

LETHALLY DEFICIENT: DIRECT APPEALS IN TEXAS DEATH PENALTY CASES – SECTION IV(C)  
INADEQUATE ATTORNEY CASELOAD CONTROL AND COMPENSATION

<sup>162</sup> For a general discussion of inadequate defense funding and its impact on the public defense system *see* NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, GIDEON AT 50-PART 1 - RATIONING OF JUSTICE: THE UNDERFUNDING OF ASSIGNED COUNSEL SYSTEMS (2013), <https://www.nacdl.org/gideonat50/>.

<sup>163</sup> THE CONSTITUTION PROJECT, JUSTICE DENIED: AMERICA’S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 65 (2009), <http://www.constitutionproject.org/wp-content/uploads/2012/10/139.pdf>.

<sup>164</sup> TEXAS GUIDELINE 5.1 (Workload).

<sup>165</sup> NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS: COURTS 276 (1973) (recommending that a single lawyer handle no more than 25 direct appeal cases in a year). As the Constitution Project stated in a 2009 report, these standards are disjunctive and cumulative. An individual attorney’s pending caseload should be lower than these figures.

<sup>166</sup> *See* Douglas W. Vick, *Poorhouse Justice: Underfunded Indigent Defense Services and Arbitrary Death Sentences*, 43 BUFF. L. REV. 329, 375 (1995) (estimating that hours billed on direct appeals average between 700 and 1,000 hours); *see also* WASHINGTON STATE BAR ASSOCIATION, FINAL REPORT OF THE DEATH PENALTY SUBCOMMITTEE OF THE COMMITTEE ON PUBLIC DEFENSE 20 (Dec. 2006), <http://www.wsba.org/~media/Files/WSBA-wide%20Documents/wsba%20death%20penalty%20report.ashx> (reporting that during the period from 1996 to 2005, defense attorneys billed between 472 and 1375 hours for capital direct appeals), and URBAN INSTITUTE, THE COST OF THE DEATH PENALTY IN MARYLAND 52 (Mar. 2008), <http://www.deathpenaltyinfo.org/CostsDPMaryland.pdf> (stating that defense attorneys spend on average 600 hours on a capital direct appeal).

<sup>167</sup> *See Fact Sheet: Computing Hourly Rates of Pay Using the 2,087-Hour Divisor*, U.S. OFFICE OF PERS. MGMT, <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/computing-hourly-rates-of-pay-using-the-2087-hour-divisor/> (last visited Oct. 5, 2015). Texas’ weighted caseload study for non-capital cases also uses the 2,087-hour work year for assessing attorney workload. *See* PUBLIC POLICY RESEARCH INSTITUTE, GUIDELINES FOR INDIGENT DEFENSE CASELOADS: A REPORT TO THE TEXAS INDIGENT DEFENSE COMMISSION, PURSUANT TO HB 1318, 83<sup>RD</sup> LEGISLATURE 29 & n.68 (2014), [http://www.tidc.texas.gov/media/31818/150122\\_weighteddel\\_final.pdf](http://www.tidc.texas.gov/media/31818/150122_weighteddel_final.pdf) [hereinafter TIDC, TEXAS CASELOAD REPORT].

<sup>168</sup> U.S. DEPARTMENT OF JUSTICE, COMPENDIUM OF STANDARDS FOR INDIGENT DEFENSE SYSTEMS VOL. III: STANDARDS FOR CAPITAL CASE REPRESENTATION E3 (2000).

<sup>169</sup> NAT’L CTR. FOR STATE COURTS & SPANGENBERG GROUP, WORKLOAD AND PRODUCTIVITY STANDARDS: A REPORT TO THE OFFICE OF THE STATE PUBLIC DEFENDER 82-93 (1989) (assigning capital direct appeal cases nine work credit units and recommending that experienced staff attorneys handle no more than 26 work credit units a year).

<sup>170</sup> Legislation passed in 2013, H.B 1318, requires that each county report the number of appointments each attorney receives in its district. However, this information is provided at the end of the fiscal year, after most cases have been resolved, and typically includes only the cases for which payment has been issued.

<sup>171</sup> Tex. Disc. R. Prof’l Conduct 1.1 & cmt. (outlining a lawyer’s obligation to refuse or discontinue where she is incapable of furnishing competent representation—considering the complexity of the legal issues at stake and the attention and preparation the engagement would require).

<sup>172</sup> TEXAS GUIDELINE 9.3 (Obligations of Counsel Respecting Workload) (“A. Counsel representing clients in death penalty cases should limit their caseloads to the level needed to provide each client with high quality representation in accordance with these Guidelines. . . . C. In the event that counsel’s caseload becomes overextended after

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acceptance of a death penalty case, so that reasonable time is not available to properly complete the tasks necessary for providing maximum quality representation, counsel should notify the court and request additional legal assistance, or seek to withdraw, or take steps to reduce other caseload matters which conflict with his death penalty representation.”).

<sup>173</sup> Full itemized billing statements were available in the following cases: <sup>20</sup> [Douglas Armstrong](#), [Teddrick Batiste](#), [Donald Bess](#), [Brent Brewer](#), [James Broadnax](#), [Micah Brown](#), [Tyrone Cade](#), [Kimberly Cargill](#), [Jaime Cole](#), [Raul Cortez](#), [Obel Cruz-Garcia](#), [Rickey Cummings](#), [Erick Davila](#), [Irving Davis](#), [Arel Escobar](#), [Robert Fratta](#), [James Freeman](#), [Milton Gobert](#), [Gary Green](#), [Howard Guidry](#), [Garland Harper](#), [Roderick Harris](#), [John Hummel](#), [Christopher Jackson](#), [Joseph Jean](#), [Dexter Johnson](#), [Matthew Johnson](#), [Mabry Landor](#), [Juan Lizcano](#), [Daniel Lopez](#), [Jerry Martin](#), [Raymond Martinez](#), [Randall Mays](#), [Hector Medina](#), [Naim Muhammad](#), [Steven Nelson](#), [Mark Robertson](#), [Cortne Robinson](#), [Rosendo Rodriguez](#), [Kwame Rockwell](#), [Wesley Ruiz](#), [Demetrius Smith](#), [Mark Soliz](#), [Robert Sparks](#), [Paul Storey](#), [Richard Tabler](#), [John Thuesen](#), [Albert Turner](#), and [Antonio Williams](#). Voucher statements in six other cases stated the amount of time expended on legal services, but did not include an itemized list of attorney time: [Tilon Carter](#), [Billie Coble](#), [Lisa Coleman](#), [Paul Devoe](#), [LeJames Norman](#), and [Roosevelt Smith](#). Attorney billing statements for Travis Mullis’ case were excluded from this question.

