

## **Instructions on How to Use this Packet**

This packet is designed to help people who believe that their court-appointed lawyer is not meeting their basic minimum rights to having an effective lawyer.

**This packet is not legal advice.** This packet is not guaranteed to improve your lawyer's representation of you in your specific case.

If you choose to use anything in this packet, **you must understand that you are responsible for anything that you write or mail to anybody.** No one who created this packet will ever instruct you that you must use any of the materials here, or that using the materials in here will guarantee you a better relationship with your lawyer, or a new lawyer for your case.

Finally, this is a warning that when it comes to specific facts about your case or witnesses for your case, **you should only talk about those with your defense lawyer for your case.** All jail phone calls are recorded, and anything said could be used against you in your case. Anything you write in a letter to the court will become part of the court record, which means the prosecutor will get it and can use it against you. Sharing information about the facts of your case with anyone besides your defense lawyer could end up hurting your case, so **always talk to your defense lawyer before sharing any of those details with anyone else.**

Some of the kinds of problems this packet is designed to help people with are:

1. If your lawyer has not communicated with you in any way for an extended period of time;
2. If your lawyer won't do any investigation into the facts of your case; or
3. If you have a conflict with your lawyer that you think is making it impossible for them to represent your interests.

Not all complaints about a court-appointed lawyer can be solved with more communication like we describe here. Here are some problems that this packet **will not help you with:**

1. If you are unhappy with the plea offer in your case;
2. If you think the prosecutor should dismiss the charges in your case;
3. If there is a specific motion that you want filed in your case but your lawyer disagrees with you and doesn't think it should be filed; or
4. If you dislike your lawyer, but they are doing basic work on your case and keeping you reasonably informed of what's happening with your case.

If you are still interested in using these materials, you can follow the steps below to try to improve your communications with your court-appointed lawyer and ensure that they are meeting your basic needs. The law says you have a right to an effective lawyer. **Unfortunately, the law does not currently say you have a right to choose who your appointed lawyer is, or to have your lawyer handle your case exactly the way you want it to be handled.** In fact, Texas courts have decided that as long as you have a lawyer, the lawyer gets to make most strategic decisions in the case, not the client. In general, Texas courts assume that your lawyer has a reason for their strategic decisions in your case, and they almost never replace a lawyer just because you disagree with how they are handling the case.

The first step to using this packet is to **read the instructions carefully and follow the steps listed here.** There is a flow chart included to help you follow the steps described here.

**Please remember to write "LEGAL MAIL" on the envelope if you are sending anything to your lawyer from the jail so that it will not be read by jail staff.**

## STEP 1

It can sometimes help to send your lawyer a letter that very clearly outlines what you want your lawyer to do and what kind of response you're expecting. **Here are a few tips for getting started, if you choose to do that:**

1. Describe your question or request clearly for the lawyer. If you want multiple things from your lawyer, describe them separately (for example, with bullet points or with big headers to separate the different things you're asking for).
2. Include reasonable timelines of when you would like those things done. This means that if your request is for your attorney to visit you, for example, you should clarify when you would like a visit and why you want your lawyer to visit. The more specific you can be, the better. For example, asking for a visit "within 10 business days to talk about witnesses I think should be contacted" is much more specific and useful than saying "visit me as soon as possible to talk about my case."
3. Document everything that happens between you and your lawyer, including every time you receive mail from them, speak with them, send them mail (including retaining a copy of letters you send), or speak on the phone. This can help you clearly demonstrate what has been happening in your case if you have problems and that becomes necessary to show a third party in the future.

**Enclosed is a template you can use to write to your attorney if you want. There is also a sample that has been filled out, to give you an idea of what it might look like if you wanted to write one yourself.** If you write your lawyer a letter, make sure you keep a copy of that letter for yourself. You may need it later to show what you sent to your lawyer.

Hopefully your lawyer will read your letter and resolve the issue, maybe by visiting you or answering some questions that you have been having. If so, that's great! You can ignore the rest of this packet once your concerns with the lawyer are resolved.

## STEP 2

If you don't get any response from your lawyer after **two full weeks** (14 days), or if you get a response that clearly does not address your concerns in any way, you might want to consider getting some outside help communicating with your attorney. There's a statewide organization, run by the State Bar of Texas, that exists to help with that kind of problem. It is called the Client-Attorney Assistance Program (CAAP).

**Enclosed is the form that the CAAP uses to take requests for assistance. It has instructions for how to use their process, if you choose to do so.** They are an independent agency, and were not involved in creating this packet in any way. They did create the form enclosed here, which is generally available to the public. If you send a request for assistance to CAAP, they will contact your lawyer on your behalf and they will send you a copy of anything they sent to your lawyer.

