

**STANDING RULES & PROCEDURES FOR TIMELY
APPOINTMENT
OF COUNSEL FOR INDIGENT JUVENILES
IN RURAL COUNTIES**

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**KIMBLE COUNTY
STANDING RULES AND PROCEDURES FOR
TIMELY APPOINTMENT OF COUNSEL FOR
INDIGENT JUVENILES**

Effective Date – January 1, 2002

The Kimble county Juvenile Board has established the following procedures to insure the fair and timely appointment of counsel for indigent juveniles in compliance with S.B. 7 (Family Code Section 51.101), passed by the Texas Legislature and signed into law in 2001.

**I.
Alternative Appointment Program**

1. Due to the rural nature of Kimble county, the limited number of attorneys available for indigent appointments, and the necessity for appointing attorneys from other counties, an Alternative Appointment Program is adopted pursuant to Family Code 51.101(b)(1)(B) and Family Code 51.101(g)(2)(D).
2. The court shall maintain a list of attorneys who regularly practice in Kimble county, interested in representing juveniles and meet the specific requirements set by the juvenile board.
3. The court shall appoint an attorney from the list based on the location of the hearing, the availability of the attorney, and the complexity of the case. However, geographical distance, travel time and related costs shall be deemed good cause to appoint attorneys out of order.
4. The appointment list shall be comprised of attorneys who have completed the questionnaire affidavit provided by the juvenile board and have specifically requested to be place on the appointment list.
5. The Kimble county Juvenile Board shall prepare and distribute to:

All licensed attorneys who practice in the Juvenile Court of Kimble county, as can be reasonably identified by the Kimble county Clerk, an “Affidavit of Licensed Attorney Residing or Practicing Law in Kimble county Texas” on or before December 1, 2001.

6. IT IS ORDERED that each attorney receiving said mailing shall return said Affidavit to Becky Henderson, Administrative Assistant for the 198th & 216th District Courts, Kerr County Courthouse, 700 Main Street, Kerrville, Texas, 78028, on or before December 24, 2001.
7. The Juvenile Board shall on or before December 31, 2001, meet, approve, and post outside the Kimble county Clerk’s office such list, as set out below, of the names of attorneys approved to represent indigent juveniles in Kimble county.

8. The list shall consist of the name of all licensed attorneys residing in or practicing in Kimble county, except:
 - a. Those attorneys who have filed an Affidavit, on the form approved by the Kimble county Juvenile Board, swearing that they are incompetent to handle any juvenile cases and do not accept employment on any juvenile cases.
 - b. Those attorneys who have retired from and no longer engage in the practice of law;
 - c. Those attorneys who are employed with a governmental entity and whose employment is a disqualification from their being appointed to represent children in juvenile proceedings.
 - d. Those attorneys who the Kimble county Juvenile Judge has found to not be qualified to represent juveniles in the juvenile court of Kimble county, Texas.
9. Due to the lack of attorneys available for appointment in Kimble county, the judge sitting as a juvenile court judge is authorized to appoint an available attorney who comes closest to meeting the qualifications for a particular case.
10. Appointments will be made reasonably and impartially among qualified attorneys.

II.

Prompt Appointment of Counsel

A. Child Taken Into Custody:

1. When a child is taken into custody by law officers, the officers will immediately notify the juvenile probation department of the child's custodial status. The probation department will assign a probation officer to immediately interview the child as to the child's family or responsible person's ability to employ an attorney. If the child is not able to inform the probation officer of whether his family can afford an attorney, the probation officer shall immediately advise the Juvenile Judge or other magistrate that an attorney needs to be appointed. The juvenile judge or magistrate will appoint an attorney to represent the child prior to the first detention hearing. No detention hearing will be held prior to the appointment of an attorney for the child. An attorney appointed to represent the child at a detention hearing shall continue to represent the child on the merits if the child is detained, until the case is terminated or other counsel is provided.
2. If the court determines at the initial or subsequent detention hearing that the child's parents can afford an attorney, the court shall order the parents to either reimburse the county for the attorney's fees, or employ an attorney of their choice pursuant to Family Code Section 51.10(d).