<sup>174</sup> [Attorney Fee Voucher, State v. Lopez, No. 09-CR-0787-B \(117th Dist. Ct., Nueces County, Tex. June 2, 2011\)](#).

<sup>175</sup> [Requests for Payment by Appointed Counsel, Harris v. State, No. F09-00409 \(Crim. Dist. Ct. 2, Dallas County, Tex. Apr. 24, 2013-Aug. 18, 2014\)](#).

<sup>176</sup> These time estimates do not include any time billed for work performed prior to the jury verdict in cases where counsel was appointed during the pendency of the trial.

<sup>177</sup> [Letter from defense counsel to Hon. Travis Bryan, III, 272nd Dist. Ct., re: State v. John Thuesen, No. 09-02136-CRF-272 \(Jan. 5, 2012\) \(copy on file with author\)](#).

<sup>178</sup> TEXAS GUIDELINE 8.1(B).

<sup>179</sup> This rate was paid in 24 cases: [Terence Andrus](#), [Teddrick Batiste](#), [Kimberly Cargill](#), [Tilon Carter](#), [Obel Cruz-Garcia](#), [Rickey Cummings](#), [Arel Escobar](#), [Robert Fratta](#), [Howard Guidry](#), [Garland Harper](#), [Christopher Jackson](#), [Joseph Jean](#), [Dexter Johnson](#), [Mabry Landor](#), [Raymond Martinez](#), [Cortne Robinson](#), [Rosendo Rodriguez](#), [Demetrius Smith](#), [Roosevelt Smith](#), [Paul Storey](#), [John Thuesen](#), [Albert Turner](#), [Adam Ward](#), and [Antonio Williams](#).

<sup>180</sup> STATE BAR OF TEX., MUTING GIDEON’S TRUMPET, *supra* note 143, at 15.

<sup>181</sup> *Id.*

<sup>182</sup> [Notice of Trial and Appellate Counsel for Defendant, State v. Beatty, No. 241-0978-04 \(241st Dist. Ct., Smith County, Tex. Aug. 27, 2004\)](#).

<sup>183</sup> See *CPI Inflation Calculator*, U.S. BUREAU OF LABOR STATISTICS, <http://data.bls.gov/cgi-bin/cpicalc.pl?cost1=135.98&year1=2000&year2=2016> (last visited April 16, 2016).

<sup>184</sup> *Id.*

<sup>185</sup> Cf. [Request for Payment by Appointed Counsel, State v. Harris, No. F09-00409 \(Crim. Dist. Ct. 7, Dallas County, Tex. May 2013-Sept. 2014\)](#); and [Request for Payment for Services Rendered as Court Appointed Counsel, State v. Gobert, No. 06-904006 \(331st Dist. Ct., Travis County, Tex. Apr. 4, 2011\)](#).

<sup>186</sup> See, e.g., [Request for Payment by Appointed Counsel, State v. Muhammad, F11-00698 \(204th Dist. Ct., Dallas County, Tex. May 15, 2014\)](#) (approving payment of attorney fees at the rate of \$150 per hour); [Capital Defense](#)

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[Claim for Fee Payment/ Expenses, State v. Davila, No. 1108359D \(Crim. Dist. Ct. 1, Tarrant County, Tex. July 10, 2010\)](#) (approving an attorney fee that was based on a rate of \$150 per hour); [Attorney Fee Voucher, State v. Lopez, No. 09-Cr0787-B \(117th Dist. Ct., Nueces County, Tex. Sept. 2, 2011\)](#) (explaining that an additional payment was necessary because the Fifth Administrative Judicial Region guidelines provide for an hourly fee of \$200).

<sup>187</sup> [Requests for Payment by Appointed Counsel, State v. Johnson, No. F12-23749-W \(363rd Dist. Ct., Dallas County, Tex. 2014-2015\)](#) (billing for 433 hours of work); [Requests for Payment by Appointed Counsel, Harris v. State, No. F09-00409 \(Crim. Dist. Ct. 2, Dallas County, Tex. Apr. 24, 2013-Aug. 18, 2014\)](#) (requesting payment for 535 hours of work); [Requests for Payment for Services Rendered, State v. Escobar, No. DC-093301250 \(167th Dist. Ct., Travis County, Tex. 2013-2014\)](#) (requesting payment for 422.5 hours of work); [Attorney Fees Expense Claims, State v. Cole, No. 1250754 \(230th Dist. Ct. Harris County, Tex. 2012-2014\)](#) (submitting statements for a total of 403.5 hours of work); [Defense Claims for Fee Payment, State v. Rockwell, No. 1195088, \(Crim. Dist. Ct. 4, Tarrant County, Tex. 2012-2014\)](#) (submitting a request for payment for 414.5 hours of work); [Attorney Fees Expense Claims, State v. Armstrong, No. CR-2095-06 \(370th Dist. Ct., Hidalgo County, Tex. 2006-2013\)](#) (billing for 423 hours of work); [Requests for Payment by Appointed Counsel, State v. Medina, No. F07-32923 \(282nd Dist. Ct., Dallas County, Tex. 2008-2014\)](#) (billing 448.5 hours for the appeal); [Requests for Payment by Appointed Counsel, State v. Broadnax, No. F08-24667 \(Crim. Dist. Ct. 7, Dallas County, Tex. 2011-12\)](#) (requesting payment for 420 hours of work); [Appointed Counsel Hourly Worksheets, State v. Turner, No. 54233 \(268th Dist. Ct., Fort Bend County, Tex. 2011-2012\)](#) (submitting payment requests for a total of 452.25 hours of work); [Requests for Payment by Appointed Counsel, State v. Green, No. F09-59380 \(282nd Dist. Ct., Dallas County, Tex. 2011-2012\)](#) (billing for 508.3 hours of work); and [Request for Payment by Appointed Counsel, State v. Robertson, No. F89-85961 \(Crim. Dist. Ct. 5, Dallas County, Tex. 2009-2010\)](#) (billing for 476 hours of work).

