

# Harrison District and County Courts Plan

## Preamble

10/22/2013

*Effective Date December 1, 2009*

### I. Preamble

The undersigned judges adopt the procedures herein with the intent to provide for an appointment list of attorneys using a system of rotation to insure that indigent accused persons receive timely and competent representation and that appointments are allocated in a manner that is fair, neutral and nondiscriminatory.

The Qualified Attorney Lists will be approved by the Judges of the District Court and County Court at Law, hereinafter referred to as the Judges. The lists will be posted on the County Web site and made available in the offices of the Judges.

Attorneys will be appointed pursuant to this Plan on a rotation system. The Pre-Trial Services Officer(s) of the Harrison County Office of Community Supervision are designated to appoint attorneys from the Lists under the supervision of the Judges and pursuant to this Plan.

Applications for inclusion/re-certification on the list may be filed with each Court in which the attorney wishes to receive appointments for Harrison County. The applications will be considered within 30 days and ruled upon within 45 days, unless for good cause the time period for ruling must be lengthened.

## Prompt Magistration

10/28/2013

### II. Prompt Magistration

The law enforcement officer making the arrest and any officer who later has custody of an accused person shall ensure that the person is taken before a magistrate without unnecessary delay but not later than 48 hours after the person is arrested, for proceedings under Art. 15.17, Art. 14.06, Subsection (a), Tex.Code Crim.Proc.

The magistrate shall inform the accused of the right to request court appointed counsel, ascertain whether or not the accused wishes to request counsel at that time, and make a record of the accused's decision, and, if the accused requests counsel, the magistrate shall direct the jail officer to immediately notify the Pre-Trial Services Office. The Pre-Trial Services Officer(s) shall each working day visit the jail to determine if any defendants have requested counsel or need assistance, or wish to apply for pre-trial services. The Officer shall provide the inmates with a *Request for Court Appointed Counsel (Request)*, and assist in completing the *Request*. If not a working day, the jail staff shall provide the inmate with the Request, provide any assistance requested by the inmate in completing the request, and then transmit the request in person or by fax to the Pre-Trial Office or the appropriate court no later than 24 hours after the inmate requests appointment of counsel.

## Indigence Determination Standards

10/28/2013

### III. Indigence Determination Standards

#### A. Definitions, as used in this rule:

- i. "Indigent" means a person who is not financially able to employ counsel.
- ii. "Net household income" means all income of the accused and spousal income actually available to the accused. 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 accused has no income or lesser income.

- iii. “Non-exempt assets and property” means cash on hand, stocks and bonds, and accounts at financial institutions.
- iv. “Household” means all individuals who are actually dependent on the accused for financial support.
- v. “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.

#### B. Eligibility for Appointment

- i. An accused is presumed indigent if at the time of requesting appointed counsel, the accused or accused’s dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.
- ii. An accused is also considered indigent if the accused meets any one of the following three criteria AND meets the asset test set out in subsection iii below:
  - 1. the accused’s net household income does not exceed 125% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register;
  - 2. The accused 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; or
  - 3. The difference between the accused’s monthly net household income and reasonable necessary expenses is less than \$200. Reasonably necessary expenses

should include but are not limited to: rent or mortgage, food/groceries, car payment, car insurance, health insurance, medical bills, and utilities (water, electric, gas, phone).

iii. In addition to meeting one of the criteria under section ii above, an accused is considered indigent only if the value of non-exempt assets and property owned by the accused does not exceed the greatest of the following:

- a. \$2,500;
- b. \$5,000 in the case of an accused whose household includes a person who is 60 years or older, disabled, or institutionalized; or
- c. Double the estimated cost of obtaining competent private representation for the offense with which the accused is charged.

iv. An accused who does not meet any of the standards above shall nevertheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused's dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:

1. the nature of the criminal charge(s),
2. anticipated complexity of the defense,
3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
4. the amount needed for the support of the accused and the accused's dependents;
5. accused's income,
6. source of income,
7. assets and property owned,
8. outstanding obligations,
9. necessary expenses,
10. the number and ages of dependents, and
11. spousal income that is available to the accused.