Hopefully after hearing from CAAP your lawyer will resolve the issue, maybe by visiting you or answering some questions that you have been having. If so, that's great! You can ignore the rest of this packet once your concerns with the lawyer are resolved.

If your concern doesn't get resolved through the CAAP process, then there are very few options remaining to help you work directly with your appointed lawyer to get proper representation.

### STEP 3

In some counties, there is someone independent to help you with these issues. For example, if your lawyer works for a Public Defender's Office (PDO), they will have a supervisor that you could contact. Similarly, if your county is serviced by a Managed Assigned Counsel program (MAC), you can contact the staff of the MAC with your complaints about your lawyer. In other places, there is an Indigent Defense Coordinator (IDC) who is responsible for making sure people have a court-appointed lawyer and handling complaints about people's representation. **If your case is in a county with any of those things, you can contact them directly** to explain the problems that you're having with your court-appointed lawyer to see if you can get them resolved or, if they can't be resolved, get assigned a new lawyer to represent you.

If that doesn't work, or if your case is in one of the many counties where there is no PDO, no MAC, and no IDC, and you have been unable to work with your appointed lawyer after multiple attempts, then the last resort would be to ask the judge in your case to replace your court-appointed lawyer with a different one.

### STEP 4

**Enclosed is a template that you could use to write to the judge asking for a replacement lawyer if you have already tried everything else to resolve your issues with your lawyer and have not been able to.** If you choose to do that, pay especially careful attention to the instructions for that letter, because **anything** you write and send to the judge will go in the court record for anyone, including the prosecutor, to read. Virtually all defense lawyers agree that it hurts a defendant's case to send information about the facts of the case - including names of witnesses, describing evidence that exists, or describing what really happened - to the court

or the prosecutor's office, and that a represented defendant should never do that on their own.

You will see from the letter enclosed that the **only** things you can ask the judge for are either (1) to replace your appointed lawyer, or (2) for a hearing to explain why the court should replace your lawyer. The judge will not order your lawyer to do specific things that you want done. In Texas, if someone wants to replace their court-appointed attorney, the client has to prove to the court that there's a good reason for replacement. The presumption is against replacing people's lawyers, so you will need to be prepared to explain how your lawyer is representing you inadequately.

**If you do choose to send a letter to the court about replacing your appointed lawyer, please send a second copy of that letter to our office** so that we can learn more about how people are using this packet and what is happening in the courts when people submit these requests. Depending on the circumstances, we may be able to help you communicate with the court about your request for a new lawyer after it has been submitted, but that decision will always be made on a case-by-case basis, and there is no guarantee that anyone will be available to help you with any request for replacement counsel. If you choose to use this packet, you must be prepared to do it yourself.

If you have any questions about how to use this packet, or feedback on how to make the materials more clear and user-friendly, please feel free to write the lawyers at Texas Fair Defense Project (**and mark the envelope as "Legal Mail"**) at:

Texas Fair Defense Project  
314 E Highland Mall Blvd, Suite 204  
Austin TX 78752

The goal of this chart is to show a step-by-step guide on how to improve communication between a client (you) and your attorney

**STEP ONE:** Write a letter to your attorney with specific requests and demands. (There is a template in this packet.)

**START HERE**

Have you sent your attorney a letter with specific requests and demands?

NO

YES

What kind of response did you receive?

"It was a satisfactory response."

**GREAT!**  
You're done.

"It was *also* an unsatisfactory response."

"It was an unsatisfactory response."

"There's been no response."

Has it been 14 days since your letter?

**STEP TWO:** Fill out CAAP form and send it in. (The form is in this packet.)

**STEP THREE:** If applicable, contact the Indigent Defense Coordinator or the supervisor for your attorney

AFTER 18 MORE DAYS

Write to CAAP and tell them you have not received a response.

"There's still no response."

"There's still no response."

**STEP FOUR:** Write a letter to the judge and mail a copy to TFDP (mark it as "LEGAL MAIL")

**GREAT!**  
You're done.

"It was a satisfactory response."

Has it been 18 days since the CAAP letter?

## Legal Mail: Letter to Attorney

Date:

Re: Representation Requests in Case # \_\_\_\_\_

Dear Attorney \_\_\_\_\_,

You were appointed to represent me because I am an indigent defendant with a criminal case in \_\_\_\_\_ County. To the best of my knowledge, I have been in jail since \_\_\_\_\_. This letter is to ask for you to help me with my case.

## Communications

You have visited me \_\_\_\_ time(s) in jail. We have talked \_\_\_\_ time(s) on the phone. You have sent me \_\_\_\_ letter(s). I have tried to contact you to get you to work on my case and tell me about what is happening with my case, and you have not done so. In total, we have had the following communications:

[illegible]



## Legal Mail: Letter to Attorney

I do not feel that you have kept me reasonably informed of the status of my case. These are the things/questions I want to discuss with you about my case:

[illegible]

Please contact me via phone or in person within ten business days of the date of this letter to discuss these issues in my case.