<sup>188</sup> James Broadnax, Gary Green, Roderick Harris, Matthew Lee Johnson, Juan Lizcano, Hector Medina, and Mark Robertson were represented by the same lawyer. Two other defendants, Jaime Cole and Albert Turner, in the group of 12 cases in which over 400 hours were billed were represented by the same attorney.

<sup>189</sup> [Anderson](#), [Brazos](#), [Calhoun](#), [Chambers](#), [DeWitt](#), [Goliad](#), [Hardin](#), [Jackson](#), [Jefferson](#), [Refugio](#), and [Victoria](#). Although Brazos County's attorney fee schedule lists a flat fee for the appeal of capital felony convictions. Billing records from *Thuesen v. State*, which concerned a Brazos County conviction, reflect that defense counsel was paid an hourly rate. Billing records from the other Brazos County case in our survey, *Olsen v. State*, were unavailable.

<sup>190</sup> See *supra* notes 166 to 169 and text.

<sup>191</sup> *Minimum Wage*, U.S. DEP'T OF LABOR, <https://www.dol.gov/general/topic/wages/minimumwage> ("The federal minimum wage for covered nonexempt employees is \$7.25 per hour effective July 24, 2009.") (last visited Apr. 18, 2016).

<sup>192</sup> [Atacosta](#), [Bandera](#), [Bexar](#), [Cass](#), [Carson](#), [Cherokee](#), [Childress](#), [Collingsworth](#), [Donley](#), [Duval](#), [Edwards](#), [Falls](#), [Frio](#), [Gillespie](#), [Hall](#), [Jim Hogg](#), [Johnson](#), [Karnes](#), [Kendall](#), [Kerr](#), [Kimble](#), [La Salle](#), [McCullough](#), [Mason](#), [Menard](#), [Milam](#), [Robertson](#), [Starr](#), and [Wilson](#). Although Johnson County's indigent defense plan caps a direct appeal lawyer's compensation in death cases at \$15,000, an attorney handling a case from this jurisdiction applied for and was paid approximately \$30,000 for his services. See JOHNSON COUNTY, THIRD AMENDED COMPENSATION OF COURT APPOINTED COUNSEL AND RELATED EXPENSES PURSUANT TO ARTICLES 26.05 AND 26.052, TEXAS CODE OF CRIMINAL PROCEDURE, <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=165>; and [Requests for Defense Counsel Payment, State v. Soliz, F45059 \(413<sup>th</sup> Dist. Ct., Johnson County, Tex. 2013-2015\)](#).

<sup>193</sup> Harris County, the jurisdiction with the highest frequency of death sentences in Texas, is an anomaly. Its attorney fee schedule states that direct appeal lawyers are paid \$100/hour with a presumptive cap of 180 hours. HARRIS COUNTY AUDITOR'S OFFICE, ATTORNEY FEES CLAIM FORM (rev. Sept. 14, 2015), <http://tidc.tamu.edu/IDPlanDocuments/Harris/Harris%20District%20Court%20Attorney%20Fee%20Schedule.pdf>. However, direct appeal lawyers handling Harris County cases in our survey billed and received an average (mean) \$25,788 per case.

<sup>194</sup> STATE BAR OF TEX., MUTING GIDEON'S TRUMPET, *supra* note 143, at 14.

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<sup>195</sup> Travis Mullis waived his right to counsel on direct appeal, thus no extension motion was filed in his case. Counsel for Mabry Landor did not move to extend the deadline to file the appellant’s brief. The brief in this case was filed 15 days after the court reporter’s record was received and filed by the CCA. *See Landor v. State*, TEX. COURT OF CRIMINAL APPEALS, <http://www.search.txcourts.gov/Case.aspx?cn=AP-76,328&coa=coscca> (last visited July 6, 2016) (stating that the court reporter’s record was received on Aug. 17, 2010 and the appellant’s brief was filed on Sept. 1, 2010). The trial transcripts in this case were estimated to be 3,500 to 4,000 pages. [Letter from Valdeane Wainwright, Official Court Reporter, 209th District Court to Abel Acosta re: Mabry J. Landor \(May 18, 2010\)](#) (copy on file with author) (“The trial was 21 days including *voir dire* and is approximately 3500-4000 pages in length.”). The CCA affirmed Mr. Landor’s conviction and sentence on direct appeal. *Landor v. State*, No. AP-76,328, slip op. at 1 (Tex. Crim. App. June 29, 2011).

<sup>196</sup> [Terence Andrus](#), [Douglas Armstrong](#), Tracy Beatty, Donald Bess, [Brent Brewer](#), [Micah Brown](#), [Tyrone Cade](#), [Kimberly Cargill](#), [Tilon Carter](#), Kosul Chanthakoummane, [Billie Coble](#), [Jaime Cole](#), [Lisa Coleman](#), [Raul Cortez](#), [Obel Cruz-Garcia](#), Rickey Cummings, [Erik Davila](#), [Brian Davis](#), Irving Davis, [Paul Devoe](#), [Arel Escobar](#), [Robert Fratta](#), James Freeman, [Joseph Gamboa](#), [John Gardner](#), [Milton Gobert](#), [Ramiro Gonzales](#), [Bartholomew Granger](#), [Gary Green](#), [Howard Guidry](#), Garland Harper, Roderick Harris, Fabian Hernandez, [John Hummel](#), [Joseph Jean](#), [Dexter Johnson](#), [Armando Leza](#), Juan Lizcano, [Steven Long](#), [Daniel Lopez](#), [Melissa Lucio](#), Raymond Martinez, Hector Medina, Blaine Milam, Demontrell Miller, Steven Nelson, Christian Olsen, [Ker’sean Ramey](#), David Renteria, Cortne Robinson, [Kwame Rockwell](#), [Wesley Ruiz](#), [Demetrius Smith](#), [Roosevelt Smith](#), [Mark Soliz](#), Robert Sparks, Paul Storey, [Richard Tabler](#), Albert Turner, Adam Ward, Christopher Wilkins, Thomas Whitaker, Antonio Williams, and Christopher Young.

