

Matagorda District Court Child Protective Service Appointment Plan

Preamble

10/21/2021

Matagorda County's plan for appointment of counsel is a plan in accordance with Chapter 37 of the Texas Government Code. The plan governs appointment of counsel for children, parents, and individuals that are minors and/or incompetent. In all cases in which a defendant is entitled to appointment of counsel, the court or the court's designee will appoint in accordance with this plan.

Matagorda County Indigent Defense Coordinator

The Matagorda County District Judges have appointed Belinda Cortinas as the Matagorda County Indigent Defense Coordinator.

Prompt Appointment

08/29/2023

In removal cases, attorneys appointed to represent children shall occur at the ex parte hearing stage. The Court shall appoint an attorney for the child after a court ordered services/required participation case is filed. Parents who apply and qualify for representation shall receive an appointment, as soon as possible, but not later than the end of the first business day after the court made the finding of indigence.. In the event a mother, adjudicated or alleged father is a minor, an attorney ad litem will be appointed for the minor respondent.

Indigence Determination Standards

10/21/2021

1. Definitions, as used in this rule:

- a. "Indigent" means a person who is not financially able to employ counsel.
- b. "Net household income" means all income of the parent and spousal income actually available to the parent. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts

from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the parent has no income or lesser income.

- c. Household” means all individuals who are actually dependent on the parent for financial support.
- d. “The cost of obtaining competent private legal representation” includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

2. Eligibility for Appointment.

- a. A parent is presumed indigent if any of the following conditions or factors are present:
 - i. At the time of requesting appointed counsel, the parent or parent’s dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
 - ii. The parent’s net household income does not exceed 150% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register; or
 - iii. The parent is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.
- b. A parent who does not meet any of the standards above shall nevertheless be considered indigent if the parent is unable to retain private counsel without substantial hardship to the parent or the parent’s dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:
 - i. Anticipated complexity of the case,
 - ii. The estimated cost of obtaining competent private legal representation for the matter;

- iii. The amount needed for the support of the parent and the parent's dependents;
 - iv. Parent's income;
 - v. Source of income;
 - vi. Assets and property owned,
 - vii. Outstanding obligations,
 - viii. Necessary expenses,
 - ix. The number and ages of dependents, and
 - x. Spousal income that is available to the parent:
- c. Factors NOT to be considered in determining indigence: The resources available to friends or relatives of the parent may not be considered in determining whether the parent is indigent.

3. **Indigent Proceedings.**

- a. The appointing authority can require the parent to respond to questions about the parent's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.
- b. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:
 - i. Determining if parent is (or is not) indigent; or
 - ii. Impeaching direct testimony of parent regarding the parent's indigence.
- c. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified Texas Family Code §§ 107 and 264.
- d. A parent determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the parent's financial circumstances occurs.
 - i. A parent's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the parent, the parent's attorney, or the attorney representing the state. The parent's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:

1. Evidence of a material change in the parent's financial circumstances, as a result of which the parent does not meet any of the standards for indigence contained in these rules; or
 2. Additional information regarding the parent's financial circumstances that shows that the parent does not meet any of the standards for indigence contained in these rules.
- ii. If a parent previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.
- e. If the court determines that a parent has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the parent to pay during the pendency of the charges or in a final order.
 - i. The Court may modify or suspend the order of reimbursement upon further proof of inability to comply with the Court's Order.
 - ii. Violation of the Court's order may be enforced as contempt of court, as a violation of condition of bond, *capias pro fine*, violation of a term of community supervision, or any other means provided by law.

Minimum Attorney Qualifications

8/29/2023

1. Qualifications.

- a. The attorney shall maintain a physical office, capable of receiving clients, U.S. Mail, deliveries from private couriers, email, fax, and telephone calls during normal business hours. The attorney must also maintain a cell phone capable of receiving email and text messages and be readily available and responsive to appointed clients in a similar fashion to retained clients.
- b. The attorney must submit a completed application, sworn or attested to under penalty of perjury, to the Matagorda County Indigent Defense Coordinator ("IDC"). The attorney shall affirmatively represent that the Attorney is qualified as defined by the CPS Local Rules.

