

**RULES FOR THE APPEAL OF AN APPROVAL OF OR FAILURE
TO ACT ON A REQUEST FOR PAYMENT OF APPOINTED
ATTORNEY'S FEES**

THIRD ADMINISTRATIVE JUDICIAL REGION OF TEXAS

I. Duties of Attorney Seeking Review of Trial Court or Director's Order

An attorney who chooses to appeal the trial court's disapproval of or failure to act on a request for payment by a trial court shall file an original motion with the clerk of the court in which the case is pending, and shall forward copies of the motion to the Presiding Judge of the Third Administrative Judicial Region and to the trial court within twenty (20) days of the trial court's signing of an order of an order disapproving the requested court appointed attorney's fees, or within eighty (80) days of the date the request for payment is submitted if the trial court fails to act on the request.

An attorney who chooses to appeal the disapproval of or failure to act on a request for payment by the Managed Assigned Counsel Director shall file an original motion with the clerk of the court in which the case is pending, and shall forward copies of the motion to the Presiding Judge of the Third Administrative Judicial Region and to the Managed Assigned Counsel Director within twenty (20) days of signing of an order disapproving the requested appointed attorney's fees, or within eighty (80) days of the date the request for payment is submitted if the Director fails to act on the request.

The appealing attorney shall set forth in the motion the following information:

1. The cause number, style, and caption of the case;
2. The type and classification of the offense;
3. The date that the attorney was appointed;
4. The date on which the case was disposed;
5. Whether the case was disposed of by dismissal, a plea, a bench trial, or a jury trial;
6. The date and the length of each court appearance within the nearest one-tenth of an hour, if the attorney is requesting to be compensated based upon an hourly fee;
7. The date of each office conference or jail conference and the time spent within the nearest on-tenth of an hour;
8. A copy of any itemization submitted to the trial court or director for the purpose of payment including a statement of each date a service was rendered, the type of service rendered, the time expended in the rendering of said service, the expenses incurred, and a statement explaining any attached vendor's invoice or expert's services invoice;

9. Any factors that required unusual effort on the attorney's part to overcome in the representation of the defendant including but not limited to: need for an interpreter, uncharged crimes and Penal Code Sec. 12.45 issues, multiple defendant's, etc.;
10. The date that the payment order the subject of the motion was signed, or the date the request for payment was submitted if there has been a failure to timely act on the request;
11. If a payment order was signed, a detailed statement by the attorney explaining how the order disapproving the requested appointed attorney's fee deviated from the county's approved fee schedule adopted under the Texas Fair Defense Act.

The appealing attorney shall attach the following documents to the motion:

1. A copy of the order disapproving the requested appointed attorney's fee; or, if applicable, a statement that there has been a failure to act on a request for payment by the 60th day after the date the request for payment is submitted; and
 2. A copy of the county's indigent fee schedule adopted pursuant to the Texas Fair Defense Act.
- II. The appealing attorney shall file the original of the motion with the clerk of the court in which the case is pending, and shall forward a copy of the motion to the Presiding Judge of the Third Administrative Judicial Region. A copy of the motion shall be forwarded to the trial court or to the MAC director whose action is being appealed. The Presiding Judge of the Third Administrative Judicial Region shall abate any ruling on the motion for a period of not less than ten (10) days from the filing of the motion pending an opportunity for further review by the payment authority whose action is being appealed.

After receiving the motion, the payment authority may enter a payment order or revised payment order within the ten (10) day period following the filing of the motion. A copy of the payment order or revised payment order shall be filed with the Presiding Judge of the Third Administrative Judicial Region.

If a payment order or revised payment order is entered resolving the dispute to the satisfaction of the appealing attorney, the attorney shall file with the Presiding Judge a notice withdrawing the appeal. The motion will then be deemed moot and no further action will be taken by the Presiding Judge of the Third Administrative Judicial Region.

If the new order does not fully resolve the issue to the satisfaction of the appealing attorney, the attorney shall, within five (5) days of the signing of the new payment order or revised payment order, file with the Presiding Judge of the Third Administrative Judicial Region and the party appealed a notice

stating that the matter remains contested. The attorney shall attach a copy of the new payment order or revised payment order, if any, to said notice.

If no revised payment order is entered, the party appealed shall, within five (5) days of the filing of the notice of contest, file written findings that set forth in detail the reason(s) for disapproving the requested attorney's fee. The findings should substantially comply with the form attached as Appendix A.

If (1) there was no action on a request for payment by the 60th day after the date the request for payment is submitted and no payment order was entered within the period provided following the filing of the motion by the appealing attorney, or (2) the Presiding Judge of the Third Administrative Judicial Region has not received notice of a resolution of the appeal prior to the expiration of twenty (20) days from the filing of the motion, the Presiding Judge shall rule on the motion in accordance with the provisions of 26.05 (c), Texas Code of Criminal Procedure. The Presiding Judge shall sign an order that substantially conforms to the form order attached as Appendix B.