<sup>197</sup> [Appellant’s Motion to Extend Time for Filing a Motion for Rehearing, Brewer v. State, No. AP-76,378 \(Tex. Crim. App. Dec. 12, 2011\)](#) [hereinafter Brewer Extension Motion]; [Appellant’s Motion for Extension of Time to File Motion for Rehearing at 2, Lucio v. State, No. AP-76,020 \(Tex. Crim. App. Sept. 29, 2011\)](#) (requesting an extension due to the attorney’s obligations in another appeal); [Motion for Extension of Time to File Brief on the Merits at § III, Leza v. State, No. AP-76,157 \(Tex. Crim. App. Nov. 17, 2009\)](#) (outlining several appellate case commitments); [Motion for Extension of Time to File Appellant’s Brief at § III, Gamboa v. State, No. AP-75,635 \(Tex. Crim. App. Oct. 2, 2009\)](#) (outlining defense counsel’s commitments in other appellate cases); [Appellant’s First Motion for Extension of Time to File Brief at § II, Tabler v. State, No. AP-75, 677 \(Tex. Crim. App. July 10, 2009\)](#) (stating that counsel was unable to meet the filing deadline because she had “[a] cert. petition due in a murder case in the United States Supreme Court on July 1; A writ of habeas corpus that had to be filed to beat the AEDPA deadline; Numerous discovery deadlines . . . as well as other cases” on her docket); [Appellant’s Motion for Extension of Time to File Brief on the Merits at § III, Carter v. State, No. AP-75,603 \(Tex. Crim. App. May 16, 2007\)](#) (“An extension of time is necessary because counsel has been inundated with appellate work in other pending appeals and trial court settings[.]”); [Motion to Extend Time for Filing Appellant’s Brief at § V, Long v. State, No. AP-75, 539 \(Tex. Crim. App. May 17, 2007\)](#) (stating that during the previous 30 days, the appellant’s lawyer filed appellate briefs in four cases, a petition for discretionary review in one case, an application for a writ of habeas corpus in a non-capital case, and an application for federal habeas corpus relief); [Motion to Extend Time to File Appellant’s Brief at § III, Ramey v. State, No. AP-75,678 \(Tex. Crim. App. Sept. 19, 2007\)](#) (stating that an extension was necessary because counsel was previously working on an appellate brief for another case and was recalled by the U.S. Navy to conduct an investigation into possible violations of the Uniform Code of Military Justice).

<sup>198</sup> [Brewer Extension Motion, supra note 197, at § II.](#)

<sup>199</sup> [First Motion for Extension of Time to File Brief for Appellant, Andrus v. State, No. AP-76,335 \(Tex. Crim. App. Dec. 9, 2013\)](#) (“counsel has been involved in trial; and additional and separate appellate cases”); [Appellant’s Motion for Extension of Time to File Brief at 2, Jean v. State, No. AP-76,601 \(Tex. Crim. App. Mar. 27, 2012\)](#) (“the undersigned has a number of capital murder cases pending during 2012 and 2013 which will require continuing investigation and preparation . . . including a non-death capital appeal”); [Third Motion for Extension of Time to File Appellant’s Brief, Death Penalty Case at 2, Lopez v. State, No. AP-76,327 \(Tex. Crim. App. May 17, 2011\)](#) (describing the defense counsel’s work in a three week federal trial that absorbed most of his time from March 1, 2011 through April 20, 2011); [Second Motion for Extension of Time to File Appellant’s Brief at § V, Davila v. State, No. AP-76,105 \(Tex. Crim. App. June 1, 2010\)](#) (outlining defense counsel’s exorbitant workload despite



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declining appointments in order to devote maximum time to Mr. Davila’s case); [Motion for an Extension of Time to File Appellant’s Brief, Fratta v. State, No. AP-76,188 \(Tex. Crim. App. Dec. 9, 2009\)](#) (stating that defense counsel was on trial from Nov. 12 to Nov. 24, 2009 and was preparing to begin another trial set for Dec. 7, 2009); [Motion for Extension of Time to File Appellant’s Brief, Gardner v. State, No. AP-75,582 \(Tex. Crim. App. Oct. 30, 2008\)](#) (Counsel required an extension due to a “heavy docket schedule in both criminal and civil matters.”); [Appellant’s Motion for Extension of Time to File Brief, Johnson \(Dexter\) v. State, No. AP-75,749 \(Tex. Crim. App. Nov. 4, 2008\)](#) [hereafter Johnson Extension Motion]; [Appellant’s Motion for Extension of Time to File Brief at § III, Smith \(Roosevelt\) v. State, No. AP-75,793 \(Tex. Crim. App. Aug. 4, 2008\)](#) (stating that counsel had obligations in other cases including five recently filed appellate briefs, two state capital murder (trial) cases, and three cases pending in federal court); [Appellant’s Motion for Extension of Time to File Appellate Brief at § VIII, Smith \(Demetrius\) v. State, No. AP-75,479 \(Tex. Crim. App. Aug. 3, 2007\)](#) (outlining a vigorous felony trial schedule which included a murder trial that was carried –day-to-day during the preceding five weeks even though the defense notified the trial judge that the case was “seriously impairing counsel’s ability to work on a death penalty appeal”).

<sup>200</sup> [Johnson Extension Motion, supra](#) note 199, at ¶¶ 5-6. [This motion was denied. Clerk’s Notice, Johnson \(Dexter\) v. State, No. AP-75,749 \(Tex. Crim. App. Nov. 4, 2008\)](#) (“The Court has this day DENIED the Appellant’s motion for extension of time to file appellant’s brief) (emphasis in original).