3. The Chief Juvenile Probation Officer shall be responsible for gathering the information regarding indigence and presenting same to the court for its consideration. Where there is lack of information, the court shall appoint counsel until further investigation can be made regarding the indigency status.

B. Child is Not In Custody:

1. When a child is released after intake or referred to the juvenile court without being in custody, no attorney will be appointed until a petition for adjudication or discretionary transfer is filed.
2. If a petition is filed, the court shall determine if the family is indigent, and appoint an attorney for the child within 5 working days after the petition is served on the child. Any petition served on the child shall provide information to the child and family as to how they may request the prompt appointment of an attorney, if they are unable to afford one.
3. In the event the family takes no action and if the child and adults appear for the initial court hearing without counsel, the juvenile court (or Chief Juvenile Probation Officer) shall determine indigence and, if it is determined the family is indigent, immediately appoint an attorney for the child.

C. Appointment of counsel after modification motion filed:

1. If a child is already on judicial probation and a motion to modify is filed that seeks either revocation with commitment to the Texas Youth Commission or modification to require confinement in a secure local facility, the court shall determine indigence upon filing the petition. If a family is found to be indigent, an attorney will be appointed within 5 days of the filing of the petition.
2. No attorney will be appointed in modification of disposition actions where the child is not to be committed to TYC or a secure local facility, where the child and adult (parents, guardian, guardian ad litem or attorney) waive a modification hearing before the juvenile court.

D. Determination of Indigency

1. Indigent status shall be determined through an interview with the child and the parents and the submission of an affidavit by the parents, guardian or responsible adult, providing the following information:
 - a. Child's parents/guardian/responsible adult's income from any and all sources;
 - b. Assets of child's parent/guardian/responsible adult;
 - c. Property owned by child's parent/guardian/responsible adult;
 - d. Necessary expenses of child's parent/guardian/responsible adult;

2. The parent, guardian or responsible adult, seeking appointment of counsel for the minor child shall:
 - a. complete under oath a questionnaire concerning their financial resources;
 - b. respond under oath to an examination regarding their financial resources by the judge or magistrate responsible for determining whether the individual responsible for the child is indigent; or
 - c. complete the questionnaire and respond to examination by the judge or magistrate.

III.

Qualifications of Attorneys to be on Appointment List

1. All attorneys on the list for representation of juveniles shall be “volunteers” who have requested that their names be included for appointment. No attorney shall be appointed who has not agreed to accept such appointments.
2. All attorneys requesting to be included on the list to represent juveniles must be approved by a majority of the juvenile board. However, a sitting juvenile judge may provide temporary approval of an attorney pending full juvenile board action within a reasonable time.
3. Attorneys shall be appointed to represent juveniles in each case based on their experience and qualifications and the complexity of the case. In this regard the court shall consider the attorney’s experience, qualifications and the five categories of juvenile cases. The five categories to be considered are as follows:
 - a. Cases in which the allegations are of conduct indicating a need for supervision;
 - b. Cases in which the allegations are of delinquent conduct in which commitment to TYC is not possible (misdemeanor cases without the required prior adjudications or contempt of a justice or municipal court);
 - c. Cases in which the allegations are of delinquent conduct in which determinate commitment to TYC is possible;
 - d. Cases in which determinate sentence proceedings have been initiated by obtaining grand jury approval of a petition alleging a covered offense;
 - e. Cases in which proceedings for discretionary transfer to criminal court have been initiated by the filing of a certification petition or motion.

IV.

Qualifications for attorneys appointed in particular category

1. Conduct indicating a need for supervision:
 - a. licensed to practice law in the state of Texas
 - b. be in good standing with the State Bar of Texas
 - c. have attended 3 hours of CLE regarding juvenile law within prior two years
 - d. be approved by juvenile board.
 - e. meet any future Task Force requirements

2. Delinquent conduct in which TYC is not possible:
 - a. licensed to practice law in the state of Texas
 - b. be in good standing with the State Bar of Texas
 - c. have attended 3 hours of CLE regarding juvenile law within prior two years
 - d. be approved by juvenile board
 - e. meet any future Task Force requirements

