FIRST ADMINISTRATIVE JUDICIAL REGION OF TEXAS

RULES FOR THE APPEAL OF A TRIAL COURT'S DISAPPROVAL OF OR FAILURE TO ACT ON A REQUEST FOR PAYMENT OF COURT APPOINTED ATTORNEY'S FEES

(Approved by the Council of Judges for the First Administrative Judicial Region and effective May 14, 2015)

These Rules apply to appeals under Article 26.05(c) of the Texas Code of Criminal Procedure, applicable to cases filed under the Juvenile Justice Code through Section 51.10(i) of the Texas Family Code. Specifically, pursuant to such provisions, the Presiding Judge of the Administrative Judicial Region has jurisdiction over appeals initiated by an appointed attorney when the trial judge disapproves or fails to act on the attorney's request for payment of fees or expenses.

A. Time To File

The appointed attorney initiates an appeal by filing a motion with the Presiding Judge pursuant to Article 26.05(c), which provides for filing when a judge has not acted on the request within sixty (60) days after submission of the request for payment. If feasible, the motion should be filed within twenty (20) days of the date the trial judge signed the order disapproving the requested payment or within eighty (80) days of the date the request for payment is submitted to the trial judge if the judge failed to act on the request. These timelines for filing are not intended to preclude consideration of an appeal filed timely based upon the specific circumstances of the case.

B. Contents Of The Motion

An attorney's motion must contain the following information:

1. The cause number and style of the case.

2. A statement regarding the jurisdiction of the regional presiding judge to hear the appeal – specifically, whether the appeal involves compensation of counsel appointed under the Texas Code of Criminal Procedure or the Juvenile Justice Code (Title 3 of the Texas Family Code).

3. A statement of the case:

    a. The type and classification of the offense for which the defendant was charged. This statement includes whether the case is a death-penalty case. For cases involving juveniles, the statement includes a brief description of the delinquent conduct, including habitual felony conduct or other conduct indicating a need for supervision at issue in the case.

    b. The date the attorney was appointed to represent the defendant or party in a juvenile proceeding.

c. The disposition of the case, including the date of final disposition, if applicable, and the manner of disposition – for example, was the case disposed of by dismissal, an agreed or open plea, a bench trial, or a jury trial.

d. Whether the requested compensation is based on a standardized compensation or an hourly rate for services.

e. Whether the attorney requested compensation beyond the approved fee schedule and the justification for additional compensation.

f. Whether the attorney requested reimbursement for expenses and, if so, whether the judge pre-approved those expenses.

g. The date the attorney submitted the request for payment to the trial judge.

h. The total amount requested.

i. The date the trial judge signed the payment order or a statement regarding the trial judge's failure to act on the request for payment.

4. If the attorney requested standard compensation, a statement regarding the nature of the representation. For example, standard compensation for representation in criminal cases may include probation violations, state jail/third degree felonies, second degree felonies, first degree felonies, contested trials (full or half day), or competency hearings (contested or agreed). Standard compensation for representation in juvenile cases may include hearings regarding detention, transfer to a criminal court, adjudication, disposition, modifications to disposition, and any hearing under Chapter 55 of the Texas Family Code.

5. If the attorney requested compensation based on an hourly rate, an explanation of the services rendered. For example, the explanation may include time spent making appearances on behalf of the defendant or juvenile, office conferences, jail conferences, other client meetings, and reasonable and necessary out-of-court time, including preparation of appeals and writs of habeas corpus.

6. If the attorney requested reimbursement for vendor or expert expenses, a statement explaining the nature of the services, such as investigation or expert testimony.

7. An explanation of any factors that required unusual effort on the part of the attorney to overcome specific circumstances, including (for example) the need for an interpreter, issues related to unadjudicated offenses under section 12.45 of the Texas Penal Code, and representation involving multiple defendants.

8. If the trial judge signed a payment order, an explanation of how the attorney believes the order deviated from the county's approved fee schedule adopted pursuant to the Texas Fair Defense Act.

9. If the trial judge made written findings as required under Article 26.05(c), a statement addressing those findings.

10. Attachments – copies of the following must be attached to the motion:

    a. The trial judge's order disapproving the court-appointed attorney's request.

    b. The trial judge's written findings, if any.

    c. The request for payment submitted to the trial judge, including the itemization of services and expenses.

    d. The county's indigent defense fee schedule adopted pursuant to the Texas Fair Defense Act. District and County Court Indigent Defense Plans and Fee Schedules by County are available at http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx. Juvenile Board Plans by County are available by visiting that same website.

C. Place To File Motion

An attorney must file the original motion with the District or County Clerk, respectively, serve all parties as required for all court filings, and deliver a copy of the motion to the trial judge and the Presiding Judge of the First Administrative Judicial Region. The Region office is located at the following address:

First Administrative Judicial Region
Frank Crowley Courts Building
133 N. Riverfront Boulevard, LB #50
Dallas, Texas 75207

D. Abatement Of Appeal

Once received, the Presiding Judge will abate the appeal for a period of not less than ten (10) days from the filing of the motion to give the trial judge an opportunity to review the motion and either (1) act on the request for payment (if the reason for the appeal was due to the trial judge's inaction) or (2) reconsider the request for payment. During the period of abatement, the trial judge may sign a payment order or revised payment order and deliver copies of the order to the parties and the Presiding Judge.

If the order resolves the dispute to the satisfaction of the appealing attorney, the attorney must notify the Presiding Judge in writing of the attorney's intent to withdraw the appeal. No further action is required of the Presiding Judge upon receipt of that notice.

If the order does not fully resolve the issue(s) to the satisfaction of the appealing attorney, the attorney must notify the trial judge and the Presiding Judge in writing within five (5) days from the date of the order that the motion remains contested.

During the period of abatement, the Presiding Judge may give the trial judge the opportunity to cure a failure to make written findings as required by Article 26.05(c). In those instances, the trial judge must deliver copies of the written findings to the parties and the Presiding Judge. If the trial judge makes written findings during the period of abatement, the appealing attorney must notify the Presiding Judge within three (3) days from the date of the findings if the attorney wishes to address the findings. Otherwise, the Presiding Judge will proceed with determining the appeal at the end of the abatement period.

E. Conclusion of Appeal

Once the abatement period has ended and the Presiding Judge has resolved the appeal, the Presiding Judge's written order will be delivered to the District or County Clerk, respectively, the trial judge, and the appealing attorney. The order, which is final and nonappealable, will include a directive for the Clerk to certify the order to the Commissioners Court of the county and, if applicable, furnish a copy to the County Auditor. To the extent not stated herein, the provisions of Article 26.05 of the Texas Code of Criminal Procedure are incorporated for all purposes.

Adopted the 14th day of May, 2015.

Mary Murphy

MARY MURPHY, Presiding Judge,
First Administrative Judicial Region