<sup>201</sup> [Motion for Extension of Time at ¶ 8, Granger v. State, No. AP-77,017 \(Tex. Crim. App. Apr. 29, 2014\)](#)[hereinafter Granger Extension Motion]; [Appellant’s Second Motion for Extension of Time within which to File Brief at § III, Brown v. State, No. AP-77,019 \(Tex. Crim. App. Mar. 31, 2014\)](#) (“undersigned attorney was recently appointed to represent a death eligible defendant in a case . . . in the United States District Court for the Western District of Arkansas[,] . . . had to prepare for oral argument in a case [pending] . . . in the Court of Appeals for the Sixth Supreme Judicial District of the State of Texas[,] . . . had to prepare a complex sentencing memorandum [for a federal case], . . . [and] has been preparing” a case scheduled for trial in the 102nd District Court in Bowie County and a case scheduled for trial in the Eastern District of Texas); [Appellant’s Motion for Extension of Time to File Brief at § VII, Cruz-Garcia v. State, No. AP-77,025 \(Tex. Crim. App. Dec. 18, 2013\)](#) (“The undersigned has also been appointed to a number of appellate cases which have required extensions of time due to the voluminous appellate records. The undersigned recently filed a Petition for a Writ of *Certiorari* in the Supreme Court of the United States on a Texas death penalty case.”); [Second Motion for Extension of Time to File Appellant’s Brief at ¶ 12, Cade v. State, No. AP-76,883 \(Tex. Crim. App. Oct. 11, 2013\)](#) (citing the case’s voluminous appellate record and stating that the appellant’s counsel is lead trial counsel in a death penalty trial that is scheduled to begin at the end of the month); [Motion for Extension of Time to File Appellant’s Brief at § V, Cargill v. State, No. AP-76,819 \(Tex. Crim. App. Oct. 3, 2013\)](#) (explaining that appellant’s counsel has spent considerable time in *voir dire* and preparation for a capital murder trial in which the state was seeking the death penalty that was scheduled to begin on Nov. 4, 2013, and “other capital murder cases” including a Dallas County case where the prosecution was seeking the death penalty); [Motion for Extension of Time to File Brief at § II, Soliz v. State, No. AP-76,768 \(Tex. Crim. App. June 11, 2013\)](#) (stating that appellant’s lawyer also represents death row inmate Lisa Coleman in post-conviction proceedings pending in the U.S. Court of Appeals for the Fifth Circuit); [Appellant’s Second Motion for Extension of Time to File Brief in Capital Appeal at § II, Rockwell v. State, No. AP-76,737 \(Tex. Crim. App. Oct. 5, 2012\)](#) (“An extension is necessary because during the previous extension granted by this court the undersigned attorney has been involved in several other appeals including a death penalty writ hearing and numerous trial court settings[,] one [of] which is being held on this same day.”); [Appellant’s Motion for Extension of Time at § III, Turner v. State, No. AP-76,580 \(Tex. Crim. App. July 12, 2012\)](#) (stating that appellant’s counsel was working on a death penalty direct appeal, a capital murder case in which the state was seeking death in the 252nd District Court in Jefferson County, a federal capital case pending in the Southern District of Texas, and two capital murder trials in Harris County); [Motion for Extension of Time to File Brief at 2-3, Hummel v. State, No. AP-76,596 \(Tex. Crim. App. June 6, 2012\)](#) (stating that the appellant’s lawyer was representing a death row inmate in a competency proceeding pending before the Court of Appeals for the Fifth Circuit); [Appellant’s Motion for Extension of Time within which to File Appellant’s Brief at ¶ 11, Cole v. State, No. AP-76,703 \(Tex. Crim. App. Apr. 13, 2012\)](#) (“Counsel is currently working on another Death Penalty Appeal, Cause No. AP-76,580 Albert James Turner v. The State of Texas. Counsel is also preparing for a Death Penalty trial in September 2012, Cause No. 10-10213, The State of Texas v. Joseph Kenneth Colone on the 252<sup>nd</sup> District Court of Jefferson County.”); [Motion for Third Extension of Time to File Appellant Brief at § III, Robinson v. State, No. AP-76,535 \(Tex. Crim. App. Mar. 5, 2012\)](#) (“Appellant’s Counsel has spent an inordinate amount of time preparing for jury trials during the

