

**PART 5
CRIMINAL DISTRICT COURT RULES**

A. PRESIDING JUDGE CRIMINAL DIVISION

Pursuant to Title 2 Government Code Section 75.013 a majority of the judges of the district courts giving preference to criminal cases in Bexar County shall select a presiding criminal judge to serve at the will of the judges.

5.1 The presiding criminal judge shall be the judge receiving bills of indictment for that term. All indictments shall be returned to a district court in Bexar County giving preference to criminal cases. The presiding criminal judge, in rotation in the order in which indictments are returned or as agreed to by a majority of judges trying criminal cases, shall assign indictments to the judicial district for trial. The presiding criminal judge shall adjust the case flow so that each of those courts receives approximately an equal share of the indictments for trial.

5.2 The presiding criminal judge shall handle all pre-indictment bond problems and pre-indictment appointment of counsel.

5.3 Any other judge may preside in the absence of the presiding criminal judge or at his request.

5.4 The presiding criminal judge, as necessary, shall adjust the business and dockets of the criminal courts and transfer or cause to be transferred causes from any of the courts to any other of the courts to equalize the business of the courts so that each judge has cases or proceedings to try or consider.

B. GRAND JURY

References to Texas Statutes: Chapters 19 & 20 C.C.P.; §24.139(k) and § 75.013 Govt. Code; Joint Orders in Vol. 537.A p. 992 Vol. 547 p. 787.

5.5 A criminal district judge of Bexar County, about to enter upon a term of court as the Presiding Criminal Judge shall timely appoint grand jury commissioners or utilize the random selection processes provided by law and, upon assuming the responsibility of the Presiding Criminal Judge, shall impanel a general grand jury for that term of court in accordance with the schedule set forth:

Jan-Feb 1988 Term by the 226th District Court

Mar-Apr 1988 Term by the 227th District Court

May-Jun 1988 Term by the 290th District Court

Jul-Aug 1988 Term by the 144th District Court

Sep-Oct 1988 Term by the 175th District Court

Nov-Dec 1988 Term by the 186th District Court

Jan-Feb 1989 Term by the 187th District Court

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and thereafter *seriatim* in the same sequence until this Rule is amended or rescinded.

5.6 A special or additional grand jury will be impaneled each term of court so that there will be two grand juries in session. The judge who impanels the special grand jury will not thereby assume nor be charged with the duties and responsibilities of the Presiding Criminal District Judge. The special grand jury will be impaneled in accordance with the schedule set forth below:

Jan-Feb 1988 Term by the 144th District Court

Mar-Apr 1988 Term by the 175th District Court

May-Jun 1988 Term by the 186th District Court

Jul-Aug 1988 Term by the 187th District Court

Sep-Oct 1988 Term by the 226th District Court

Nov-Dec 1988 Term by the 227th District Court

Jan-Feb 1988 Term by the 290th District Court

and thereafter *seriatim* in the same sequence until this Rule is amended or rescinded.

C. FILING AND RETURN OF INDICTMENTS

Felony indictments shall be filed and returned as follows: On and after July 23, 1985, the first indictment returned by a Bexar County Grand Jury shall be deemed as returned to and filed in:

First	290 th	Fifth	187 th
Second	144 th	Sixth	226 th
Third	175 th	Seventh	227 th
Fourth	186 th		

And, thereafter each indictment returned by any Grand Jury of Bexar County shall be received and filed in the above said District Courts in rotation.

5.7 When indictments are returned against two or more co-defendants, the court in which the first indictment is filed shall receive, by filing or transfer, all indictment against such co-defendants.

5.8 When several indictments are returned against the same individual, the Court in which the first indictment is filed shall receive, by filing or transfer, all such indictments against the said individual.

5.9 When an indictment is returned against an individual who is on felony probation, the Court which granted probation shall receive, by filing or transfer, such indictment.

5.10 When an indictment is returned against an individual who has an indictment pending in one Court, that Court shall receive, by filing or transfer, the subsequent indictment.

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5.11 The transfers directed in these paragraph shall be ordered and signed by the Presiding Judge of the Criminal District Court.

5.12 The first capital case returned by a grand jury of Bexar County, Texas on and after July 24, 1985 shall be deemed as filed with or transferred to the 187th District Court of Bexar County, Texas and thereafter to the other Criminal District Courts in the sequential rotation indicated:

First	187 th	Fifth	144 th
Second	226 th	Sixth	175 th
Third	227 th	Seventh	186 th
Fourth	290 th		

5.13 A case indicted and called for trial as a capital case will count as a "Capital Case" even though subsequently reduced to a lesser offense. Capital cases remanded for a new trial will be heard by the original trial judge if so desired, or it may be transferred to another judge by mutual consent; otherwise it will be rotated in the same manner as a "new" capital case.

D. ARRAIGNMENT

There is no consolidated arraignment. Defendants may be arraigned during a pre-trial hearing, at docket call, or immediately prior to trial (guilty plea, bench or jury).