- c. The attorney shall be a licensed practicing attorney and a member in good standing of the State Bar of Texas and the Matagorda County Bar Association.
- d. The attorney must not have been the recipient of any public disciplinary action by the State Bar of Texas or any other attorney-licensing authority of any state of the United States, or any United States District Court or United States Court of Appeal, within the last 10 years.
- e. The attorney must not have been indicted or convicted of any felony charge, unless, in the case of indictments, the indictment is dismissed.
- f. The attorney must not have been charged or convicted of any Class A or B misdemeanor within the last ten (10) years, unless, in the case of charges, the information is dismissed.
- g. The attorney must not be the subject of a Protective Order under Title 4 of the Tex. Family Code or Chapter 17 of the Tex. Code of Criminal Procedure.
- h. The attorney must not have been found by a court of competent jurisdiction, by final judgment or order upheld on appeal, to have provided ineffective assistance of counsel to a client.
- i. The attorney must be readily available to appear at hearings and trials at such times as they may be scheduled by the Court without the burden of repeated scheduling requirements and/or conflicts of the attorney. By accepting court appointments, attorneys recognize that hearings and trials must generally be set at the convenience of the court in order for the court to manage the dockets efficiently.
- j. Regardless of whether the appointment as attorney ad litem is for a respondent or a child, all attorneys seeking appointment in child protection cases in Matagorda County must meet the minimum standards for appointment set out in Texas Family Code §107.004.
- k. An attorney shall have a minimum of three (3) years of experience practicing in the area of CPS, Ad Litem representation, and/or family law. Alternatively, an attorney wanting to obtain experience may do so by taking an appointment with the help of an assigned CPS mentor. The attorney is the appointed counsel on the case and the CPS Mentor is assigned to assist and train the attorney to handle CPS cases.

- l. An attorney shall have prior relevant experience as 1st or 2nd chair in at least ten (10) cases involving CPS, or ten (10) contested family law cases involving children. The styles (appropriately redacted as necessary) and cause numbers of these cases shall be listed on the Appointment Request Form. Qualifying experience may consist of paid or pro bono representation including those in which an attorney serves as pro bono 2nd chair to a court-appointed counsel for indigent persons in a CPS case in Matagorda County or accept appointments with an assigned mentor.
- m. Be familiar with the American Bar Association's standards of practice for attorneys who represent children in abuse and neglect cases, the suggested amendments to those standards adopted by the National Association of Counsel for Children, and the American Bar Association's standards of practice for attorneys who represent children in custody cases;
- n. Complete and maintain the Guardianship Ad Litem Certification required by State Bar of Texas;
- o. An attorney shall complete a minimum of 6 hours of CLE annually in the area of parent and child representation, one hour of which shall be in the area of ethics relevant to serving as an attorney or guardian ad litem. All attorneys on the appointment list shall file by November 1st of each year the "Certificate of Compliance" with the IDC attesting to the completion of the required CLE or submit documentation showing that the attorney is board-certified in family law and/or child welfare law by the Texas Board of Legal Specialization or other certifying organization recognized as such by the State Bar of Texas.
 - i. The designated reporting period shall be from October 1st to September 30th unless otherwise designated by the Board of Judges.
 - ii. For applications/reports submitted in 2023, the designated reporting period shall begin one year prior to the effective date of the CPS Local Rules (September 1, 2022-date of submission).
 - iii. Continuing legal education completed within the one (1) year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year.

- iv. Continuing legal education completed during any reporting period exceeding the minimum of ten (10) hours for such period may be applied to the following period's requirement as provided below up to five (5) hours but shall not apply to the ethics requirement or the one (1) hour course required under 1.15 below.
- p. The attorney must attend a one (1) hour course each year, or more frequently/longer as may be required by the CPS Judge, regarding the policies and procedures for handling, invoicing, and obtaining payment for handling court-appointed cases in Matagorda County.
- q. Completion of training program regarding trauma-informed care Texas Family Code § 107.004(b-1) (2).
- r. Complete and maintain the Guardianship Ad Litem Certification required by State Bar of Texas;
- s.
- t. Other specialized qualifications as deemed necessary by the Local Administrative District Judge.
- u. In all instances of inclusion on the appointment list, including annual renewals, to be considered qualified, the attorney must have established a record of fulfilling the duties required of appointed counsel by these rules during any past periods of being included on the list of attorneys qualified to receive appointments on Matagorda County cases, and attorney acknowledges that inclusion and renewal is at the sole discretion of the CPS Judge.