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preceding month[.]” which included preparing a first degree case for trial and preparing a capital murder case in which the state was seeking death in Smith County. The lawyer also was in the process of researching and preparing state habeas applications in two death penalty cases: State v. Cortez and State v. Milam.); [Motion for Extension of Time to File Appellate Brief at § III, Escobar v. State, No. AP-76,751 \(Tex. Crim. App. Feb. 22, 2012\)](#) (“Counsel has . . . a very busy docket, and . . . is currently embroiled in four capital cases in central Texas, which have further delayed finishing this appeal.”); [Motion for Extension of Time for Filing Appellant’s Brief, Davis \(Brian\) v. State, No. AP-76,521 \(Tex. Crim. App. Nov. 9, 2011\)](#) (outlining defense counsel’s extraordinary workload including three murder cases, including one capital murder trial scheduled to begin in the next sixty days, as well as an infant death case, a petition for discretionary review, and 26 recently resolved cases); [Appellant’s Second Motion for Extension of Time to File Appellant’s Brief at §§ IV to VI, Harper v. State, No. AP-76,452 \(Tex. Crim. App. Oct. 28, 2011\)](#) (stating that counsel’s workload included two federal habeas corpus writs in death penalty cases, preparing for a non-death capital murder trial and three cases scheduled for trial before Thanksgiving); [Motion for Extension of Time to File Brief at 2, Green v. State, No. AP-76,458 \(Tex. Crim. App. Apr. 21, 2011\)](#) (“counsel has a heavy workload including another death penalty direct appeal with a voluminous record”); [Appellant’s Motion for Extending Time to File Brief at 2, Gobert, v. State, No. AP-76,345 \(Tex. Crim. App. Dec. 9, 2010\)](#) (requesting an extension due to counsel’s heavy caseload that included another death penalty direct appeal); [Appellant’s Second Motion for Extension of Time to File Appellant’s Brief at 2-3, Martin v. State, No. AP-76,317 \(Tex. Crim. App. Mar. 25, 2011\)](#) (“In 2009 and 2010, [counsel] tried three capital murders, each trial lasting at least two months-one being this case-and the state was seeking the death penalty in each case. . . . Additionally, in February of 2010, he was involved in State of Texas vs. Jonathan Damuth in the 12th Judicial District of Grimes County, Texas, and in October of 2010, he was involved in State vs. Brandon Harris in the 85th Judicial District in Brazos County, Texas. Both of which were murder cases. In the summer of 2010, he prepared the Appellant’s Brief in Christian Olsen vs. State of Texas [a capital direct appeal] which was filed in this Court in September of 2010.”); [Motion for Extension of Time to File Appellant’s Brief at 2, Milam v. State, No. AP-76,379 \(Tex. Crim. App. Apr. 27, 2011\)](#) (“On February 14, 2011, Appellant’s counsel started individual *voir dire* in [a case] wherein the defendant is charged with capital murder and the State is seeking death. A panel of forty-eight (48) qualified jurors were selected on April 21, 2011, only four days before this brief is due. Individual *voir dire* in [this] case commenced on February 14, 2011.”) (italics added); [Second Motion for Extension of Time to File Appellant’s Brief, Hernandez v. State, No. AP-76,275 \(Tex. Crim. App. Mar. 4, 2011\)](#) (stating that counsel had a number of trial cases including a two week murder trial that concluded on Feb. 11, 2011); [Third Motion for Extension of Time to File the Appellant’s Brief at § III, Miller v. State, No. AP-76,270 \(Tex. Crim. App. Jan. 27, 2011\)](#) (“[c]ounsel for the Appellant, in the proceeding months has been researching and preparing” state habeas petitions for three death penalty cases); [Appellant’s Third Motion for Extension of Time to File Brief at 2, Devoe v. State, No. AP-76,289 \(Tex. Crim. App. Aug. 16, 2010\)](#) (defense counsel was handling *inter alia* “three other death penalty cases in various stages of briefing[,] and a federal habeas case requiring an evidentiary hearing in San Antonio last week”); [First Motion for Extension of Time to File Appellant’s Brief at § V, Cortez v. State, No. AP-76, 101 \(Tex. Crim. App. Feb. 17, 2010\)](#) (“Appellant’s counsel is presently dealing with two capital murder cases, both set for trial in the spring . . . Additionally, Appellant’s counsel has an active practice in Wood County, Texas.”); [Appellant’s Motion for Extension of Time to File Brief at 1-2, Freeman v. State, No. AP-76,052 \(Tex. Crim. App. Nov. 23, 2009\)](#) (“In addition to a full trial and appellate practice . . . the undersigned counsel has filed [three] original state capital habeas applications in the past six months . . . has filed five subsequent capital writs[,] . . . [fought] two execution dates”); [Motion for Extension of Time to File Appellant’s Brief at ¶ 6, Chanthakoummane v. State, No. AP-75,794 \(Tex. Crim. App. Nov. 4, 2009\)](#) (stating that “counsel was in trial in two felony cases after the filing of the record . . . [and was] set for trial in seven felony cases in the next seven months including two capital murder cases, in which the state may seek the death penalty”); [Second Motion for Extension of Time to File Appellant’s Brief, Olsen v. State, No. AP-76,175 \(Tex. Crim. App. Feb. 22, 2010\)](#) (stating that counsel recently filed a brief in a death penalty direct appeal and was scheduled to begin two murder trials within the next two months, the state sought the death penalty in one of these cases); [Second Motion for Extension of Time to File Appellant’s Brief, Renteria v. State, No. AP-74,829 \(Tex. Crim. App. Oct. 5, 2009\)](#) (stating that counsel was scheduled to try 10 felony jury trials between July and December 2009); [Motion for Extension of Time to File Brief at 1, Medina v. State, AP-76,036 \(Tex. Crim. App. Aug. 25, 2009\)](#) [hereinafter Medina Extension Motion]; [Motion for Extension of Time to File Appellant’s Brief at § V, Ruiz v. State, No. AP-75, 968 \(Tex. Crim. App. July 9, 2009\)](#) [hereinafter Ruiz Extension Motion]; [Motion for Extension of Time to File Brief at 1, Sparks v. State, No. AP-76,099 \(Tex. Crim. App. July 1, 2009\)](#) (“Appellate Counsel has a very heavy workload. Appellate Counsel is presently in the Capital Murder- Death trial of Mark Robertson, Cause Nos. F07-56955, F07-56954 & F07-56931 in Criminal District Court No. 5.”); [Motion for Extension of Time to File Appellate](#)

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[Brief at § III, Storey v. State, No. AP -76,018 \(Tex. Crim. App. May 5, 2009\)](#) (“Appellant's request for an extension is based on the following facts: The undersigned attorney has been preparing a brief for filing in cause number 02-08-00060-CR in the Second Court of Appeals - Fort Worth, Tracy Denise Roberson v. State, preparing Applicant's findings of fact and conclusions of Law in Cause Number C-297-008439-1016470-A, Ex Parte: Lisa Coleman (a death penalty case), and preparing Appellant's Brief for filing in Will Gasaway v. The United States of America, in the United States Court of Appeals - Fifth Circuit.”); [Motion for Extension of Time to File Brief at 1-2, Lizcano v. State, No. AP-75,879 \(Tex. Crim. App. Jan. 7, 2009\)](#) (“Appellate Counsel has recently submitted a Motion for Rehearing on an appeal in another death case. . . a Motion for New Trial and evidentiary hearing . . . in a recently completed death penalty trial, and has just completed jury selection in . . . a death penalty case in Collin County, Texas.”); [Motion for Extension of Time to File Appellate Brief at § IV, Williams v. State, No. AP-75,811 \(Tex. Crim. App. Nov. 21, 2008\)](#) (“An extension of time is necessary because the undersigned counsel has just completed a capital murder case in the 262 District Court in Harris County, Texas and has been required to prepare numerous appeals in the last 30 days, including the appeal of a 4-week trial in the 184<sup>th</sup> District Court.”); [Second Motion to Extend Time for Filing Appellant’s Brief at § III, Whitaker v. State, No. AP-75,654 \(Tex. Crim. App. June 6, 2008\)](#) (stating that counsel was scheduled to begin a death penalty trial in one month); [Motion for an Extension of Time to File Appellant’s Brief at 2-3, Guidry v. State, No. AP-75,633 \(Jan. 7, 2008\)](#) (stating that counsel was on trial in a capital murder case where the prosecution sought the death penalty during the previous two and a half months and had worked through the December holidays); [Motion to Extend Time to File Appellant’s Brief at ¶ 11, Armstrong v. State, No. AP-75,706 \(Tex. Crim. App. Jan. 4, 2008\)](#) (stating that counsel was working on an appellate brief for another case and was scheduled to begin a non-death capital murder trial in four days); [Motion for Extension of Time to File Appellant’s Brief at § III, Gonzales v. State, No. AP-75,540 \(Tex. Crim. App. June 11, 2007\)](#) (stating that during the period from June to October 2007, counsel was scheduled to try two capital murder cases, one murder case, one sexual assault case in state court, as well as two federal drug cases, and to file two petitions for habeas corpus relief for death penalty cases—one in federal and one in state court); [Appellant’s First Motion for Extension of Time to File Brief on Merits on Automatic Appeal from Sentence of Death at § III, Coleman v. State, No. AP-75,478 \(Tex. Crim. App. Feb. 23, 2007\)](#) (“counsel has been inundated with appellate work in other pending appeals and trial court settings, including a federal post-conviction writ in a death penalty case”).