## Other Specific Legal Concerns

I also have concerns about:

[illegible]

## Conclusion

I am concerned that I am not receiving the level of representation that I am entitled to. I would like to be able to work with you, my court-appointed lawyer, productively on my case, so if you do not wish to advocate for me, please move to withdraw from my case so that I can request another appointment.

Thank you,

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Legal Mail: Letter to Attorney

Robert Robinson  
12 Hollow Drive  
Austin, TX 77777

This space is left blank on the template, but please make sure your attorney's name and mailing address goes here.

Date: 01-01-21

Re: Representation Requests in Case # 12-34567

Dear Attorney Robinson,

You were appointed to represent me because I am an indigent defendant with a criminal case in Travis County. To the best of my knowledge, I have been in jail since 01/02/20. This letter is to ask for you to help me with my case.

**Communications**

You have visited me 1 time(s) in jail. We have talked 1 time(s) on the phone. You have sent me 0 letter(s). I have tried to contact you to get you to work on my case and tell me about what is happening with my case, and you have not done so. In total, we have had the following communications:

From (Name)	Method of Contact	To (Name)	Date	General Description
	visit in jail		01-03-20	You visited me for about 10 minutes to discuss my case generally and initially meet.
Mr. Robinson	phone call	Graciela Martinez (me)	3-21-20	Call lasted about 10 minutes. We talked about my upcoming court date and I asked you to file certain motions.
Graciela Martinez (me)	letter	Mr. Robinson	6-7-20	I sent a letter requesting an update on my case and received no response.
Graciela Martinez (me)	letter	Mr. Robinson	8-23-20	I sent a letter with information about possible evidence and witnesses. Received no response.
Me	convo in open court	Atty	9-21-20	In court you told me a pled offer. We did not talk about the facts of my case because other people were around.

SAMPLE LETTER

Legal Mail: Letter to Attorney

I do not feel that you have kept me reasonably informed of the status of my case. These are the things/questions I want to discuss with you about my case:

I have asked you to request body cam footage and talk to certain people I believe are witnesses, and I have not heard an update on whether you have looked into that.

Please contact me via phone or in person within ten business days of the date of this letter to discuss these issues in my case.

**Other Specific Legal Concerns**

I also have concerns about:

- I want to know more information about the evidence in my case and what that means for me and my case. We have only reviewed evidence for a few minutes over the phone. I haven't seen any of the discovery.
- I have asked you to file some motions in my case and you have not done so or told me why not. If you still do not want to file, I would just like to know why not.

**Conclusion**

I am concerned that I am not receiving the level of representation that I am entitled to. I would like to be able to work with you, my court-appointed lawyer, productively on my case, so if you do not wish to advocate for me, please move to withdraw from my case so that I can request another appointment.

Thank you.

Jane Doe  
Jane Doe

} sign on the line  
and make sure to  
print your name  
below the signature.

## **KNOW THE STEPS: How to get assistance from CAAP**

### **Step 1: Write a letter to your attorney**

- Write directly to the attorney of record. Make sure to include the following:
  - o Any questions or concerns about your case or legal situation
  - o What action you would like your attorney to take
  - o A 7-10 business day timeframe for your attorney to respond
- Send the letter to your attorney by certified mail (whenever possible) and keep a copy for yourself
- Allow your attorney time to respond
- If your attorney responds and there are still more concerns, write to your attorney again, including your new questions
- If your attorney does not respond, proceed to step 2

### **Step 2: Complete your Request For Assistance form (RFA)**

- Fill out all sections and sign the form
- RFA must have:
  - o A copy of the letter you sent to your attorney regarding your concerns (not over 90 days old)
  - o A copy of your dismissal letter from the Chief Disciplinary Counsel if you previously filed a Grievance against your attorney
  - o Power of Attorney (POA), or Letter of Protection (LOP) if necessary

**\*\*\* RFAs that do not comply with the requirements will not be processed.**

### **Step 3: Send the RFA form to CAAP**

- **Mail, Fax or E-mail the RFA and attachments to CAAP**
- Allow 5 business days for CAAP to process your request
- RFAs are processed in the order in which they are received
- If we are able to process your request, you can expect to receive a letter from CAAP along with a copy of the letter we send to your attorney
- If your request is denied, you will receive a letter or phone call explaining why

