

## **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**

*10/21/2021*

In removal cases, attorneys appointed to represent children shall occur at the ex parte hearing stage. Parents who apply and qualify for representation shall receive an appointment, as soon as possible, before the hearing. (Tex. Fam. Code §§ 107.012, 107.013). The Court shall appoint an attorney for the child immediately after the court ordered services/required participation case is filed. Parents who apply and qualify for representation shall receive an appointment, as soon as possible, before the hearing. (Tex. Fam. Code §§ 264.203 (g)(h)). 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*

#### **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 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.

- iii. “Household” means all individuals who are actually dependent on the parent for financial support.
- iv. “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. A parent is presumed indigent if any of the following conditions or factors are present:
  - 1. 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;
  - 2. 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
  - 3. 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.
- ii. 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:
  - 1. Anticipated complexity of the case,
  - 2. The estimated cost of obtaining competent private legal representation for the matter;

3. The amount needed for the support of the parent and the parent's dependents;
  4. Parent's income;
  5. Source of income;
  6. Assets and property owned,
  7. Outstanding obligations,
  8. Necessary expenses,
  9. The number and ages of dependents, and
  10. Spousal income that is available to the parent:
- iii. 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.

**C. Indigent Proceedings.**

- i. 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.
  - 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 parent is (or is not) indigent; or
    2. Impeaching direct testimony of parent regarding the parent'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 Texas Family Code §§ 107 and 264.
- iv. 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.
  1. 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:

- a. 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
  - b. 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.
2. 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.
- v. 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.
  1. The Court may modify or suspend the order of reimbursement upon further proof of inability to comply with the Court's Order.
  2. 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**

*10/21/2021*

#### **A. Qualifications.**

- i. An attorney on the child protection appointment list must ensure all information on their application is current.
- ii. An 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.
- iii. 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.

- iv. Completion of training program regarding trauma-informed care Texas Family Code § 107.004(b-1) (2).
- v. Other specialized qualifications as deemed necessary by the Local Administrative District Judge.
- vi. An attorney may 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 or the United States within the last three (3) years.
- vii. An attorney shall notify the designated Matagorda County Indigent Defense Administrator promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent persons.

**B. Approval for Appointment List.**

- i. “Attorney” as used in these Rules shall mean any attorney appointed to represent a child, parent or alleged father in a child protection case.
- ii. Application Procedure.
  - 1. 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.
  - 2. An attorney seeking to be included on the child protection appointment list must be approved by the Local Administrative District Judge.
- iii. 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.
- iv. Continuing Education.
  - 1. Completion of any additional training program regarding trauma-informed care Texas Family Code § 107.004(b-1) (2).
  - 2. An attorney shall complete a minimum of 6 hours of CLE in the area of child protection law and procedure each year, including one hour of

ethics. All attorneys on the appointment list shall file by October 15th of each year the “Certificate of Compliance” with the designated Matagorda County Indigent Defense Coordinator attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in child welfare law:

- a. The designated reporting period shall be from October 1st to September 30th;
- b. Continuing legal education completed within the one-year period immediately preceding an attorney’s initial reporting period may be used to meet the educational requirements for the initial year;
- c. Continuing legal education completed during any reporting period exceeding the minimum of 6 hours for such period may be applied to the following period’s requirement (this carryover provision applies to one year only).

**C. Removal from List for Good Cause.** An attorney may be removed from the list if the Local Administrative District Judge determines that good cause exists for removal. Good cause may include, but is not limited to:

- i. Intentionally or repeatedly failing to fulfill the duties required by law or local rules;
- ii. Failing to provide effective assistance of counsel as determined by a Texas Appellate Court;
- iii. Failing on two or more occasions to contact or interview clients in a timely manner;
- iv. Submitting a claim for legal services not performed as specified in Texas Family Code §107.001 et seq;
- v. Having been found to have violated a rule of professional conduct by the State Bar of Texas;
- vi. After having been placed on the appointment list, being convicted of or receiving deferred adjudication for any offense, other than an offense punishable by a fine only;
- vii. Being under indictment or charged with an offense, other than an offense punishable by a fine only; or

viii. Failing to comply with the requirements for continued inclusion on the appointment list.

**D. 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:

- i. An attorney may request at any time, in writing, a period of temporary voluntary removal from the appointment list.
- ii. Upon receipt of a written request, the attorney shall be returned to the appointment list provided the attorney remains qualified.
- iii. If the period of voluntary removal exceeds one year, the attorney must reapply for appointments through the original application process.

**E. 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.

- i. 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.
- ii. 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.
- iii. 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.**

*10/21/2021*

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 the following overriding circumstances:

**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.)
- G. Length of Appointment.** In general, appointed counsel will be released at final order, with the following exceptions related to Permanent Managing Conservatorship cases:
  - i. Attorneys for the child(ren) shall remain on the case.
  - ii. 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**  
*10/21/2021*

- A. 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 Local Administrative District Judge.
- B. Payment Process.** No payment of attorney's fees will be made other than in accordance with the rules set forth below.



- i. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered.
- ii. The Local Administrative District Judge shall review the request for compensation and either approve or disapprove of the amount requested.
  1. 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.
  2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 21st 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.

**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**

*10/21/2021*

[Matagorda County Affidavit of Indigence.](#)

[Matagorda County Attorney Application for CPS Appointment.](#)

[Matagorda County Attorney Fee Voucher.](#)