<sup>202</sup> [Granger Extension Motion](#), *supra* note 201, at 8.

<sup>203</sup> [Clerk’s Notice, Medina v. State, No. AP-76,036 \(Tex. Crim. App. Aug. 13, 2009\)](#).

<sup>204</sup> [Medina Extension Motion](#), *supra* note 201, at ¶ 2. The CCA granted an extension until December 12, 2009. Clerk’s Notice, Medina v. State, (Tex. Crim. App. Aug. 27, 2009). Mr. Medina’s lawyer submitted a subsequent request for an extension the day before the deadline on December 18, 2009, requesting an extension until January 18, 2010, the date requested in his original motion for an extension. [Motion for Extension of Time to File Brief, Medina v. State, No. AP-76,036 \(Tex. Crim. App. Dec. 17, 2009\)](#). The CCA gave him a three day extension to December 21, 2009. [Clerk’s Notice, Medina v. State, No. AP-76-036 \(Dec. 21, 2009\)](#).

<sup>205</sup> [Ruiz Extension Motion](#), *supra* note 201, at § V (italics added).

<sup>206</sup> Tanya Eiserer, *Ex-Judge Sentenced to Death in Texas Revenge Plot*, USA TODAY (Dec. 17, 2014), <http://www.usatoday.com/story/news/nation/2014/12/17/texas-prosecutors-murder-sentence/20537451/>.

<sup>207</sup> [Letter from Appellant’s Counsel to Abel Acosta, Clerk of Court, Court of Criminal Appeals \(May 7, 2014\)](#) (copy on file with author) (italics added).

<sup>208</sup> Granger v. State, No. AP-77,017, 2015 WL 1875907, at \*1 (Tex. Crim. App. Apr. 22, 2015) (“Appellant raises seven points of error. After reviewing appellant's points of error, we find them to be without merit. Consequently, we affirm the trial court's judgment and sentence of death.”); Cargill v. State, No. AP-76,819, 2014 WL 6477109, at \*1 (Tex. Crim. App. Nov. 19, 2014) (“After reviewing appellant's eighteen points of error, we find them to be without merit. Consequently, we affirm the trial court's judgment and sentence of death.”); Ruiz v. State, No. AP-75,968, 2011 WL 1168414, at \*9 (Tex. Crim. App. Mar. 2, 2011) (“The judgment of the trial court is affirmed.”); Medina v. State, No. AP-76,036, 2011 WL 378785, at \*1 (Tex. Crim. App. Jan. 12, 2011) (“The appellant now

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raises fifty-three points of error on direct appeal to this Court. Finding no reversible error, we shall affirm the judgment and sentence of the trial court.”).

<sup>209</sup> Texas law requires that counties report the number of appointments each lawyer accepting indigent defense cases in the county receives each fiscal year (Oct. 1st to Sept. 30th). *See* Tex. Gov’t Code § 79.036. This requirement was enacted by the Texas Legislature in 2013. H.B. 1381, 83rd Leg., R.S., ch. 912, art. 3 (eff. Sept. 1, 2013).

<sup>210</sup> *See supra* note 168 and text.

<sup>211</sup> PUBLIC POLICY RESEARCH INSTITUTE, GUIDELINES FOR INDIGENT DEFENSE CASELOADS: A REPORT TO THE TEXAS INDIGENT DEFENSE COMMISSION PURSUANT TO HB 1318, 83RD LEGISLATURE 34 (2014), [http://www.tidc.texas.gov/media/31818/150122\\_weightedcl\\_final.pdf](http://www.tidc.texas.gov/media/31818/150122_weightedcl_final.pdf).

<sup>212</sup> *Id.*

<sup>213</sup> Attorney 1 (paid a total of \$273,345.00), Attorney 2 (paid a total of \$140,463.71), Attorney 3 (paid a total of \$182,952.28), Attorney 4 (paid a total of \$152,752.16), and Attorney 5 (paid a total of \$188,892.50). STATEWIDE ATTORNEY CASELOAD REPORT, TEX. INDIGENT DEF. COMM’N, <http://tidc.tamu.edu/public.net/Reports/AttorneyCaseLoad.aspx> (last visited Jan. 31, 2016).