E. INDIGENT DEFENSE

5.14 The rules in this section will govern criminal procedures in all criminal district courts in Bexar County, and will take precedence over any other local rule to the contrary

5.15 Procedures for Timely Appointment of Counsel

a. The rules in this subsection were promulgated with the cooperation of the City of San Antonio Magistrates Office.

b. The person making the arrest or the person having custody of the arrested person shall take the arrested person before a magistrate within 48 hours after arrest, which is the current common practice in Bexar County.

c. Whenever an arrested person is first brought before a magistrate, the magistrate shall perform the duties described in Article 15.17 of the Code of Criminal Procedure, conducting what will hereinafter be referred to as an Article 15.17 hearing, which will include the following:

1. The magistrate shall specifically inform the person arrested of the persons right to request appointment of counsel if the person cannot afford counsel.
2. The magistrate shall specifically ask the person arrested whether the person wants to request appointment of counsel.

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3. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel.

4. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the time of the Article 15.17 hearing.

5. If the arrested person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31 of the Code of Criminal Procedure.

d. In each case in which an arrested person is taken before a magistrate for an Article 15.17 hearing, the magistrate will make a written record on a form titled Magistrate Warning and available in both English and Spanish, of the following information:

1. That the magistrate informed the person of the persons right to request appointment of counsel;

2. That the magistrate asked the person whether the person wanted to request appointment of counsel; and

3. Whether or not the person requested appointment of counsel.

e. If the arrested person requests appointment of counsel, the magistrate shall transmit or cause to be transmitted to the Bexar County Pre-Trial Services Department the name of the arrested person requesting appointment of counsel, for their assistance in filling out the necessary forms and to interview them to determine if they qualify for a court appointed attorney. This transmittal will occur no later than 24 hours after the request is made to the magistrate.

f. Counsel shall be appointed in the manner specified in Rule 5.17 below, as soon as possible, but not later than the end of the first working day after the date on which the Pre-Trial Services Department receives the defendants request for counsel. Working day means Monday through Friday, except for official county holidays.

5.16 Procedures and Financial Standards for Determining Whether a Defendant is Indigent

a. After the Article 15.17 hearing, if the arrested person has informed the magistrate that he/she does not want to request court appointed counsel, this will be reflected on the Magistrate Warning form. If at any time after magistration the arrested person decides that he/she would like to be interviewed after telling the magistrate that they did not want to request court appointed counsel, he/she will be referred to the Pre-Trial Services Officer for an interview (see below). If at any time after magistration the arrested person decides that he/she does not want to be interviewed for court appointed counsel, after

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making the request with the magistrate, he/she will be referred to the Pre-Trial Services Office to sign a form reflecting the declination.

b. After the Article 15.17 hearing, if the arrested person has informed the magistrate that he/she wants to request court appointed counsel, the arrested person will be interviewed by the Pre-Trial Services Clerk whether or not they are able to make bond. If the defendant makes bond, this interview will take place before release on bond.

c. As soon as possible following the Article 15.17 hearing, a Pre-Trial Services Clerk shall interview each arrested person who wants to request appointment of counsel, and the arrested person will provide under oath the necessary information concerning the persons financial resources. The Pre-Trial Services Clerk shall input this information into the computer for the arrested person.

d. The financial data requested from the arrested person during the interview with the Pre-Trial Services Clerk will include but is not limited to the defendants income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. Whether the defendant has posted or is capable of posting bail will not be considered in determining indigency, except to the extent that it reflects the defendants financial circumstances as measured by the considerations listed above.

e. At the conclusion of the interview with the Pre-Trial Services Clerk, the arrested person will be asked to swear to and sign a Financial and Indigent Affidavit.

f. Based on the financial data given by the arrested person, the computer will calculate and determine whether the person meets the financial standard for indigence in Bexar County. That standard is outlined as follows:

1. The defendants necessary expenses will be subtracted from the defendants gross income, including spousal income if applicable. The resulting number will be referred to as the defendants net income.

2. Necessary expenses should include but are not limited to: rent or mortgage, food/groceries, car payment, car insurance, utilities.

3. The defendants net income will be used to determine if the individual is indigent based on the income for one person under the Federal Poverty Guidelines. If the defendants net income is \$775 or more a month, they will not qualify for a court appointed attorney. If the defendants net income is less than \$775 a month, they will qualify for a court appointed attorney. This amount will be adjusted annually pursuant to the Federal Poverty Guidelines.

g. A defendant who is determined to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendants financial circumstances occurs. If there is a material change in financial circumstances

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after a determination of indigency or nonindigency is made, the defendant, the defendants counsel, or the attorney representing the state may move for reconsideration of the determination.

h. A written or oral statement elicited from the defendant during this process or evidence derived from the financial data provided may not be used for any purpose, except to determine the defendants indigency or to impeach the direct testimony of the defendant.

i. At any time a defendant may request a court appointed attorney, and the criminal district court judge who presides over the defendants case has the discretion to appoint an attorney to that defendant, according to the method of assignment outlined in Rule 5.17 below.