3. Delinquent conduct in which TYC is possible:
 - a. licensed to practice law in the state of Texas for two years
 - b. be in good standing with the State Bar of Texas
 - c. have attended at least 6 hours of CLE regarding juvenile law within prior two years
 - d. represented juveniles in at least two delinquent conduct cases
 - e. be approved by juvenile board
 - f. meet any future Task Force requirements

4. Cases involving possible determinate commitment to TYC:
 - a. licensed to practice law in the state of Texas for three years
 - b. be in good standing with the State Bar of Texas
 - c. have attended at least 6 hours of CLE regarding juvenile law within prior two years.
 - d. represented juveniles in at least three delinquent conduct cases
 - e. be approved by juvenile board
 - f. meet any future Task Force requirements

5. Cases involving discretionary transfer to criminal court:
 - a. licensed to practice law in the state of Texas for four years
 - b. be in good standing with the State Bar of Texas
 - c. have attended at least 6 hours of CLE regarding juvenile law within prior two years
 - d. represented juveniles in at least five delinquent conduct cases
 - e. be approved by juvenile board
 - f. meet any future Task Force requirements

- g. Any qualification set forth in Article IV, except for licensing and good standing with the State Bar of Texas, may be waived by the court for good cause shown on a case by case basis.

V.

Responsibility of Court Appointed Attorney

1. All court appointed attorneys shall make every reasonable effort to contact the juvenile not later than the end of the first working day after appointment and to interview the child as soon as practicable.
2. All court appointed attorneys shall represent the juvenile until charges are dismissed, the juvenile is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record.
3. If an attorney is appointed at the initial detention hearing and the child is detained, the attorney shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.
4. If there is an initial detention hearing without an attorney and the child is detained, the attorney appointed under Section 51.10(c), shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.
5. Court appointed counsel on the approved list must maintain an office with a phone which is answered by a receptionist or answering service from 8:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 5:00 p.m. Monday through Friday (except for Kimble county holidays approved by the Kimble county Commissioners) and which receptionist or answering service can promptly locate the attorney and notify said attorney of appointment or hearing setting.

VI

Removal of Attorneys from List

1. An attorney may be removed by the juvenile board from the list for failing to vigorously and competently represent a client or violation of ethical rules.
2. A judge sitting as a juvenile court, who has good cause to believe that an attorney should be removed from the appointment list may remove an attorney from the appointment list and not make further appointments of that attorney pending full board action within a reasonable time.
3. Any attorney who has been removed from the appointment list shall have the right to appear before the juvenile board within 30 days to seek reinstatement on the appointment

list. The decision of whether or not an attorney may be reinstated on the appointment list lies within the sole discretion of the juvenile board.

4. Any attorney may request that his name be removed from the list at any time.

VII

Compensation for Court Appointed Counsel

1. An attorney appointed to represent the interests of a child shall be paid from the general funds of Kimble county.
2. The juvenile board shall establish a system of compensation of attorneys appointed in juvenile cases commensurate with compensation of attorneys appointed in criminal court, in compliance with Texas Code of Criminal Procedure Article 26.05.
3. Compensation of appointed attorneys shall be based on the performance of the following services, based on the time and labor required, complexity of the case, and experience an ability of the appointed counsel:
 - a. Time spent in court making an appearance on behalf of the juvenile as evidenced by a docket entry, time spent in trial, and time spent in proceedings in which sworn oral testimony is elicited.
 - b. Reasonable and necessary time spent out of court on the case, including travel, supported by any documentation the court requires.
 - c. Preparation of an appellate brief and presentation of oral argument to a court of appeals; and
 - d. Preparation of motion for rehearing.
4. The fee schedule shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates.
5. Compensation for time spent in and out of court shall not be less than FIFTY DOLLARS AND NO CENTS (\$50.00) per hour nor more than NINETY DOLLARS AND NO CENTS (\$90.00) per hour.
6. If an attorney submits a payment voucher that is cut by the juvenile judge, the attorney can appeal the court's decision to the presiding judge of the administrative judicial region, whose decision on the matter is final.

VIII.

Appointment of Investigators and Experts

Appointment and reimbursement for reasonable and necessary investigation, mental health and other experts shall be as provided by law and only upon written motion and prior approval of the juvenile judge for such appointments and anticipated reimbursement.

IX.

Annual Review of Eligible List of Court Appointed Counsel

