



DENISE M. FORTENBERRY
130th Judicial District Judge

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

These CPS Local Rules govern establishing qualifications and the appointment and compensation of counsel engaged in the defense of indigent persons for CPS cases in Matagorda County, pursuant to Texas Family Code 107.015, Texas Code of Criminal Procedure Art. 26.04 (appointment procedure), Art. 26.05 (compensation), Texas Government Code Chapter 37 (Appointments of Attorneys Ad Litem, Guardians Ad Litem, Mediators and Guardians), Texas Family Code Ch. 51, and other applicable law. All appointments of counsel and payments made to counsel under these CPS Local Rules shall be made and paid in accordance with the schedule of fees adopted by formal action of the district court trying CPS cases. ("CPS Judge"). Art. 26.05(b). The District Judges have adopted fee schedules taking into consideration those factors required by applicable law including reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates. Art. 26.05(c). It is the intent of the CPS Judge that these CPS Local Rules are to expand and clarify standards and procedures outlined in the Matagorda County Indigent Appointment Plan. The intent is to be fully compliant with applicable law, but if ever there is a conflict between the two, applicable law shall control.

The CPS Judge has adopted these CPS Local Rules effective on September 1, 2023.

Attorney Qualification, Appointment, Disqualification and Duties

1. **Attorney Qualification.** Attorney Qualifications for Child Protective Services ("CPS"), Guardian Ad Litem, and Attorney Ad Litem List Qualifications - In order to be considered a qualified attorney, an attorney seeking inclusion on the CPS, Guardian Ad Litem, Guardian and Attorney Ad Litem case list must meet the following criteria (1.1 - 1.20):
 - 1.1 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.

- 1.2 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.
- 1.3 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.
- 1.4 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.
- 1.5 The attorney must not have been indicted or convicted of any felony charge, unless, in the case of indictments, the indictment is dismissed.
- 1.6 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.
- 1.7 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.
- 1.8 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.
- 1.9 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.
- 1.10 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.
- 1.11 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.

- 1.12 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.
- 1.13 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;
- 1.14 Complete and maintain the Guardianship Ad Litem Certification required by State Bar of Texas;
- 1.15 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 by the State Bar of Texas.
 - 1.15.1 The designated reporting period shall be from October 1st to September 30th unless otherwise designated by the Board of Judges.
 - 1.15.2 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.
 - 1.15.3 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 under 1.16 below.
- 1.16 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.
- 1.17 Completion of training program regarding trauma-informed care Texas Family Code § 107.004(b-1) (2).

- 1.18 Other specialized qualifications as deemed necessary by the CPS District Judge.
- 1.19 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.
- 1.20 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. **Methods of Appointment.** A separate Child Protective Services list shall be maintained by the CPS Judge cases and shall include, subject to later disqualification and removal as provided for by the CPS Local Rules, all attorneys who have: sought inclusion on the CPS Appointment List, complied with the application process set forth in these CPS Local Rules relevant to the CPS list, and approved by the CPS Judge presiding over the list.
- 2.1 *Assignment of Attorneys in Cases.* The following method shall be used to assign attorneys for all indigent persons in a CPS case seeking attorney ad litem, guardian ad litem, or guardians.
- 2.2.1 The selection and appointment of counsel for indigent persons shall be in accordance applicable law, including, but not limited to, Texas Government Code § 37.004. To the extent these CPS Local Rules are invalid, inconsistent, or violative of state law for any reason, the invalidity, inconsistency, or violation does not affect other provisions or applications of these CPS Local Rules that can be given effect without the invalid, inconsistent, or violative provision or application. To this end the provisions of these CPS Local Rules are severable.
- 2.2.2 When a finding of indigence has been made by a court, legal counsel shall be appointed by the court or the court's designee on rotation from the appropriate appointment list as soon as possible, but not later than the end of the first business day after the court made the finding of indigence. "Business day" means Monday through Friday, except for official Matagorda County holidays or office closures.