2. Approval for Appointment List.

- a. Application Procedure.
 - i. An attorney seeking to be included in the Matagorda County Child Protection Appointment List shall submit the application form to the Matagorda County Indigent Defense Coordinator.
 - ii. An attorney seeking to be included on the child protection appointment list must be approved by the CPS Judge.
- b. Reporting Requirements. An attorney shall comply with annual reporting requirement by submitting online the “TIDC Attorney Reporting Form” to the

Texas Indigent Defense Commission (<https://tidc.tamu.edu/AttorneyReporting/>). This form shall be submitted by October 15th of each year. If online submission for child protection cases is not available, annual reporting shall be made to the designated Matagorda County Indigent Defense Administrator.

c. Continuing Education.

i. An attorney shall complete a minimum of 6 hours of CLE annually in the area of parent and child representation, one hour of which shall be in the area of ethics relevant to serving as an attorney or guardian ad litem. All attorneys on the appointment list shall file by November 1st of each year the "Certificate of Compliance" with the IDC attesting to the completion of the required CLE or submit documentation showing that the attorney is board-certified in family law and/or child welfare law by the Texas Board of Legal Specialization or other certifying organization recognized as such by the State Bar of Texas.

1. The designated reporting period shall be from October 1st to September 30th unless otherwise designated by the Board of Judges.
2. Continuing legal education completed within the one (1) year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year.
3. Continuing legal education completed during any reporting period exceeding the minimum of ten (10) hours for such period may be applied to the following period's requirement as provided below up to five (5) hours but shall not apply to the ethics requirement or the one (1) hour course required below.

ii. The attorney must attend a one (1) hour course each year, or more frequently/longer as may be required by the CPS Judge, regarding the policies and procedures for handling, invoicing, and obtaining payment for handling court-appointed cases in Matagorda County.

iii. Completion of training program regarding trauma-informed care Texas Family Code § 107.004(b-1) (2).

- iv. Other specialized qualifications as deemed necessary by the CPS District Judge.
 - d. By seeking inclusion on the list of qualified attorneys available for court appointments, each attorney represents and agrees inclusion on the list is at the discretion of the CPS Judge. They further represent and agree that removal or exclusion from the list is at the discretion of the CPS Judge.
 - e. Neither these Rules, nor any provision in these CPS Local Rules, constitutes a contract or otherwise bestows rights on attorneys or other persons in addition to those which might otherwise exist under applicable law. Attorneys appointed to represent indigent clients in Matagorda County, Texas do so at the discretion of the CPS Judge.
3. **Removal from List for Good Cause.** An attorney may be removed from the list if the CPS District Judge determines that good cause exists for removal. Good cause may include, but is not limited to:
- a. The attorney failed or is failing to provide adequate and/or effective legal representation to a person in an assigned case.
 - b. The attorney failed or is failing to be reasonably communicate and/or be responsive to the client and/or Court.
 - c. The attorney failed to timely appear without reasonable justification and/or advance notice at one or more court settings in an assigned case.
 - d. The attorney regularly failed to reasonably accommodate the Court's scheduling or case management needs.
 - e. The attorney submitted a claim for legal services not performed and/or expenses not incurred by the attorney and/or which the attorney could not substantiate.
 - f. The attorney submitted a claim for legal services and/or expenses which contained false or misleading information.
 - g. The attorney submitted a claim for legal services that included inflated time entries and/or entries that exceeded those that were reasonable and necessary;
 - h. The attorney submitted claims for expense reimbursements that are not reasonable and necessary.

- i. The attorney accepted an assignment of a case or continued an assignment of a case after a conflict of interest arose;
 - j. The attorney fails to comply with the requirements of this plan or the policies or orders of the court;
 - k. The attorney no longer meets the qualifications of this plan and/or the specific qualifications for the list from which the attorney was appointed/listed.
 - l. The attorney has instructed a client to not abide by a court order (ex. Instructing a client to not take a drug test or to perform measures manipulate or avoid a drug test (i.e. shave head).
 - m. Appointed counsel has failed to participate in mediation in good faith.
 - n. Appointed counsel has failed to abide by the Texas Lawyer's Creed.
4. **Voluntary Removal from List.** An attorney may request to be removed from, or returned to, the child protection appointment list subject to certain criteria set out below:
- a. An attorney may request at any time, in writing, a period of temporary voluntary removal from the appointment list.
 - b. Upon receipt of a written request, the attorney shall be returned to the appointment list provided the attorney remains qualified. If the period of voluntary removal exceeds one year, the attorney must reapply for appointments through the original application process.
5. **Reinstatement to Appointment List.** In order for an attorney to be considered for reinstatement to the appointment list, certain criteria must be met as set out below.
- a. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours, so long as the attorney meets the other qualifications under this plan.
 - b. An attorney who was removed from the appointment list for not submitting the attorney's annual TIDC Attorney Reporting Form or other reporting requirement may be immediately reinstated upon submission of the form, so long as the attorney meets the other qualifications under this plan.
 - c. An attorney who was removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

Assignment of Attorneys.