- v. Factors NOT to be considered in determining indigence:
  - 1. The accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent.
  - 2. The resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent.
- vi. Only the accused's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. Indigence Proceedings:

- i. The appointing authority can require the accused to respond to questions about the accused's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.
- ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:
  - 1. Determining if accused is (or is not) indigent; or
  - 2. Impeaching direct testimony of accused regarding the accused's indigence.
- iii. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in Parts I and IV of these rules and contained in Code of Criminal Procedure article 1.051.
- iv. An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused's financial circumstances occurs.
  - 1. An accused'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 accused, the accused's attorney, or the attorney representing the state. The accused's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:

- a. Evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or
  - b. Additional information regarding the accused's financial circumstances that shows that the accused does not meet any of the standards for indigence contained in these rules.
2. If an accused 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.
- v. If the court determines that a defendant 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 defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

### **Minimum Attorney Qualifications**

*10/28/2013*

#### **IV. Minimum Attorney Qualifications**

- 1. Eligibility.** The attorney shall be familiar with the practice and procedure of the criminal courts of Texas and shall be a member in good standing of the State Bar of Texas. Practice before a juvenile court shall be considered as experience in criminal litigation for purpose of these standards. Pro bono service of counsel shall also be considered as experience for purpose of these standards. The attorney shall have their residency or primary office location in Harrison County, except for counsel who restrict their appointments to appeals.
- 2. Compliance with Ethical Standards.** All attorneys shall comply with the Canons Of Ethics and with the Lawyer's Creed and shall require that all investigators, experts and others working for or under the direction of the attorney shall also comply with all appropriate ethical standards.
- 3. Evidentiary Matters.** The attorney shall be familiar with the Texas Rules of Evidence and shall have knowledge of the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence.
- 4. Co-Counsel.** If the Court appoints co-counsel for any non-death penalty offense, it shall be at the discretion of the Court as to the qualification of counsel.
- 5. Continuing Education.** To maintain annual certification, successful completion of a minimum of (8) hours of training in State Bar of Texas approved training in criminal law, evidence or trial practice. This is an annual calendar year requirement with reporting each January by the presentation of a re-certification affidavit presented prior to January 31 of each year. A failure to present the affidavit shall cause an attorney to be subject to removal from the lists of attorneys eligible for appointment.
- 6. Re-Certification:** An attorney shall file a new application between January 1 and January 31 of each year to remain on the list(s).

**7. Removal from List:** A judge may remove an attorney from consideration for appointments if the attorney intentionally or repeatedly does not fulfill the duties required by law, Attorney's Creed, Canons, local rules, or the provisions of this plan. An attorney removed from the list(s) will be given notice and the reasons for the removal.

### Qualifications for Specific Lists:

#### 1. Capital Offenses.

In order to serve as lead counsel in a capital offense where the State of Texas is seeking a death sentence, an attorney must meet the following:

1. Exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;
2. Have (5) years experience in criminal litigation of serious felony matters and experience in at least one capital case; and
3. Have tried to verdict as lead defense counsel a significant number of felony cases before a jury, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies;
4. Have trial experience in the use of and challenges to health or forensic expert witnesses and investigating and presenting mitigating evidence at the penalty phase of a death penalty trial.
5. Have participated in continuing legal education relating to death penalty criminal defense within the previous year, and shall have completed in addition to the minimum continuing legal education requirements of the State Bar of Texas, a minimum of twelve hours of such training over the previous two year period.

The attorney appointed as second chair shall have at least five years experience in representing individuals charged with felony matters and must have completed a minimum of eight hours of continuing legal education courses or other training related to criminal defense in death penalty cases over the previous two year period. Counsel shall have tried to verdict at least five felonies.

Appointment of attorneys in capital cases shall be as further provided in the *Standards for Appointment of Counsel in Death Penalty Cases Promulgated Pursuant to Art. 26.05 C.C.P.* as promulgated by the First Administrative Judicial Region. A copy of same is attached hereto.

#### 2. All other felonies and misdemeanors, including revocations of probation:

In order to be eligible for appointment an attorney must:

1. Have (1) year experience in criminal litigation.
2. Have demonstrated to the Court the ability to investigate, prepare, and present a case to the court or jury .
3. Have demonstrated to the court the ability to timely prepare for trial and appear in Harrison County Courts.
4. The attorney shall have their residency or primary office location in Harrison County, except for counsel who restrict their appointments to appeals.
5. Due to the criminal caseloads and jail population of Harrison County, the fact that there are only two trial courts in

Harrison County; the lack of visiting judges to sit for additional weeks of trial other than the two criminal weeks each month; the lawyers who ask to be placed on the Harrison County Qualified List must be available to prepare and try cases on a timely basis. Lawyers whose caseloads include indigent or criminal representation in multiple counties, which result in repeated requests for continuances , failures to appear or inability to timely investigate, prepare and dispose of cases will not be considered as qualified for the Harrison County List. Attorneys who, after they are placed on the Harrison County List, but due to the caseloads can no longer meet this criteria should ask to be removed or will be removed from the list.