- 2.2.3 The court or its designee shall appoint the attorney whose name appears first (next in order) on the relevant public appointment list.
- 2.2.4 On a finding of good cause, the Court may appoint a person included on the applicable list whose name does not appear first on the list, 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:
- 2.2.4.1 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;
 - 2.2.4.2 Has relevant prior involvement with the parties or case; or
 - 2.2.4.3 Is in a relevant geographic location.
- 2.2.5 When an attorney is appointed out of order under the above-stated provisions (2.2.4), 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.
- 2.2.6 In the event of a state of disaster, the Court may appoint an individual as permitted by Texas Government Code § 37.004(d-1).
- 2.2.7 Each attorney appointed under these procedures shall represent the client until final disposition of the case or until released by the Court.
- 2.2.8 At the conclusion of all proceedings in the trial court, including post-trial motions, if an indigent person wishes to file an appeal, the appointing judge or the judge's designee shall appoint the lawyer whose name appears next in order on the Appellate List. The appointment is subject to the same rotation provisions as those listed for trial attorneys.
- 2.2.9 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 applicable law and these CPS Local Rules allows otherwise.

2.3 *Restrictions of Appointments.*

- 2.3.1 Specifically, but not by way of limitation, attorneys shall not accept assignments that create a conflict of interest. By accepting an assignment, Counsel represents that they have performed a conflict check and no conflict or foreseeable potential conflict of interest exists.
- 2.3.2 Specifically, but not by way of limitation, attorneys shall not accept assignments that create an ongoing or repeating scheduling conflict with other cases in which the attorney is representing other persons, or which conflict with personal or professional commitments of the attorney such that the attorney cannot be readily available to handle hearings and trial on the merits of an assigned case at the convenience of the court. The Court may occasionally accommodate the schedules of attorneys, but the Court must not be unduly encumbered by the schedules of attorneys.

3. **Disqualification, Removal and Reassignment.**

- 3.1 *Voluntary Removal.* An attorney may request to be removed from, or returned to, the child protection appointment list subject to certain criteria set out below:
 - 3.1.1 At attorney may request at any time, in writing, a period of temporary voluntary removal from the appointment list.
 - 3.1.2 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.
- 3.2 *Request By Indigent Client.* At the request of an Attorney's indigent client, the judge presiding over the case may remove the Attorney from the particular appointment for good cause shown.
- 3.3 *Sua Sponte Removal.* An attorney may be removed from a list on which the attorney is included if the CPS Judge finds good cause exists for removal.
- 3.4 *Good Cause Grounds for Removal.* The following is a non-exhaustive list of grounds that may constitute good cause for removal from a particular case and/or from a particular CPS list.:
 - 3.4.1 The attorney failed or is failing to provide adequate and/or effective legal representation to a person in an assigned case.

- 3.4.2 The attorney failed or is failing to be reasonably communicate and/or be responsive to the client and/or Court.
 - 3.4.3 The attorney failed to timely appear without reasonable justification and/or advance notice at one or more court settings in an assigned case.
 - 3.4.4 The attorney regularly failed to reasonably accommodate the Court's scheduling or case management needs.
 - 3.4.5 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.
 - 3.4.6 The attorney submitted a claim for legal services and/or expenses which contained false or misleading information.
 - 3.4.7 The attorney submitted a claim for legal services that included inflated time entries and/or entries that exceeded those that were reasonable and necessary;
 - 3.4.8 The attorney submitted claims for expense reimbursements that are not reasonable and necessary.
 - 3.4.9 The attorney accepted an assignment of a case or continued an assignment of a case after a conflict of interest arose;
 - 3.4.10 The attorney fails to comply with the requirements of this plan or the policies or orders of the court;
 - 3.4.11 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.
 - 3.4.12 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).
 - 3.4.13 Appointed counsel has failed to participate in mediation in good faith.
 - 3.4.14 Appointed counsel has failed to abide by the Texas Lawyer's Creed.
- 3.5 *Reassignment.* Current information about the client and the case involving the client indicate that another qualified attorney is more appropriate under the particular facts of the case and that a re-assignment is in the best interest of the client. Such may include, but is not limited to the matters described below:

- 3.5.1 The client's primary language is one other than English and the appointed attorney does not speak the client's primary language, but other available counsel does.
 - 3.5.2 An attorney other than the one appointed possesses special expertise, 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.
 - 3.5.3 Appointed counsel requests and demonstrates good cause for being removed from a particular case, including but not limited to illness, workload, client relationship issues, scheduling difficulties, and/or compliance with the rules of professional responsibility.
- 3.6 *Non-Voluntary Removal Procedure.* The CPS Judge can remove and/or reassign an attorney after the judge provides the attorney notice and an opportunity to be heard.
- 3.6.1 Opportunity to be heard may constitute of permitting the attorney to submit a written response to the Court's allegation that good cause exists for removal.
 - 3.6.2 The CPS Judge may, but is not required to, appoint counsel to investigate the potential cause for removal and provide a report to the CPS Judge.
 - 3.6.3 If an attorney is removed from a list while continuing to represent clients pursuant to an appointment received by reason of his inclusion on that list, his or her continuation of such representation(s) shall be addressed by each of the presiding trial judge(s) assigned to those cases on a case-by-case basis. At the discretion of the trial judge assigned to each case, such attorney may be removed from individual case(s) on which the attorney has been appointed.
 - 3.6.4 An Attorney removed from a case and/or from the CPS appointment list may, by written motion, file an appeal with the presiding judge of the administrative region
- 3.7 *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.
- 3.7.1 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.