8/29/2023

1. **Order of Appointment.** Attorneys shall be appointed from the appointment list maintained for those attorneys who are eligible for appointment in child protection cases. The court shall appoint the attorney whose name next appears in order on the public appointment list unless, on a finding of good cause, the Court appoints a person included on the applicable list whose name does not appear first, or a person who meets statutory or other requirements to serve on the case and who is not included on the list, and agrees to accept the compensation authorized by these CPS Local Rules, if the appointment of that person as attorney ad litem, guardian ad litem, or guardian is required on a complex or specialized matter and that person:
 - a. Possesses relevant specialized education, training, certification, skill, language proficiency, competence or background that is relevant to the case and it would be in the best interest of the client to reassign the appointed counsel;
 - b. Has relevant prior involvement with the parties or case; or
 - c. Is in a relevant geographic location.
2. **Examples of Good Cause.** The following list is not exhaustive, but serves as examples of good cause reasons to deviate from the order of appointments:
 - a. **Language Barrier.** If the respondent does not understand English, an attorney who can communicate with the respondent in respondent's language is preferable to one who cannot;
 - b. **Multiple CPS Cases Pending.** If a person for whom an attorney is appointed under this section has a currently pending child protection case, the attorney previously appointed should be appointed in the newest case.
 - c. **Juvenile/Criminal Case Pending.** If a person already has a juvenile or criminal case pending in Matagorda County with an appointed attorney, that same attorney may be appointed in the new CPS case.
 - d. **Ad Hoc Distribution of Appointments in Open Court.** The Court may deviate from the rotation system and appoint an attorney who is present in court and who is qualified under the plan on an ad hoc basis to represent indigent persons upon a finding of good cause to deviate from the rotation system.

- e. **Appellate Appointments.** Appellate counsel will be appointed as soon as practicable after the filing of a Notice of Appeal.
 - f. **Limitations on Appointment after Overriding Circumstances.** When an attorney is appointed out of order due to an overriding circumstance, that attorney shall not receive another sequential appointment until every other attorney on that list has received an appointment in that rotation (but may receive additional overriding circumstance appointments.)
3. When an attorney is appointed out of order under the above-stated provisions, that attorney's name will be moved to the last place and any lawyer who was not appointed will remain at the top of the list until appointed or removed from the list. A symbol will be placed next to the attorney appointed out of order to indicate the reason for deviation from the order.
 4. In the event of a state of disaster, the Court may appoint an individual as permitted by Texas Government Code § 37.004(d-1).
 5. If an attorney is removed from representation of an indigent person, replacement counsel shall be selected from the list using the rotation method described above and appointed immediately, unless another provision of these rules apply.
 6. **Length of Appointment.** In general, appointed counsel will be released at final order, with the following exceptions related to Permanent Managing Conservatorship cases:
 - a. Attorneys for the child(ren) shall remain on the case.
 - b. Attorneys for the parent(s) whose rights have not been terminated will not remain on the case unless the parent is a minor or incapacitated.

Fee and Expense Payment Process
08/29/2023

1. **Reasonable and Appropriate.** Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the client. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by the District Judges.
2. **Payment Process.** No payment of attorney's fees will be made other than in accordance with the rules set forth below.

- a. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered.
- b. The CPS Judge shall review the request for compensation and either approve or disapprove of the amount requested.
 - i. If the judge disapproves a request for compensation, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.
 - ii. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region. This procedure shall only be used after the attorney has attempted to obtain payment, or a change in fee, with a filed motion set on the CPS Judge's submission docket.
- c. **Payment of Expenses.** Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred. Whenever possible court approval should be obtained before expenses are incurred.

Plan Documents

8/29/2023

Matagorda County Affidavit of Indigence

Matagorda County Attorney Application for CPS Appointment.

Matagorda County Local Rules Adopting Standards and Procedures for the Appointment of Counsel for Indigent Persons in Matagorda County CPS Cases

Matagorda County Attorney Fee Voucher.