#### 3. Appellate Counsel and Writ Counsel

In order to serve as appellate counsel an attorney shall:

1. Have (3) years of experience in criminal litigation;
2. Have tried at least two pleas of not guilty before a jury; and
3. Have filed a brief and/or argued at least one case before the Courts of Appeal of Texas, the Texas Supreme Court, the Texas Court of Criminal Appeals, Fifth Circuit Court of Appeals or the United States Supreme Court.

#### Effect of Criminal Law Specialization

An attorney who has received his or her specialization in criminal law is qualified to serve on any capital felony where the State is not seeking the death penalty and for all other grades of felony and misdemeanor offenses.

### **RESPONSIBILITIES OF COURT APPOINTED COUNSEL**

Appointed counsel shall contact the client not later than the end of the first working day after appointment and to also interview in person the client within 3 days of the appointment.

Court appointed counsel should be available to receive communications by telephone, answering service, pager, e-mail or voice mail from 8:00 am to 5:00 PM on workdays. Counsel will also maintain a FAX or E-MAIL for receiving notices, motions, appointments, etc. from the Court 24 hours a day, 7 days a week. Difficulty communicating with counsel by court or court staff or clients will be considered as grounds for removing the counsel from the approved list. If counsel has no fulltime office staff, counsel will also provide a mobile cell phone number.

Counsel shall comply and insure that investigators and experts employed by counsel shall comply with all laws, rules, procedures and ethical provisions for providing reasonable assistance to counsel, including the Lawyer's Creed. Counsel is expected and shall timely investigate and prepare the case for trial and especially in the case of an incarcerated defendants, attempt to reach a plea agreement or request a setting on the trial docket. Counsel shall not wait to receive notice of a trial setting to begin attempting to prepare or resolve the case.

The Qualified Attorney Lists will be approved by the Judges of the District Court and County Court at Law, hereinafter referred to as the Judges. The lists will be posted on the County Web site and made available in the offices of the Judges.

An attorney shall submit by October 15<sup>th</sup> each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission prescribed by the Texas Indigent Defense Commission to the court administration office.

## **Prompt Appointment of Counsel**

11/30/2009

### **V. Prompt Appointments**

The magistrate shall inform the accused of the right to request court appointed counsel, ascertain whether or not the accused wishes to request counsel at that time, and make a record of the accused's decision, and, if the accused requests counsel, the magistrate shall direct the jail officer to immediately notify the Pre-Trial Services Office. The Pre-Trial Services Officer(s) shall each working day visit the jail to determine if any defendants have requested counsel or need assistance, or wish to apply for pre-trial services. The Officer shall provide the inmates with a *Request for Court Appointed Counsel (Request)*, and assist in completing the *Request*. If not a working day, the jail staff shall provide the inmate with the *Request*, provide any assistance requested by the inmate in completing the request, and then transmit the request in person or by fax to the Pre-Trial Office or the appropriate court no later than 24 hours after the inmate requests appointment of counsel.

If adversarial proceedings have not been initiated against the accused, and counsel shall be appointed immediately following the expiration of three working days after the date on which the *Request* was received by the Judge or the Pre-Trial Office.

If adversarial proceedings have been initiated against the accused, counsel shall be appointed on or before the 3rd working day after the date on which the Judge or Pre-Trial Office receives the *Request*.

### **WAIVERS OF RIGHT TO COUNSEL:**

It is the intent of this Plan to comply with H.B. 1178.

Specifically, in any adversary proceeding that may result in punishment by confinement, the attorney representing the state may not initiate or encourage an attempt to obtain from a defendant who is not represented by counsel a waiver of the right to counsel or communicate with a defendant who has requested the appointment of counsel, unless the court or the court's authorized designee has denied the request and subsequent to the denial the defendant has been given a reasonable opportunity to retain and has failed to retain private counsel or waives or has waived the opportunity to retain private counsel.

The Court will not direct or encourage a 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 reasonable opportunity to request appointed counsel. If the defendant has requested counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the court or designee has denied the request and subsequent to the denial, the defendant has been given a reasonable opportunity to retain and has failed to retain counsel or waives or has waived the opportunity to retain counsel.