- 3.7.2 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.
- 3.7.3 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.
- 3.8 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.
- 3.9 Neither these CPS Local 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.

4. Duties of Attorney.

- 4.1 Every attorney appointed must notify the court within 24 hours of receipt of the appointment if there is a reason the appointment cannot be accepted.
- 4.2 The attorney must also make every reasonable effort to:
 - 4.2.1 Contact the client by the end of the first working day after the date on which the attorney is appointed; and
 - 4.2.2 Interview the client as soon as practicable after the attorney is appointed but no later than seven (7) days from the date of appointment.
- 4.3 The attorney must also:
 - 4.3.1 Represent the client in compliance with the applicable standard of care for Texas attorneys and the Texas Rules of Professional Responsibility until the case is fully resolved (the case is dismissed, non-suited, final judgment is entered, and/or appeals are exhausted if appointed for the appeal pursuant to 2.2.8) or the attorney is permitted or ordered by the Court to withdraw as counsel for the defendant after a finding of good-cause is entered on the record;
 - 4.3.2 Embody the Texas Lawyer's Creed with the Court, other attorneys and their clients.

- 4.3.3 Comply with these CPS Local Rules;
- 4.3.4 Manage the attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case without interfering with the Court's docket management;
- 4.3.5 Be readily available for hearings and court appearances at the court's discretion at all times in which the particular case for which the attorney is appointed might be heard;
- 4.3.6 Accurately keep track of attorney's time working on tasks related to the assigned case and accurately itemize time and charges to the tenth of an hour;
- 4.3.7 Accurately keep track of receipts for case-related expenses; and
- 4.3.8 Other than Class C level traffic offenses, promptly report in writing any criminal arrests, charges, indictments, convictions, protective orders, bar disciplinary action, professional sanctions, allegations of professional misconduct, negligence or findings of ineffective assistance of counsel, or instances where you have been removed from any other court appointment list to the IDC.

Attorney Compensation & Expense Reimbursement

5. Attorney Compensation

- 5.1 *Approval.* The CPS Judge shall approve for payment appointed attorney's reasonable and necessary fees in accordance with a uniform schedule of fees as adopted by the District Judges.
- 5.2 *Permitted Fees.* Appointed attorneys shall be paid for the following: (1) time spent in court making an appearance on behalf of the party as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited; (2) reasonable and necessary time spent out of court on the case (above and beyond the time calculated in the Fixed Fee), supported by any documentation that the court and these CPS Local Rules require; (3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals in appellate cases; and (4) preparation of a motion for new trial. Expenses such as phone calls, copy paper, postage, email and other common office overhead shall not be considered a reimbursable expense without express written approval of the CPS Judge.

5.3 *Fixed Fee Presumption.* Compensation shall be based on the presumptively reasonable fee for a particular matter or task, referred to in these CPS local rules as a "Fixed Fee" adopted by the District Judges. In limited circumstances, the CPS Judge may authorize compensation under (Alternative Fee Calculation), below.

5.3.1 *Alternative Fee Calculation.* Only with prior authorization from the CPS Judge, and only for tasks specified under that authorization, appointed attorneys may be paid for time and labor spent on items set forth in 5.2. multiplied by an hourly rate within the minimum and maximum hourly rates set forth in 5.3.2 et seq. adopted by the District Judges.

5.3.1.1 An ex parte motion under oath for pre-approval of Alternative Fee Calculation shall fully and completely set forth the basis for the request, and be accompanied by documentation that makes a particularized showing with respect to any factual basis supporting the motion.

5.3.1.2 Time listed in the motion shall be itemized to the tenth (1/10) of an hour.

5.3.1.3 All such requests shall be submitted under oath and/or attested to under penalty of perjury and as officers of the Court.

5.3.1.4 Nothing herein shall be interpreted as limiting the presiding judge's right to make credibility determinations with respect to the motion, affidavit, and/or supporting documentation and/or take judicial notice where appropriate.