5.17 Selection and Appointment of Counsel

a. Attorneys shall be appointed to represent indigent defendants from public appointment lists using a system of rotation as described later in this subsection.

b. The judges hereby establish the following public appointment lists from which counsel for indigent defendants shall be appointed:

1. A State Jail Felony list;
2. A Second and Third Degree Felony list;
3. A First Degree and 3(g) Felony list;
4. An Appellate list for State Jail and Third Degree Felonies;
5. An Appellate list for First, Second, and 3(g) Felonies.

c. Appointment of counsel to represent a defendant in a motion to revoke probation proceeding or a motion to adjudicate guilt proceeding shall be from the list appropriate for the underlying offense.

d. Twice a year, by a posted date in June and December, attorneys may apply to be included on one or more of the public appointment lists. Attorneys do not need to re-apply for lists they are already on, but may apply for additional lists if they have met the qualifications.

e. To be eligible for placement on each public appointment list, attorneys must meet the following minimum qualifications:

1. To qualify for any felony appointment, including appeals, an attorney must have completed ten hours of CLE in criminal law or procedure in the past year,

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including carryover from the previous year only. Also, a State Bar approved Legislative Update Seminar must be attended in any year the Legislature meets.

2. To qualify for the State Jail Felony list, an attorney must have at least one year prior experience in criminal litigation, and prior experience as lead or co-counsel in at least three criminal jury trials.

3. To qualify for the Second and Third Degree Felony list, an attorney must have at least two years prior experience in criminal litigation, and prior experience as trial counsel in two or more felony jury trials, as lead or co-counsel.

4. To qualify for the First Degree and 3(g) Felony list, an attorney must either be board certified in criminal law, OR

have at least four years prior experience in criminal litigation; and

have prior experience as trial counsel in four felony jury trials in the last five years, having served as lead counsel in at least two of those trials; and

have completed twelve hours of CLE in criminal law or procedure in the last calendar year. Suggested courses are: The Criminal Law Institute (offered annually by the SABA), Advanced Criminal Law Course (offered in San Antonio once every four years), The Short Course (offered annually by the TCDLA). Other courses authorized by the State Bar of Texas in criminal law or procedure are acceptable.

5. To qualify for the Appellate list for State Jail and Third Degree Felonies, an attorney must have at least two years prior experience in criminal litigation and/or appellate experience, and at least one brief filed in a criminal or juvenile case.

6. To qualify for the Appellate list for First, Second, and 3(g) Felonies, an attorney must have at least three years prior experience in criminal litigation and/or appellate experience, and at least two briefs filed in a criminal or juvenile case.

f. In addition to the above qualification requirements, in order to be placed on one or more of the felony and/or appellate appointments lists, a majority of the criminal district court judges must vote to approve the attorneys placement on each such list.

g. In lieu of the above qualification requirements, for both felony and appellate appointments, in extraordinary circumstances, an attorney may be deemed qualified by a majority of the criminal district court judges.

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h. If an attorney does not meet the qualifications to accept cases of a certain degree, but would like the judges to consider qualifying them for that list under the provision above, they can fill out a form called Application for Exception to Qualifications to Receive Court Appointments and turn that in with their application.

i. At least twice a year, following the submission of attorney applications for the public appointment lists by the posted dates in June and December, the criminal district court judges shall evaluate the new applicants for each list and the attorneys already on the lists. The judges will vote on the new applications and any new exceptions to the qualifications received. Attorneys approved by a majority of the votes of the judges will be placed on the public appointment lists.

j. An attorney may be removed from one or more of the public appointment lists by vote of a majority of the criminal district court judges for any of the following reasons:

1. Whenever the judges determine that the attorney no longer meets the objective qualifications for that list or is not fully competent to adequately handle the category of cases associated with that list. The judges may in their discretion remove an attorney from one or more lists, while continuing to approve the attorney for other lists.

2. When an attorney intentionally or repeatedly violates the requirement that the attorney make every reasonable effort 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.

3. When, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

k. In certain extraordinary circumstances, such as incarceration or institutionalization, an attorney may be temporarily removed from the felony court appointed attorney lists.

l. The following method shall be used to assign attorneys from the appropriate public appointment list to represent indigent defendants:

1. After the defendant has been interviewed by the Pre-Trial Services Clerk and the computer has completed the calculation and determined that the defendant meets the standard of indigency in Bexar County, the Pre-Trial Services Clerk will ask the computer to determine the next attorneys name on the appropriate list.

2. The computer will select and provide an attorneys name to the Pre-Trial Services Clerk, after analyzing the individual requirements of the request and utilizing the following filters:

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Language

Degree of Offense

Availability of Attorney

Date of Last Appointment.