APPENDIX A-1: Judge's Findings

NO. _____

THE STATE OF TEXAS

IN THE _____ COURT

VS.

OF

_____ COUNTY, TEXAS

TRIAL COURT'S WRITTEN FINDINGS REGARDING REQUESTED COURT APPOINTED ATTORNEY'S FEES

On this _____ day of _____, the Court, after reviewing the above styled and numbered case, finds that The requested amount of payment by _____ in the amount of \$ _____ is not Reasonable and therefore is disapproved for the following reason(s).

_____ The Court finds that the requested fees exceed the Court's approved fee schedule.

_____ The Court finds that the attorney has failed to provide to the Court an itemized document setting forth billable attorney's hours and/or expenses.

_____ The Court finds that the attorney has submitted an hourly rate that exceeds the rate established by the fee schedule.

_____ The Court finds that the attorney has submitted an itemized statement that records unauthorized expenses, to wit:

_____ The Court finds that the time and labor required the lack of novelty and difficulty of the questions involved and the skill requisite to properly perform the legal services do not justify the requested fee.

_____ The Court finds that the requested payment exceeds the customarily charged in the locality for similar legal services.

_____ The Court finds that the nature and length of the professional relationship with the client does not justify the requested fee.

_____ The Court finds that the requested payment of fees as submitted by the attorney is not supported for the following reasons:

_____ Other:

The Court finds that an attorney's fee in the amount of \$_____ should be paid to said attorney as fair and just compensation for the attorney's fee in the case.

Signed the _____ day of _____, 20____.

JUDGE PRESIDING

APPENDIX A-2: Managed Assigned Counsel Program Director's Findings

NO. _____

THE STATE OF TEXAS

IN THE _____ COURT

VS.

OF

_____ COUNTY, TEXAS

MANAGED ASSIGNED COUNSEL PROGRAM DIRECTOR'S WRITTEN FINDINGS REGARDING REQUESTED COURT APPOINTED ATTORNEY'S FEES

On this _____ day of _____, the Director, after reviewing the above styled and numbered case, finds that The requested amount of payment by _____ in the amount of \$ _____ is not Reasonable and therefore is disapproved for the following reason(s).

_____ The Director finds that the requested fees exceed the Director's approved fee schedule.

_____ The Director finds that the attorney has failed to provide to the Director an itemized document setting forth billable attorney's hours and/or expenses.

_____ The Director finds that the attorney has submitted an hourly rate that exceeds the rate established by the fee schedule.

_____ The Director finds that the attorney has submitted an itemized statement that records unauthorized expenses, to wit:

_____ The Director finds that the time and labor required the lack of novelty and difficulty of the questions involved and the skill requisite to properly perform the legal services do not justify the requested fee.

_____ The Director finds that the requested payment exceeds the customarily charged in the locality for similar legal services.

_____ The Director finds that the nature and length of the professional relationship with the client does not justify the requested fee.

_____ The Director finds that the requested payment of fees as submitted by the attorney is not supported for the following reasons:

_____ Other:

The Director finds that an attorney's fee in the amount of \$_____ should be paid to said attorney
as
fair and just compensation for the attorney's fee in the case.

Signed the _____ day of _____, 20____.

DIRECTOR

APPENDIX B

NO. _____

THE STATE OF TEXAS

IN THE _____ COURT

VS

OF

_____ COUNTY, TEXAS

ORDER ON MOTION TO REVIEW (DISAPPROVAL OF OR FAILURE TO ACT ON REQUEST FOR) COURT APPOINTED ATTORNEY'S FEE

On this day, came on for consideration the motion to review the (disapproval of the requested attorney's fee/failure to act on a request for payment) filed by _____, appointed counsel for the Defendant in the above-entitled and numbered cause. After considering the motion and other documents filed, the following order is rendered.

IT ORDERED that the motion is GRANTED/DENIED.

(if the motion if granted)

IT IS FURTHERE ORDERED that _____ shall be paid a reasonable attorney's fee of \$ _____.

(if the motion is denied)

IT IS FURTHER ORDERED that the order for payment signed by the trial court or director on _____ is AFFIRMED.

(Continue with the following)

The District Clerk of _____ County, Texas shall certify this order to the Commissioners Court of _____ County for its observance and, if applicable, furnish a copy of this order to the County Auditor.¹

SIGNED on _____ day of _____, 20____.

PRESIDING JUDGE, 3RD ADMINISTRATIVE JUDICIAL REGION

¹ Not later than the 45th day after the date an application for payment of a fee is submitted, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county, **Art.26.05 (c), Texas Code of Criminal Procedure.**