5.3.1.5 If approved, such time shall be paid within the minimum and maximum range of hourly rates approved by the District Judges for the type of case involved.

5.3.1.6 The burden is on the attorney seeking payment to establish to the satisfaction of the CPS Judge that the services rendered are actually reasonable and necessary, and in compliance with the requirements of these CPS Local Rules and fee schedule adopted therein. Failure to provide detail sufficient to allow the Court to fully assess whether a request is reasonable and necessary is in itself grounds for denial of the request.

5.3.2 *Hourly Rate.* An hourly fee between \$75-\$90 per hour may be used for Alternative Fee Calculation with authorization in advance by the court.

- 5.4 *Equal Allocation.* Where an attorney's request for payment is based on an hourly rate multiplied by an increment of time, if the attorney represents more than one client during that increment of time, the attorney shall equally allocate the time among the clients to avoid an attorney being paid more than once for the same increment of time.
- 5.5 *Attorneys shall not bill for off-duty time.* Off-duty time includes, but is not necessarily limited to, time during breaks, waiting for hearings or meetings, meals, sleeping and/or otherwise not working on the case. Travel time shall be considered off-duty except for travel to and from locations more than fifty (50) miles from the appointed attorney's office location.
- 5.6 *Payment Limitations.* An attorney shall not be paid until:
- 5.6.1 *Form Submission Required.* The attorney submits a completed form (can be ex parte) that complies with these CPS Local Rules including:
- 5.6.1.1 *Fixed Fee Request.* If the attorney only seeks amounts characterized as presumptively reasonable and necessary Fixed Fees in the fee schedule, a Fixed Fee sheet can be submitted at any time. Any claim for Family Group Conferences or mediation fees shall also include the date(s) of those events.
- 5.6.1.2 *Alternative Fee Request.* The invoice and description of the services for which compensation is sought must reference the court's authorization for the Alternative Fee Calculation and comply with 5.3.1 *et. seq.*
- 5.6.2 *Accuracy.* The attorney seeking compensation as counsel for indigent client(s) must verify under oath the accuracy of the facts set out in the form requesting payment as well as the accuracy and completeness of any other information provided in support of the request for payment.
- 5.6.3 *Deadline.* Billing for work performed in between hearings shall be billed on one pay sheet and submitted within 10 business days of a hearing in the case. For example, for an Adversary hearing that was held on January 5, 2023, the work performed in preparation for the adversary hearing which qualifies for an Alternative Fee Calculation shall be submitted no later than January 20, 2023. Any Alternative Fee Calculation work performed outside of the court after the January 5, 2023 hearing shall be billed on one fee sheet within ten (10) business days after the next scheduled hearing. Invoices presented for payment outside of the time frames listed above will not be approved.

- 5.7 *Excessive Fees.* Attorneys shall not submit requests for fees and expenses that exceed the amount of fees and expenses that are reasonable and necessary to the effective representation of the indigent person being represented by the appointed attorney. The CPS Judge shall review all requests for payment of attorney fees and expenses, and the materials initially submitted in support of the invoice, and only approve for payment those attorney's fees and expenses that the judge finds to be reasonable and necessary based upon the supporting information and documents submitted with the initial request and consistent with the applicable fee schedule.
- 5.8 *Reimbursement for Travel.* Travel shall be calculated by using the IRS Standard Mileage for travel beyond fifty (50) miles (effective on the date of travel), as authorized by these rules or approved specifically by the Court. All requests for mileage reimbursements shall include a Google Map print out (or equivalent) that reflects the beginning location and the ending location (redacted for privacy).
- 5.8.1 *Child and Client Visitations Beyond Fifty (50) Miles.* With the exception of the first child home visit, videoconferencing is required for all visitation with children and parent clients living fifty (50) miles or more from the office of the appointed attorney. If an attorney has more than one location, the location with the shortest distance shall be used for calculation. An attorney seeking reimbursement for travel beyond fifty (50) miles from the office of the appointed attorney must first seek preapproval from the court for such travel.
- 5.8.2 *Travel by Alternate Means.* An attorney seeking reimbursement for travel made other than by private vehicle must first seek preapproval from the court for such travel. Approval will not be granted if the time and expense of traveling by the requested mode of travel is greater than the time and expense of traveling by private vehicle. It shall be the burden of the attorney to demonstrate to the satisfaction of the presiding judge that air travel or some other mode of transportation is reasonable and necessary in a particular case. The attorney shall seek alternative mode(s) of travel in those instances where travel by private vehicle would exceed the cost of alternative modes of travel such as airfare.
- 5.8.3 *Rules for Claiming Travel Reimbursement.*
- 5.8.3.1 If the travel involves more than one case, the attorney shall equally allocate the travel among the clients to avoid an attorney being paid more than once for the same travel.
- 5.8.3.2 If attorneys travel together to perform tasks necessary to representation, the mileage will only be paid to the attorney owner of the vehicle used for travel.