#### **PRE TRIAL ATTORNEY SUPERVISION:**

If an inmate has been appointed counsel and is subsequently released on bond, then the defendant will be referred to the Pre-Trial Services Office and placed on Attorney Fee Supervision.

A request for counsel from a defendant who is out on bond and has not had counsel previously appointed, will be referred to Pre -Trial Services for an interview to consider his eligibility for appointment of counsel and the terms and conditions of bond. If the defendant appears to be indigent, then a recommended pre-trial bond will be submitted to the Court for final approval and the next eligible attorney appointed. If the defendant appears to not be indigent, this fact will be reported to the Court and the Court will make the final determination.

## **Attorney Selection Process**

*11/30/2009*

### **VI. Fair Appointments**

If Pre -Trial Services determines that the accused is entitled to appointment of counsel, the next qualified attorney from the appropriate Qualified Appointment List shall be appointed, unless a finding of good cause is made on the list for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list. Once a capital indictment is returned, only a Capital Qualified List attorney approved to provide representation in a capital case will be appointed. If an attorney from the Qualified List has been representing the defendant, and is not qualified on the Capital Qualified List, that attorney must immediately file a Motion to Withdraw and obtain a hearing on said motion. At or before arraignment, if the State has not filed a Notice that the State does not seek the death penalty, then Second Chair counsel shall be appointed.

A copy of the appointment shall be immediately faxed or emailed to the appointed attorney before the end of the business day on which the attorney was appointed.

## **Fee and Expense Payment Process**

*4/5/2011*

### **VII. Fee and Expenses**

The following schedule is adopted pursuant to Art. 26.05, Texas Code of Criminal Procedure, with the intent to provide for reasonable compensation to court appointed counsel for time spent performing the reasonable and necessary services in representing the client, and with the intent to take into consideration the time and labor required, complexity of the case, experience and ability of the appointed counsel, and the reasonable and necessary overhead costs of the attorneys.

Not less than \$50.00 per hour nor more than \$100.00 per hour depending on the grade of offense, nature and complexity of the case, and whether the death penalty in a capital case is sought. In all cases except those in which a presumptively flat fee for a guilty plea is requested. Counsel may request, upon the entry of a guilty plea, a flat fee as set forth below. If multiple pleas are entered in both the County Court at Law and the District Court or in either court, counsel may request a flat fee in each court for one case, based on the highest degree offense, or submit a fee request on an hourly basis for work done on all cases. Fees shall be requested from the Court in which the respective plea was entered, but in no event shall the attorney charge twice for the same hours expended.

If a case results in a dismissal, counsel shall submit a fee based on the number of hours expended.

Based on the foregoing considerations, the judges find the following fees to be presumptively reasonable:

#### **A. FEE SCHEDULE**

##### **1. FELONIES AND STATE JAIL OFFENSES:**

Guilty plea	<b>\$500.00</b>
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**2. MISDEMEANORS AND REVOCATIONS**

Guilty plea **\$400.00**

**\*\*ENHANCEMENTS:** Cases enhanced to a higher punishment level shall be treated as the higher level case.

**3. REVOCATIONS OF PROBATION \$400.00****4. APPEALS \$75.00 per hour****5. WRITS, OTHER MATTERS, AND HOURLY RATES FOR FEES ABOVE THE PRESUMPTIVELY REASONABLE FEES ABOVE:**

**\$50.00 - \$100.00 per hour**, depending on the nature of the case

**6. CAPITAL CASES WHERE DEATH PENALTY SOUGHT:**

Lead Counsel in a capital case shall be entitled to a minimum of : **\$90.00 per hour**

Co-Counsel shall be entitled to: **\$80.00 per hour**

**B. INVESTIGATION EXPENSES AND EXPERT WITNESS FEES:**

The defendant has the right to the proper investigation of his case and for the appointment of expert witnesses when necessary for the defense of his case. Investigation expenses will be compensated at \$20 to \$40 per hour in the discretion of the court and considering the nature of the offense and the nature of the services provided. Travel time from the investigator's office to the courthouse, jail and lawyer's office is not compensated. Mental health, ballistics, forensics, fingerprint, DNA experts necessary for the defense of the accused shall be compensated based on the usual and normal charges for such experts in the Administrative Judicial District.