3. The attorneys name selected by the computer to be appointed to the case should be one that meets any language requirement (if possible), is qualified to take appointments for that degree of offense, is not unavailable, and has the oldest date of last appointment. This will result in a system of rotation.

4. Criminal District Courts Administration will receive a master list every working day containing the names of all defendants who were arrested the previous day or weekend and were assigned court appointed counsel by the Pre-Trial Services Clerk. This master list will include the court appointed attorneys name and bar number, as well as the case numbers and offenses charged. This master list will be taken to the presiding criminal district court judge for a signature, making all appointments reflected therein official. A separate order appointing an attorney in each case will then be generated and placed in the courts file for each case, reflecting that the original master order was signed by the presiding judge.

5. Regarding Motions to Revoke Probation and Motions to Enter an Adjudication of Guilt, the criminal district court judge having jurisdiction over the case has the discretion to appoint a court appointed attorney to represent the defendant, as long as the court appointed attorney is qualified to accept appointments of the degree of the underlying offense.

6. At any time, a defendant may appear before the judge presiding over the defendants case and request a court appointed attorney, and the judge has the discretion to appoint an attorney to represent that defendant. The attorney must be qualified to take that degree of offense, and may be chosen from the next five names on the wheel, as provided by the Criminal District Courts Administration Office. The judge may make a finding of good cause on the record for appointing out of order, and may appoint any qualified, willing attorney regardless of whether the attorneys name is among the next five names on the appropriate list.

m. Each attorney appointed under this subsection to represent the defendant shall represent the defendant (unless relieved by the court earlier, after a finding of good cause is entered on the record), until charges are dismissed, the defendant is acquitted, all post-trial motions are resolved, notice of appeal is perfected, or until relieved by the court or replaced by other counsel.

n. **At the conclusion of all proceedings in the trial court, including post-trial motions, if an indigent defendant wishes to file an appeal, trial counsel must assist the defendant in the filing of the notice of appeal. Once these steps have been completed, the court appointed trial attorney's representation of the defendant is concluded. No motion to withdraw is necessary. The trial court may then appoint the Appellate Public Defender's Office (APD) on the appeal. If the APD refuses the appointment pursuant to the Code of Criminal Procedure Article 26.044(j), the trial court may appoint a lawyer from the next five names on the appropriate Appellate list, as provided by the Criminal District Courts Administration Office. The judge may make a finding of good cause on the record for appointing out of order, and may appoint any qualified, willing attorney regardless of whether the attorney's name is among the next five names on the appropriate list.**

5.18 Selection and Appointment of Counsel in Death Penalty Cases

a. The presiding judge of the district court in which a capital felony case is filed shall appoint two attorneys, at least one of whom must be qualified under this chapter, to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty. When a defendant is arrested on capital murder charges, the office of Criminal District Courts Administration will notify the district court where the case is filed on the first working day after arrest. The judge of that court will then have two working days to appoint counsel to represent the defendant.

b. If an arrested person is charged with capital murder and requests a court appointed attorney at magistration, the Pre-Trial Services Clerk may interview the defendant to determine if the person meets the standard of indigency in Bexar County, but the computer will not select the name of an attorney to be appointed to that defendant. If the defendant qualifies for a court appointed attorney, the judge presiding in the court to which the capital murder case is assigned will make the appointments according to the rule above

c. To be assigned as lead counsel in a death penalty case an attorney must:

1. Be on the list of attorneys approved by the local selection committee of the administrative judicial region for appointment in death penalty cases as provided in Article 26.052 of the Code of Criminal Procedure; and
2. Meet the following qualifications outlined in Article 26.052 of the Code of Criminal Procedure, as approved by the criminal district court judges in Bexar County:

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- X be a member of the State Bar of Texas;
- X exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;
- X have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case;**
- X have at least five years of experience in criminal litigation;
- X have tried to a verdict as lead defense counsel at least eight felony cases, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies;
- X have trial experience in the use of and challenges to mental health or forensic expert witnesses;
- X have trial experience in investigating and presenting mitigating evidence at the penalty phase of a death penalty trial;
- X have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases.

3. The local selection committee for the Fourth Administrative Judicial Region has determined that attorneys qualified as lead counsel on death penalty cases must complete 5 hours of death penalty related CLE within each year. Two of the five hours are allowed to be self-study. The committee will review the list for CLE compliance in March of every year.

4. In addition to meeting the above listed qualifications and CLE requirements, in order to be included on the list of attorneys qualified for appointment in death penalty cases in the Fourth Administrative Judicial Region, a majority of the members of the local selection committee must vote to approve the attorney's placement on that list.

d. According to the Texas Code of Criminal Procedure Article 26.052(b), because Bexar County is a county served by an Appellate Public Defender's Office, counsel for direct appeal on a death penalty case may be appointed as provided by the guidelines established by the public defender's office. In all other cases in which the death penalty is sought, counsel shall be appointed as provided by Article 26.052 and the above provisions of the plan.