<sup>214</sup> Requests for Payment by Appointed Counsel submitted in the following proceedings: [State v. Thomas, No. F-86-85539 \(194th Dist. Ct., Dallas County, Tex. Mar. 10, 2015-Dec.17, 2015\)](#); [State v. Theron, No. F13-24890 \(195th Dist. Ct., Dallas County, Tex. May 15, 2015\)](#); [State v. Cabrera, No. F-10-57867-1 \(195th Dist. Ct., Dallas County, Tex. July 22, 2014\)](#); [State v. Pineda, No. F12-34923 \(202nd Dist. Ct., Dallas County, Tex. Apr. 14, 2014\)](#); [State v. Burch, No. F14-00319 \(204th Dist. Ct., Dallas County, Tex. July 23, 2014\)](#); [State v. Muhammad, No. F11-00698 \(204th Dist. Ct., Dallas County, Tex. May 15, 2014-Apr.15 2015\)](#); [State v. Torres, No. F10-587769 \(265th Dist. Ct., Dallas County, Tex. July 7, 2014\)](#); [State v. Longrum, No. F11-60330 \(265th Dist. Ct., Dallas County, Tex. May 6, 2014\)](#); [State v. Clark, No. F08-33150 \(265th Dist. Ct., Dallas County, Tex. Apr. 4, 2014\)](#); [State v. Reyes, Nos. F11-35901, 13-34158, 13-34208, 13-34209 \(291st Dist. Ct., Dallas County, Tex. Aug. 6, 2014\)](#); [State v. King, No. F11-00838 \(363rd Dist. Ct., Dallas County, Tex. July 3, 2014\)](#); [State v. Henry, No. F09-59736 \(363rd Dist. Ct., Dallas County, Tex. May 19, 2014\)](#); [State v. Johnson, No. F12-23749-W \(363rd Dist. Ct., Dallas County, Tex. Mar. 25, 2014-Mar. 18, 2015\)](#); [State v. Young, No. 81844-2013 \(401st Dist. Ct., Collin County, Tex. May 6, 2014\)](#); [State v. Guthrie-Nail, No.80635-2012 \(401st Dist. Ct., Collin County, Tex. May 30, 2014\)](#); [State v. Ramey, No. F12-53925 \(Crim. Dist. Ct. 2, Dallas County, Tex. Aug. 1, 2014\)](#); [Harris v. State, No. F09-00409 \(Crim. Dist. Ct. 2, Dallas County, Tex. Apr. 24, 2013-Aug. 18, 2014\)](#); [State v. Mosley, No. F11-57352 \(Crim. Dist. Ct.2, Dallas County, Tex. May 5, 2014\)](#); [State v. Johnson, No. W11-27104 \(Crim. Dist. Ct. 6, Dallas County, Tex. May 14, 2014\)](#); [State v. Roberts, No. F13-70669 \(Crim. Dist. Ct. 7, Dallas County, Tex. Apr. 30, 2014\)](#); [State v. Williams, No. F13-72201 \(Crim. Dist. Ct. 6, Dallas County, Tex. May 13, 2014\)](#); [No. W13-90036 \(292nd Dist. Ct., Dallas County, Tex. May 20, 2014\) \(defendant name illegible\)](#); [State v. Denver, No. F14-00186 \(194th Dist. Ct., Dallas County, Tex. June 24, 2014\)](#).

<sup>215</sup> A “billable hour” is distinct from the number of hours a lawyer spends at the office, and includes the time spent on a case. Attorneys cannot bill for time at lunch, getting coffee, handling personal calls, or taking a cigarette break. It is not uncommon for a lawyer to spend 60 hours a week at the office (working 8:00 am to 8:00 pm, Monday through Friday) and still bill only 42 of those hours to client work. *See* The Truth About the Billable Hour, YALE LAW SCHOOL, <https://www.law.yale.edu/student-life/career-development/students/career-guides-advice/truth-about-billable-hour> (updated May 2015).

<sup>216</sup> If Attorney 1 took breaks for federal holidays and weekends, he would have averaged 14.5 hours a day. His statements do not itemize the specific days on which he performed certain services. For example, the payment request relating to *State v. Guthrie-Nail* shows only that he worked 40 hours on the case between April 30, 2014 and May 30, 2014.

<sup>217</sup> [Appointed Counsel Request for Compensation, State v. Saenz, No. 82492-2007 \(380th Dist. Ct., Collin County, Tex. July 7, 2014\)](#); [Request for Payment by Appointed Counsel, State v. Lofton, No F13-51567 \(291st Dist. Ct.,](#)



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[Dallas County, Tex. June 30, 2014](#)); [Request for Payment by Appointed Counsel, State v. Baldin, Nos. F13-61758 & F14-45168 \(Crim. Dist. Ct. 7, Dallas County, Tex. June 24, 2014\)](#)); [Request for Payment by Appointed Counsel, State v. Henderson, No. F13-71850 \(265th Dist. Ct., Dallas County, Tex. May 22, 2014\)](#)); [Request for Payment by Appointed Counsel, State v. Garrett, No. F14-70320 \(283rd Dist. Ct., Dallas County, Tex. May 14, 2014\)](#)); [Request for Payment by Appointed Counsel, State v. Louis, No. F13-57514 \(Crim. Dist. Ct. 3, Dallas County, Tex. May 12, 2014\)](#)); [Request for Payment by Appointed Counsel, State v. Gonzales, No. 13-12905 \(363rd Dist. Ct., Dallas County, Tex. May 9, 2014\)](#)); [Appointed Counsel Request for Compensation, State v. Bynum, No. 199-80443-2104 \(195th Dist. Ct., Collin County, Tex. May 5, 2014\)](#)); [Request for Payment by Appointed Counsel, State v. Clark, No. F13-63007 \(Crim. Dist. Ct. 1, Dallas County, Tex. Apr. 18, 2014\)](#)); [Request for Payment by Appointed Counsel, State v. Sauls, Nos. F13-58991, F13-70758 \(194th Dist. Ct., Dallas County, Tex. Apr. 10, 2014\)](#)); [Request for Payment by Appointed Counsel, State v. Stidham, F13-11880 \(363rd Dist. Ct., Dallas County, Tex. Apr. 8, 2014\)](#)); [Request for Payment by Appointed Counsel, State v. King, No. F13-721721 \(282nd Dist. Ct., Dallas County, Tex. Apr. 4, 2014\)](#)).

<sup>218</sup> [Requests for Payment by Appointed Counsel, Harris v. State, No. F09-00409 \(Crim. Dist. Ct. 7, Dallas County, Apr. 24, 2013-Aug. 18, 2014\)](#)).

<sup>219</sup> [Request for Payment by Appointed Counsel, State v. Thomas, F86-85539 \(194th Dist. Ct. Dallas County, Tex. May 21, 2015\)](#)); [Judgment of Conviction by Jury, State v. Thomas, F86-85539 \(194th Dist. Ct. Dallas County, Tex. July 23, 2014\)](#)).

<sup>220</sup> [Request for Payment by Appointed Counsel, State v. Denver, No. F14-00186 \(194th Dist. Ct., Dallas County, Tex. June 24, 2014\)](#)).

<sup>221</sup> [Request for Payment by Appointed Counsel, State v. Torres, No. F10-587769 \(265th Dist. Ct., Dallas County, Tex. July 7, 2014\)](#)).