- 5.8.3.3 If an attorney has more than one location, the location with the shortest distance shall be used for reimbursement calculation.
- 5.8.3.4 Attorneys shall use telephone and videoconferencing ("Remote Conferencing") to avoid travel whenever such Remote Conferencing is a reasonable alternative to in person meetings.
- 5.8.3.5 Time spent on unnecessary travel shall not be billed and will not be paid.

5.9 *Judicial Discretion.* The Court may approve additional expenditures upon good cause shown and reserves the discretion to deviate upward or downward in awarding an attorney fee (whether by the hour or by the total awarded fee) depending on the time and labor required, the complexity of the case, the experience and ability of the appointed counsel. 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. Tex. C.C.P. art. 26.05(c).

5.10 *Disapproved Requests.* The attorney whose request for payment has been disapproved in whole or in part, or has not been acted upon within sixty (60) days of submission may, by written motion, file an appeal with the presiding judge of the administrative region pursuant Texas Code of Criminal Procedure Article 26.05. 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.

5.12 *Expense Request.* Expenses incurred without prior court approval shall be reimbursed only upon a showing by the attorney, and finding by the presiding trial judge, that the expenses for which reimbursement is sought were reasonable and necessary and incurred in conformity with the CPS Local Rules and fee schedule. Failure to obtain prior ex parte approval of an expense is to the risk of the attorney foregoing prior approval.

5.13 *Adequate and Fair Compensation.* By seeking inclusion on the list of qualified attorneys available for court appointments, each attorney represents and agrees (1) that the applicable CPS Local Rules and fee schedule adopted therein are reasonable; (2) that they adequately and fairly compensate court-appointed attorneys for the legal services to be rendered to indigent persons; and (3) the attorney is willing to accept appointments from the Court under the terms of the CPS Local Rules and fee schedule of Matagorda County.

6. **Fees and Expenses.** Counsel are expected to be able to handle a case with fees that do not exceed \$2,500. If counsel experience circumstances in which they expect fees to exceed \$2,500, prior approval must be sought and obtained from the 130th District Judge. This may be done *ex parte* by counsel with the District Judge.

- 6.1 *Fee Schedule.* For all cases in which an attorney is appointed under these CPS Local Rules, the presumptive reasonable and necessary attorney's fees for each case shall be as follows:
- 6.1.1 *Hearing Attendance - \$200* - The presumptive reasonable and necessary Fixed Fee for each hearing in which the attorney is personally in attendance for the entire hearing is \$200. Such includes compensation for attending the hearing and for the reasonable and necessary preparation for the hearing.
 - 6.1.4 *Participation in Family Group Conference (FGC) - \$200* - The presumptive reasonable and necessary Fixed Fee for preparing for and participating in a Permanency Meeting is \$200. Such includes compensation for preparing for and physically attending the meeting. For meetings that are attended via telephone or video conferencing, the Fixed Fee for preparing and participating in this meeting is \$100. Any work performed on other CPS cases during a FGC shall not be billed.
 - 6.1.5 *Court-Ordered Mediation - \$400/half day* - The presumptively reasonable and necessary fee Fixed Fee for attending any court- ordered mediation is \$400 per half-day or portion thereof. A morning session is considered a half day and an afternoon session is considered a half day. Such payment includes preparation for the mediation. Court-Ordered mediation contemplates a half day. If mediation is expected to extend beyond a half day, prior court authorization for payment is required. If a second mediation is requested for the same issues at the same state of the case, a motion shall be filed and set for hearing to show good cause as to why the second mediation will be beneficial. Any work performed on other CPS cases during a mediation shall not be billed.
 - 6.1.6 *Default/Prove-Up - \$200* - The presumptive reasonable and necessary Fixed Fee for preparing for and participating in a Default/Prove-Up is \$200.
 - 6.1.7 *Trial (bench or jury) - \$400/half day* - The presumptively reasonable and necessary Fixed Fee shall be \$400 per half day or portion thereof, regardless of whether the trial is before a jury or the court. A court's morning session is considered a half day and its afternoon session is considered a half day. The presumptively reasonable Fixed fee for trial preparation shall be \$100 for trial preparation for each half-day of trial, regardless of whether the trial is before a jury or the court.
 - 6.1.7 *First Child Home Visit - \$100* - The presumptively reasonable and necessary Fixed Fee for the initial child home visit is \$100.