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e. To be assigned as second chair counsel in a death penalty case an attorney must meet the qualifications outlined in Rule 5.17(e)(4) for the First Degree and 3(g) Felony List.

5.19 Notice of Appointment, Determination, and Contact with the Defendant

a. If the computer determines that a person who requests appointment of counsel is not indigent under the standards and procedures described in Rule 5.16, that finding will be entered on the persons Indigent Attorney Appointment Affidavit, which will be filed in the courts file. The Pre-Trial Services Clerk will also hand the defendant a copy of this affidavit, including notice that they are not qualified for a court appointed attorney

b. If the computer determines that a person who requests appointment of counsel is indigent under the standards and procedures described in Rule 5.16, the computer will print the name, address, and phone number of the selected court appointed attorney, as determined according to Rule 5.17, on the Indigent Attorney Appointment Affidavit, which will be filed in the courts file. The Pre-Trial Services Clerk will also hand the defendant a copy of this affidavit, including the attorneys information outlined above.

c. At the same time the computer selects the court appointed attorneys name and it is provided to the defendant by the Pre-Trial Services Clerk, that attorney is receiving notice of the appointment by e-mail and/or fax.

d. According to the Texas Code of Criminal Procedure Article 26.04(j)(1), the appointed attorney shall make every reasonable effort 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. The initial contact may be by certified letter to the defendant.

e. The defendant will be given a postcard by the Pre-Trial Services Clerk to send by regular mail or interoffice mail from the jail to Criminal District Courts Administration, if the defendant has not been contacted by their court appointed attorney within a specified date. Criminal District Courts Administration will attempt to verify this information through jail visitation records and/or communication with the appointed attorney and request for verification that they have complied with the provision immediately above.

5.20 Attorney Fee Schedule and Compensation of Appointed Attorneys

a. **Other than the Appellate Public Defender's Office**, counsel appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorneys fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

1. Time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

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2. Reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;
 3. Preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and4. Preparation of a motion for rehearing.
 4. Preparation of a motion for rehearing
- b. All payments shall be paid after judicial approval, in accordance with the attached fee schedule and guidelines which were adopted by formal action of the Criminal District Court Judges, with copies sent to the Commissioners Court of Bexar County.
- c. This fee schedule takes into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates.
- d. A new voucher form and in-court and out-of-court itemization forms will be provided for appointed counsel to itemize the types of services performed. The appointed counsel must submit this voucher to the judge presiding over the case for which the appointed attorney seeks compensation, for the judge to approve the payment.
- e. An attorney who receives an appointment through the system outlined in this plan or through any other means is not allowed to receive any money or anything else of value for representing the accused, other than what is paid to them by the county, as approved by the court in writing.
- f. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.
- g. A peer review committee to mediate voucher disputes has been established, consisting of five criminal defense attorneys appointed by the Criminal District Court Judges. When a voucher dispute arises, either the judge or the defense attorney may contact the Criminal District Courts Administrator to set up a meeting of the peer review committee. The committee will review the voucher in dispute and vote on a recommendation to make to the judge, as to whether the voucher should be approved as submitted or modified for payment. If the attorney involved in the dispute is not satisfied with the outcome, he/she may pursue the following statutory remedy. This step is not mandatory.
- h. An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region, as provided under Article 26.05(c) of the Code of Criminal Procedure. This motion must be filed within twenty-one (21) days from the date the attorney receives notice of the disapproval of payment.

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i. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment and determine the appropriate amount of payment. In reviewing the disapproval, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted, Bexar County shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the adopted fee schedule.

j. Bexar County will reimburse appointed attorneys for investigation and expert witness expenses incurred on behalf of an indigent defendant as provided under Articles 26.05(d) and 26.052(f) through (h) of the Code of Criminal Procedure, and that is in accordance with the adopted fee schedule.

These Local Rules of Administration were approved by a majority of the Criminal District Court Judges in Bexar County at a meeting held on December 26th, 2001. **The amendments were approved by a majority of the Criminal District Court Judges at a meeting held on September 14, 2005.**

F. PRE-TRIAL MATTERS

Bail Bonds and Forfeitures

5.22 The amount of bail to be required shall be set after considering the rules contained in Article 17.15 Code of Criminal Procedure and the local Bond Schedules.

5.23 The Presiding Criminal Judge shall handle all pre-indictment bond problems.

5.24 Matters concerning bond forfeitures shall be governed by Chapter 22 Code of Criminal Procedure.

Motions and Pre-Trial Hearings

5.25 An application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be made in writing, shall state the grounds therefor, shall set forth the relief or order sought, and shall be filed and noted on the docket.

An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon the adverse party not less than three days before the time specified for the hearing, unless otherwise provided by these rules or shortened by the court.

5.26 Formal pre-trial hearings will be conducted in accordance with Article 28.01 Code of Criminal Procedure.

5.27 Other motions, pleadings and exceptions will be filed as provided in Chapter 28, Code of Criminal Procedure.

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Guilty Pleas, *Nolo Contendere* and Plea Bargains

5.28 In addition to the procedures in article 26.13 Code of Criminal Procedure, the terms of a plea bargain will be reduced to writing, signed by both counsel and the defendant and filed with the Court.