As provided by Art. 26.05(d), counsel in a non-capital case shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health experts and other experts. Expenses incurred shall be as provided in Art. 26.052(f), (g), and (h).

Incurring frivolous, unnecessary or improper investigation expenses could result in the removal of the attorney from the list of qualified attorneys.

**C. REQUESTS FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

Each attorney shall submit a request for payment:

1. On the date of the disposition of the case by a plea or bench trial; or
2. Within 15 days of the date of the verdict in a jury trial; or
3. Within 15 days of the date the mandate being returned in an appeal.
4. Or within 15 days of the defendant's release on bond, or by way of writ of habeas corpus or other order of the Court.

Bills for indigent attorney fees or expenses not timely filed as above will be considered waived, the services being performed pro bono, and said request shall not later be paid.

Requests for amounts greater than the presumptively reasonable amounts set forth above or for services rendered in a trial to the court or jury shall be verified and include a detailed statement of the nature of the services performed, the date of such performance, and the actual time spent on each such date and performing each such service.

Fee and expense payment process.

- Payments shall be in accordance with a schedule of fees adopted by the judges [Art. 26.05(b), CCP]
- No payment shall be made until judge approves payment after submission of attorney fee voucher [Art. 26.05(c), CCP]
- If judge disapproves the requested amount of payment, the judge shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount. [Art. 26.05(c), CCP]



- The second chair attorney must have at least two years experience in representing individuals charged with felony matters; and
- The second chair attorney must have completed a minimum of eight hours of continuing legal education courses or other training relating to criminal defense in death penalty cases over the previous two year period.

District Judges trying capital cases in the First Administrative Region shall adopt a list of names of attorneys within their judicial district who meet the standards set forth herein and are eligible for appointment as lead attorney in death penalty cases. A copy of the list of eligible attorneys along with the qualifications of each attorney named on the list shall be forwarded to the Presiding Judge of the First Administrative Region for review by the local selection committee and inclusion on the master list of attorneys eligible for appointment as lead attorney in death penalty cases in the First Administrative Judicial Region. The master list of attorneys qualified for appointment to death penalty cases in the First Administrative Judicial Region and this order setting standards shall be prominently posted in each district clerk's office in the Administrative Region. The list of attorneys eligible for appointment may be amended annually by the judges trying capital cases forwarding additions or deletions to the list of eligible attorneys in their judicial district to the Presiding Judge of the Region for review by the local selection committee. The Presiding Judge of the Region shall determine the date any additions or deletions to the list are to be submitted. Counties with more than one district court trying capital cases may comply with this order under authority of the Local Administrative Judge or his designated judge, or the presiding judge of the criminal courts trying capital cases.

The judge of the court in which a capital felony case is filed shall appoint counsel to represent an indigent defendant as soon as practicable after charges are filed. At least one of the attorneys appointed must be from the master list of attorneys eligible for appointment to death penalty cases, unless the State gives notice in writing that the State will not seek the death penalty. The judge trying the case shall compensate appointed counsel in accordance with the fee schedule adopted in that jurisdiction.

Not later than the second anniversary of the date an attorney is placed on the master list of qualified attorneys for the Administrative Region, and each year following the second anniversary, each attorney named on the list must present proof to the local selection committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas and has completed the required hours of training relating to the defense of death penalty cases. The name of any attorney failing to provide proof of completion of the continuing legal education requirements to the local selection committee shall be removed from the master list of eligible attorneys. The Presiding Judge of the Region shall determine the date CLE reports are to be submitted. The local selection committee shall meet annually at a time set by the Presiding Judge of the First Administrative Judicial Region to ensure that each attorney listed on the master list of eligible attorneys satisfies the requirements set forth in this order.

The district courts trying capital cases in the Region may, by separate plan adopted by the judges, require additional qualifications for an attorney to be appointed to a capital case in their jurisdiction. Any such plan shall be forwarded to the Presiding Judge of the Region upon its adoption. An attorney appointed as first chair in a capital case where death is sought must meet the minimum qualifications set forth in this plan.

Signed this 13th day of November, 2003.

John Ovard

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JOHN OVARD, PRESIDING JUDGE  
FIRST ADMINISTRATIVE JUDICIAL REGION

### Plan Documents

Harrison District and County Court Affidavit of Indigence.pdf (10/28/2013 3:21:27 PM) [view](#)  
Harrison District and County Court Attorney Application for Appointment.doc (11/30/2009 4:29:09 PM) [view](#)