- 6.1.8 *Appeals* - Fees for completing an appeal from the trial court shall be calculated using the Alternative Fee Calculation Method, found in CPS Local Rule 5.3.1, and such fees may not exceed 35 hours of reimbursed time without preapproval from the court.
- 6.2 *Litigation Expenses.* Attorneys appointed under the CPS Local Rules may request reimbursement for certain expenses with prior approval from the court. Such expenses include:
- 6.2.1 *Witness expense reimbursement.* Reimbursement of certain reasonable and necessary expenses associated with the appearance of particular witnesses may be permitted if such reimbursement is approved in advance by the court. The reasonableness of any reimbursement requested will be based on State of Texas Comptroller of Public Accounts Witness Fee Claim and Guidelines.
- 6.2.2 *Service of Subpoena.* Subpoenas shall be served through the Matagorda County District Clerk, Sheriff's Office and Constables Offices and not through private process servers. A reimbursement for fees associated with service of subpoena using private process servers is not a permissible expense, unless service is pre-approved by the court.
- 6.2.3 *Depositions.* Attorneys shall request approval from the Court prior to conducting depositions, and any invoice for an approved deposition shall be limited to \$3.80 per page.
- 6.2.4 *Investigation and Experts.* An attorney, other than an attorney with a public defender's office, appointed to represent an indigent person under these CPS Local Rules may be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Investigation and experts shall be submitted for prior approval.
- 6.2.4.1 An ex parte motion under oath for pre-approval of investigation and expert fees shall fully and completely set forth the basis for the request, and be accompanied by documentation that makes a particularized showing with respect to any factual basis supporting the motion.
- 6.2.4.2 All such requests shall be submitted under oath and/or attested to under penalty of perjury and as officers of the Court.

6.2.4.3 Nothing herein shall be interpreted as limiting the presiding judge's right to make credibility determinations with respect to the motion, affidavit, and/or supporting documentation and/or take judicial notice where appropriate.

6.2.4.4 If approved, the CPS Judge shall place a maximum on the expense.

6.2.4.5 The burden is on the attorney seeking payment to establish to the satisfaction of the CPS Judge that the services are actually reasonable and necessary, and in compliance with the requirements of these CPS Local Rules and fee schedule adopted therein. Failure to provide detail sufficient to allow the Court to fully assess whether a request is reasonable and necessary is in itself grounds for denial of the request.

6.2.5 *Non-Compensable Activities.* Payments will not be approved or made under any Fee Schedule for time that is properly considered overhead and/or administrative such as the following services: file set up; file maintenance; file review; filings; typing; word processing; calendaring; preparing and submitting forms and invoices for payment and other administrative or secretarial work whether performed by a secretary, legal assistant/paralegal or attorney.

6.3 *Quarterly Payments.* Invoices will be paid once per quarter on a schedule to be set from time to time by the Matagorda County Auditor working in conjunction with the Matagorda County Commissioners Court.

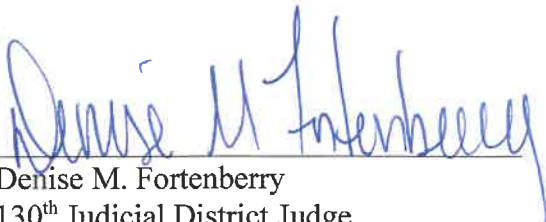
6.4 *Attorney Certification.* Each request for payment must include a sworn certification by the attorney seeking payment that the request truthfully and accurately represents time spent on the identified matter(s), that the time spent was reasonable and necessary, that expenses for which reimbursement is sought were reasonable and actually incurred on the identified matter(s), and that the request complies with the CPS Local Rules and fee schedule of Matagorda County in effect at the time the services were rendered or expenses incurred. Each request for payment shall also constitute the attorney's acceptance of the CPS Local Rules and willingness to abide by the same.

Approved, adopted and effective September 1, 2023.

FILED
at 7:20 o'clock A. M.

SEP - 1 2023

JANICE L. HAWTHORNE
Clerk of District Court Matagorda Co., Texas
By  **DEPUTY**


Denise M. Fortenberry
130th Judicial District Judge
CPS Judge