5.29 Pleas of guilty and *nolo contendere* will be made in conformance with Article 26.13 Code of Criminal Procedure.

Docket Calls and Announcements

5.30 Counsel shall appear in court at the appointed time and will not depart unless excused by the court or, if authorized, by the Coordinator. If excused to confer with the State counsel will report back to the Court before departing.

5.31 Requests for resets and postponements will be governed by Chapter 29 Code of Criminal Procedure.

5.32 Motions for continuances will be governed by Chapter 29 Code of Criminal Procedure.

G. TRIAL MATTERS

5.33 The defendant shall be present at all phases of a trial and is entitled to representation by counsel as provided in Article 33.03 Code of Criminal Procedure.

5.34 Texas Rules of Criminal Evidence will govern matters pertaining to witness and evidence.

5.35 Jury selection and *voir dire* will be in accord with Chapters 33, 34, and 35 Code of Criminal Procedure.

5.36 Applications for probation and deferred adjudication will be submitted in accordance with Article 42.12 Code of Criminal Procedure.

5.37 Pre-sentence reports will be processed as provided in Article 42.12 Code of Criminal Procedure.

5.38 Judgments will be prepared as required by Article 42.01 Code of Criminal Procedure.

5.39 Motions to revoke probation and to proceed to adjudication will be conducted in accordance with the requirements of Article 42.12.

5.40 Applications and proceedings pertaining to writs of *habeas corpus* will be conducted in accordance with Chapter 11 Code of Criminal Procedure.

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H. JUVENILE CASE TRANSFERS TO CRIMINAL DISTRICT COURT

To eliminate unnecessary delays in the processing of Juvenile Jurisdiction Waivers and Certifications and transfers to criminal district courts the following general procedures shall apply.

5.41 When the Juvenile Court has made its findings and decided to waive jurisdiction and transfer the case to a criminal district court (Sec. 54.02(h) Family Code), the Juvenile Clerk will request a Courthouse Magistration number from the Criminal Assignment Clerk's Office.

5.42 The Juvenile Court will reduce to writing its findings, reason for waiver, including its Order transferring the case along with Certification of its Action (Sec. 54.02(h) Family Code). The Juvenile Clerk should then deliver the Original Juvenile and Certification of Transfer, excluding its jacket, to the Criminal Assignment Clerk. All documents in the juvenile jacket pertaining to the offense(s) transferred will be reproduced and delivered to the clerk of the criminal court. Documents involving other non-transferred juvenile matters and delinquent conduct shall not be reproduced.

5.43 The Criminal Assignment Clerk upon creation of file with the CM number will deliver the file to the clerk of the Presiding Criminal District Court.

5.44 Before any other proceedings begins, the Coordinator or clerk of the court, if the defendant appears to be indigent, shall interview the defendant and take an affidavit of indigency. The Presiding judge may then reappoint the attorney who was assigned to the juvenile case or appoint other counsel for the defendant.

5.45 If there is no good cause for an examining trial, the court shall refer the case to the grand jury. (Sec. 54.02(h) Family Code.)

5.46 If the Criminal District Court conducting the examining trial fails to find probable cause it may remand the child to the jurisdiction of the Juvenile Court. (Sec. 54.02(h) Family Code.) Should the judge conducting the examining trial find probable cause he "shall make an order committing the defendant to the jail ... or admitting him to bail ... Failure of the judge to make or enter an order within 48 hours after the examining trial has been completed operates as a finding of no probable cause and the accused shall be discharged." (Art. 16.17 C.C.P.)

5.47 Upon completion of the Examining Trial by the court if probable cause has been found, the Clerk of the Court should advise the Criminal Assignment Clerk of the conclusion of the Examining Trial. If the case is referred to the Grand Jury but it does not indict the "criminal district court shall certify the grand jury's failure to indict to the juvenile court. On receipt of the certification, the juvenile court may resume jurisdiction of the case." (Sec. 54.02(i) Family Code.)

I. CRIMINAL LAW MAGISTRATE

Pursuant to V.T.C.A. Government Code §54.901, *et. seq.*, the Judge of the District Courts of Bexar County that give preference to criminal cases are authorized to appoint Criminal Law Magistrates. Each appointment must be with the approval of a majority of the Criminal Judges.

