Acosta

Judges:

Darlina has been emailing me for over a week and she has come to my office regarding this pay sheet. I told her I would submit it to the BODJ via email at her request. You suggested I send her the new pay sheet appeal info from Judge Murphy, which I did. After giving her that information, I received the following email. Before I respond-- I want to make sure I have a clear understanding of the process:

1. Ray pointed out that our internal appeal process was no longer in the plan.
2. We pay on the flat fee scale with the discretionary amounts listed in the plan.
3. Any amount over the flat fee and approved discretionary amounts are appealed to Judge Murphy.

Is that correct?

Angela Tucker
Judge, 199th Judicial District Court
Collin County Courthouse

2100 Bloomdale Road, Suite 10030
McKinney, Texas 75071
972-548-4415
972-548-4465 (Fax)

-----Original Message-----

From: Darlina Crowder [<mailto:crowderlawfirm@gmail.com>]
Sent: Friday, May 22, 2015 2:51 PM
To: Judge Angela Tucker
Cc: Leila Olivarri; Debbie Blackshear
Subject: Re: Enrique Acosta

Judge:

Forgive me, am I understanding that the district judges are now having to disapprove any pay sheets that are above the maximum limit set for felonies and have no discretion to increase the fee?

I just want to be clear.
Thank you.

Warm regards,

Darlina Crowder

The Crowder Law Firm P.C.
1600 First Ave.
McKinney, Texas 75069
(214) 544-0061 office
(214) 544-8601 facsimile
(214) 491-7011 cellular

CONFIDENTIALITY NOTICE: This e-mail is sent by The Crowder Law Firm, P.C. and may contain confidential or privileged information which is authorized to be read only by the intended recipient. Use of it by anyone other than an intended recipient is unlawful. If you have received this message in error, you are hereby notified that any use, dissemination, distribution or reproduction of this message is strictly prohibited. If you are not the intended recipient, please immediately notify me by e-mail or telephone and delete the message from your system.

> On May 22, 2015, at 1:59 PM, Judge Angela Tucker <atucker@co.collin.tx.us> wrote:

>

> Darlina:

>

> Last week, Region 1 Judges voted on the attached appeal process. Paysheet Appeals are no longer submitted to the BODJ. The appeal is submitted to Judge Murphy. When I submitted your request to the BODJ, they made me aware of the new process. I apologize for the misinformation.

>

> Please see the attached. Let me know if you need anything additional. Yes, you did send the information below to me and you discussed it with me in chambers.

>

>

> Angela Tucker

> Judge, 199th Judicial District Court

> Collin County Courthouse

> 2100 Bloomdale Road, Suite 10030
> McKinney, Texas 75071
> 972-548-4415
> 972-548-4465 (Fax)

>
> -----Original Message-----
> From: Darlina Crowder [<mailto:crowderlawfirm@gmail.com>]
> Sent: Friday, May 22, 2015 1:49 PM
> To: Leila Olivarri; Debbie Blackshear; Judge Angela Tucker
> Subject: Enrique Acosta

>
> Judge:

>
> I don't believe I stated nor explained in the detailed paysheet the reason I am asking for an amount above the fixed fee.

>
> I mentioned it to you. However, I believe it's important.

>
> My client was indicted for 2 cases. Aggravated Assault with deadly weapon and kidnapping.

>
> I believe I set it for trial early on and filed a Motion for Speedy Trial. After explaining the issues in the states case they refused to dismiss the cases and they were set for trial. I had an investigator appointed. The investigator and myself worked together to resolve this case in the best way possible to present case in trial.

>
> On our first pre-trial hearing I was told we were the only case set that following Monday and the state was ready to go. We also had a Motion for Speedy Trial filed.

>
> On that day I presented the assistant district attorney with evidence to dismiss these cases. I had explained to them the issues prior but they wanted to go forward. After they reviewed what I presented they agreed to dismiss the Aggravated Assault with Deadly Weapon and reduced the Kidnapping to a misdemeanor.