5.48 Except as limited by an order of referral, a magistrate to whom a case is referred may:

- a) Conduct hearings;
- b) Hear evidence;

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- c) Compel production of relevant evidence;
- d) Rule of admissibility of evidence;
- e) Issue summons for the appearance of witnesses;
- f) Examine witnesses;
- g) Swear witnesses for hearings;
- h) Make findings of fact on evidence;
- i) Formulate conclusions of law;
- j) Rule on a pre-trial motion;
- k) Recommend the rulings, orders, or judgment to be made in a case;
- l) Regulate proceedings in a hearing;
- m) Accept a plea of guilty for a misdemeanor from a defendant charged with both misdemeanor and felony offenses; and
- n) Do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

J. RULES OF PROCEDURE AND PERSONNEL RULES FOR THOSE EMPLOYEES HANDLING THE CRIMINAL DOCKET FOR THE 150th DISTRICT COURT OF BEXAR COUNTY

The District Court Judges of Bexar County giving preference to criminal matters adopt the following Rules of Procedure and Personnel Rules for those employees handling the criminal docket for the 150th District Court of Bexar County, also known as the Special Drug Impact Court.

The purpose of these rules is to promote uniform administration of justice in the handling of the Criminal Docket of the court and to establish standards of conduct for its personnel.

Nothing in these rules shall be construed in a manner which is inconsistent with the Texas Rules of Civil Procedure, the Texas Code of Criminal Procedure, the Texas Rules of Appellate Procedure, the Court Administration Act and Rules of Practice, Procedures and Administration in the District and Statutory Courts-at-law, Bexar County, Texas ("Local Rules").

General Considerations - Statement of Agreement

5.50 In order to promote the expeditious handling of the Criminal Docket of the 150th District Court, the Judges of the Bexar County District Courts handling criminal cases (hereinafter "Criminal District Judges"), the District Clerk of Bexar County and the Bexar County Sheriff, in mutual cooperation, asked the County Judge and Commissioners Court to fund six specific positions: a Court Reporter, a Court Coordinator, two Criminal Clerks and two Criminal Bailiffs.

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The County Judge and Commissioners Court, to promote the efficient handling of the Criminal Docket of said court, acceded to the request of the judges, the District Clerk and the Sheriff and funded such positions, in part with funds from a grant and part from general revenues.

The Criminal District Judge have overall supervision of the efficient handling of the Criminal Docket of the Court, and specific supervisory authority over the Court Reporter and Court Coordinator. The Criminal Clerks are the employees of (and therefore likewise subject to the direction and supervision of) the District Clerk. The Criminal Bailiffs are the employees of (and therefore likewise subject to the direction and supervision of) the Sheriff.

As with any court, the efficient operation of the Criminal Docket of the 150th District Court is absolutely dependent upon teamwork and spirit of cooperation among the court staff. These rules are promulgated, therefore, to promote harmony and efficiency in the operation of the court.

Judicial Functions of the Court

5.1 All purely judicial functions (as distinguished from administrative functions) of the judge of the court, with respect to criminal cases, will belong to and be exercised exclusively by the particular active, retired or former judge who may be presiding over the criminal docket of said court at the time such function is or ought to be performed.

Administrative Functions of the Court

5.2 All administrative functions of the judge of the Court, relating to criminal cases, will belong to and be exercised exclusively by the Criminal District Judges.

More particularly, the immediate, day-to-day administrative functions of the judge of the court, relating to criminal cases, will belong to and be exercised exclusively by that Criminal District Judge who currently has a Grand Jury in session, but who is not the Presiding Criminal Judge. Administrative functions of the judge of the court, relating to criminal cases, are not limited to but do include the following:

- a) The transfer of cases to and from the criminal docket of the 150th District Court.
- b) The appointment and compensation of court appointed counsel handling cases before the 150th District Court.
- c) Requests for personal bond and motions to increase or decrease bond on cases pending before the 150th District Court.
- d) Requests for supplies or equipment for the employees involved with the criminal docket of the 150th District Court.
- e) Request to the County Auditor for payments, or whatsoever kind, for matters relating to the criminal docket of the 150th District Court.
- f) Orders such as cash bond refunds, motions for destruction of property and violation reports from the Probation Department.

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The Court Reporter

5.53 The Court Reporter for the criminal docket of the 150th District Court has all the duties and responsibilities of the official reporter of any District Court of the County. Said reporter shall file with the Administrator of the Criminal District Courts of Bexar County a copy of all reports regarding the status of all records pending completion which may be filed with the Clerk of the Fourth Court of Appeals. Said reporter will schedule vacations through the office of the Local Administrative Judge and will advise the Court Coordinator for the criminal docket of the 150th District Court of any inability to report to work by reason of illness or emergency. For any administrative needs not otherwise dealt with herein, said reporter shall contact the District Judge with current administrative responsibility for the criminal docket of the 150th District Court. Said reporter shall be subject to the control of the judge exercising the judicial functions of the court as to all matters of official duty.

The Court Coordinator

5.54 The Coordinator's primary responsibility is to facilitate the handling of the criminal docket of the Court by the judge exercising the judicial functions of the court and to facilitate the handling of administrative matters by the Criminal District Judges, generally, and by the single judge with current administrative responsibility regarding matters related to the criminal docket of the Court.

Particular duties are not limited to, but do include:

- a) Advising the bailiff as to the identity of prisoners needed in court, the offense committed, the case number, the system identification number (SID) of the prisoner, and the time and date when the prisoner is needed. The prisoner should be dressed for any trial or hearing, but may be in jail clothing for a docket call, so the bailiff should be notified of the nature of the appearance in court.
- b) Advising the clerk as of when each case on the docket is set, and for what purpose, i.e., plea, trial, etc.
- c) Supplementing weekly dockets by writing in other pending cases (misdemeanors and motions to revoke) and telephone numbers for attorneys and making a copy of the supplemented docket available as early as possible to the clerk and the prosecutors assigned to the Court.
- d) Monitoring the jail list to make certain nobody gets lost in jail.
- e) Receiving and routing correspondence to the Court.
- f) Verifying counsel's identify or seeing to it that counsel is retained or appointed in every case on the docket of the court.
- g) Assisting in answering telephone calls to the Court.
- h) Monitoring those cases in which pleas have been entered, applications for probation have been filed, and pre-sentence investigation reports have been ordered, to insure that there is not an inappropriate interval before the matter is set for determination.
- i) Notifying the State and defense counsel to appear when appropriate for trials, hearings, etc.

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- j) Monitoring appeals, to insure that there is an appellate lawyer for the defendant/appellant who is actually functioning.
- k) Monitoring all motions for psychiatric evaluation (competency and insanity), and seeing to it that the county psychiatrist has the indictment and an offense report.
- l) Scheduling the Coordinator's vacation and advising of any inability to report to work by reason of illness or emergency through the office of the Administrator of the Criminal District Courts of Bexar County.
- m) Assisting the judge with administrative responsibility for the Court in carrying out the judge's duty to compensate court-appointed counsel by receiving attorney affidavits, verifying their accuracy as to dates, times and the like, and presenting the affidavits to the judge for signature.
- n) Assisting attorneys and the general public in obtaining case status information.

The Criminal Clerks

5.55 The functions of the clerks basically revolve around keeping the records of the Court and issuing process of the Court. In particular, the duties of the clerks are not limited to but do include:

- a) Maintaining custody of the files of the court in a manner consistent with easy access to the files and the information contained therein. While this duty does make the clerk the custodian of all files, it does not mandate that the files be in the actual physical possession of the clerk, if the efficient operation of the Court necessitates possession of the file by either the Court Reporter or the Court Coordinator. However, under no circumstances should the file leave the Justice Center or Courthouse.
- b) Maintaining the files in a neat and orderly manner, so that information may be easily gleaned from the file.
- c) Noting on the outside of each file each action of the Court with respect to the file.
- d) Promptly and accurately recording on the criminal justice information computer the actions of the Court with respect to all cases.
- e) Maintaining accurate and up-to-date minutes of the Court.
- f) Preparing accurate judgments and commitment papers (where appropriate) in a timely fashion. While the preparation of judgments is not inherently the responsibility of the clerk, the necessity for the prompt entry of accurate judgments has brought about the long-standing practice in this (and many other) county of relying upon the Clerk of the Court to perform this function.
- g) The issuance of such process (other than subpoenas, which are handled by the subpoena section of the Criminal Division of the District Clerk's office) of the Court as any judge thereof may order. This includes arrest warrants of every kind and description, bench warrants, attachments ordered by the Court, precepts, capias pro fines, and the like.

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- h) Bringing to the attention of the judge any written motion on which the judge shall have ruled, but as to which rulings the judge shall have failed to make any written notation.
- i) Assisting in answering telephone calls to the Court.
- j) Providing each probationer with a copy of his or her probationary conditions and certifying to having done so.
- k) Responding as may be directed by the Court, to requests from prisoners and others for information, additional credit for time spent in custody, and the like.
- l) Preparing and forwarding Notice of Appeal to the Fourth Court of Appeals, in accordance with law.
- m) Figuring court costs and preparing appropriate documents related to court costs.

The Bailiff

5.56 The primary responsibilities of the bailiffs are the security of the judge, staff, jurors, attorneys and members of the public in and around the Court and the timely, humane and efficient transportation of prisoners to and from the Court.

Specific duties are not limited to but do include:

- a) Maintaining a dignified atmosphere in and around the courtroom.
- b) Having prisoners in court when they need to be, dressed appropriately.
- c) Assuring adequate security at all times, so that prisoners are never left unattended or allowed to mingle inappropriately with spectators.
- d) Timely calling the names of those who fail to appear at the Courthouse door and filing appropriate written evidence thereof with the Clerk for filing.
- e) Maintaining the integrity of the jury deliberation process, including the security of the jury and the exhibits in the jury room.
- f) Directing all inquiries or other communications regarding docketing of cases, announcements, and the like to the Court Administrator.

5.57 Staff members are encouraged to work together in a spirit of mutual cooperation and harmony. In the event staff members are unable to agree on a particular matter, then the issue whatever it may be will be submitted to the judge exercising current administrative responsibility for the court.