>
> I would like the board of judges to know that given the severity of a lot of criminal offenses we are appointed to defend it is IMPOSSIBLE for a lawyer to work hard and spend the amount of time needed to represent these indigent defendants.

> I do not even like to mention "effective assistance" of counsel. To me that is not enough.

> Given the fact that defendants have been found indigent they deserve the same attention and hard work as anyone else. I understand there is a budget.

>
> However, if a case is prepared for trial and in numerous of circumstances the prosecutors either dismiss cases or lower the recommendations a lawyer should still be compensated.

>
> More importantly the fees for a felony trial do not compensate for the time a good lawyer spends on a case.

> I'm certain this has caused good lawyers to get off the wheel or unfortunately to have lawyers plea a case just for the small fee.

>
> I know these issues have been addressed for years. However, I wanted you'll to know my thoughts for whatever it's worth.

> Thank you for your consideration in this matter.

>
>
>
>
> Warm's Regards,

>
> Darlina Crowder

>
> The Crowder Law Firm P.C.

> 1600 First Ave.
> Mckinney, Texas 75069
> (214) 544-0061 office
> (214) 544-8601 facsimile
> (214) 491-7011 cellular

>

>

> CONFIDENTIALITY NOTICE: This e-mail is sent by The Crowder Law Firm, P.C. and may contain confidential or privileged information which is authorized to be read only by the intended recipient. Use of it by anyone other than an intended recipient is unlawful. If you have received this message in error, you are hereby notified that any use, dissemination, distribution or reproduction of this message is strictly prohibited. If you are not the intended recipient, please immediately notify me by e-mail or telephone and delete the message from your system.

> <1st-admin-rules-for-appealing-court-appointed-attorneys-fees.pdf>

8/18 - SCOTT BECKER

- I HAVE NO IDEA WHAT IT WILL COST.
- I HAVE NEVER GIVEN A NUMBER.
- THE \$2 MILLION WAS 1ST MENTIONED BY A COMMISSIONER
- I NEVER GAVE ANYBODY A NUMBER. I NEVER SUGGESTED A NUMBER.
- FLAT FEE FOR MOST CASES IN COLLIN COUNTY, BY TYPE, PLUS DISCRETION.
- CAPITAL MURDER - THE ONE EXAMPLE THAT BEST TYPIFIES THIS EXAMPLE.

If God is for us, who can ever be against us?

- I CANT RECALL THE RATE (HOURLY RATE FOR SPEC. PROS.)

(CONT.)

DATE _____

8/18 - SWIFT BECKER (CONT.)

- I NEVER INTENDED TO MAKE THE AMOUNT (PER HOUR) PUBLIC.
- I WASNT PLANNING TO SHARE THE RATE, BUT I'LL TELL YOU SINCE YOU ASKED
- I WILL FIGURE IT OUT & SEND IT TO YOU BY THE END OF THE DAY
- YOU UNDERSTAND THERE ARE JUST SOME PEOPLE WHO DONT NEED TO KNOW (THE RATE)
- SOME PEOPLE MIGHT BE INCLINED TO USE THE INFORMATION IN THE WRONG WAY

OUTSTANDING ITEMS

- WHAT RATE DID YOU AGREE TO PAY
- WILL SOMEONE FROM D. COURTS (PAM DEVAULT) ATTEND COURT TO MAKE PRESENTATION

Oh, that we might know the LORD! Let us press on to know Him.
He will respond to us as surely as the arrival of dawn
or the coming of rains in early spring.

DATE

8/19. SCOTT BECKER

\$200/HR AGREED TO FOR PROSECUTOR

1ST TWO @ \$300.00

LAST ONE @ LOWER RATE

JUDGE GALLAGHER (TARRANT CO.)

PRESIDING.

CRES HUDSON · FORMAL GUIDANCE
ON ANTICIPATED COSTS OF
SPECIAL PROSECUTION.



But God demonstrates His own love toward us,
in that while we were still sinners, Christ died for us.

ROMANS 5:8 NKJV