### **REMEMBER:**

- The Client-Attorney Assistance Program is a voluntary program. Our purpose is to help clients communicate better with their attorneys; we **cannot compel** your attorney to take a specific action
- **CAAP cannot contact your attorney on your behalf while a grievance is pending**
- CAAP can only contact an attorney on behalf of the client of that attorney. If you are not a client of the attorney who is the subject of the RFA, you **must include a copy** of the Power of Attorney form with the Request for Assistance
- Requests for client files on **criminal cases** are subject to the discovery rules of the specific jurisdiction and The Texas Code of Criminal Procedure, and Powers of Attorney may not be honored

## REQUEST FOR ASSISTANCE

### The State Bar of Texas Client-Attorney Assistance Program

P.O. Box 12487 Austin, TX 78711-2487 [caap@texasbar.com](mailto:caap@texasbar.com) Phone: (800) 932-1900/Fax: (512) 427-4442

**Please be advised that the CAAP process and Grievance process may not take place at the same time.**

#### Section A

*Please Print Clearly*

<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms. (Person completing this application. If not the client, you must provide Power of Attorney)			
Name _____ <small>First Last TDCJ/SID#</small>		Telephone # _____	
Address _____ <small>Street City State Zip Code</small>		E-Mail: _____	

#### Section B

<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms. (If the person completing this application is not the client or the attorney seeking assistance, please answer the following)			
Client's Name _____ <small>First Last</small>		Telephone # _____	
Address _____ <small>Street City State Zip Code</small>		E-Mail: _____	

#### Section C

(Attorney Information)			
Name _____ <small>First Last</small>		Telephone # _____	
Address _____ <small>Street City State Zip Code</small>		Bar card # _____	

#### Section D

(Client-Attorney Relationship Information)			
Is this your <b>current</b> or <b>previous</b> attorney? (Circle One) If previous, are you currently represented by a new attorney? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Date attorney was hired/appointed: _____ Do you have a copy of the contract? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has CAAP assisted this client before? <input type="checkbox"/> Yes <input type="checkbox"/> No Type of legal matter: <input type="checkbox"/> Business <input type="checkbox"/> Civil <input type="checkbox"/> Criminal <input type="checkbox"/> Collections <input type="checkbox"/> Family Law <input type="checkbox"/> Personal Injury <input type="checkbox"/> Other _____			
Have you or this client filed a grievance against this attorney in this matter with the Chief Disciplinary Counsel Office? Yes <input type="checkbox"/> No <input type="checkbox"/>			
<b>If yes, you <u>must</u> include a copy of your grievance dismissal letter.</b>			

#### Section E

Assistance is needed with the following: <input type="checkbox"/> Itemized billing statement <input type="checkbox"/> Case Status <input type="checkbox"/> Refund <input type="checkbox"/> Client File			
<input type="checkbox"/> Copy of _____			
<input type="checkbox"/> Other _____			
What steps have been taken to resolve the problem with the attorney? _____			
_____			

***I do not intend this request to be a formal grievance against this attorney: This is a request for help to resolve this problem***

*I understand that it may be necessary to act promptly to preserve any legal rights I may have and that commencement of a civil action may be required to preserve those rights. I acknowledge my understanding that completion of this form does not constitute the commencement of a civil action and that the State Bar of Texas will not commence any civil action on my part. I acknowledge that it is my responsibility to seek and obtain any necessary legal advice with respect to this matter. I also understand that the information I send may be used to assist me and will remain confidential for purposes of resolving the issue(s) described above.*

\_\_\_\_\_  
Client/Power of Attorney Signature

\_\_\_\_\_  
Date

Legal Mail: Letter to Judge

Motion to Replace Court-Appointed Counsel and for an  
*Ex Parte* Hearing with a Sealed Record of the Proceeding

Date: \_\_\_\_\_

Dear Judge \_\_\_\_\_,

I have been appointed a lawyer, \_\_\_\_\_, to represent me who I do not believe is meeting my constitutional rights to counsel or to effective assistance of counsel.

I cannot afford to hire a lawyer, and I must rely on the Court to provide me a lawyer to meet my Sixth Amendment right to representation. If my lawyer does not perform adequately, I have no way of getting a different lawyer by myself.

I am asking the Court do make a determination under Texas Code of Criminal Procedure article 26.04(j)(2) that there is good cause to replace my lawyer with a different appointed attorney, as well as under the Sixth and Fourteenth Amendments to the United States Constitution and article 1, section 11 of the Texas Constitution. In the alternative, I am asking this Court to conduct an *ex parte* hearing, without the presence of a prosecutor, to determine whether my current court-appointed lawyer is violating my rights and whether I am entitled to a different lawyer.

I believe that the Court will find that there is good cause to assign me a different lawyer for multiple reasons that I can more fully explain in a hearing without a prosecutor present, and with a sealed record of the proceeding. Some of my complaints with my current court-appointed lawyer, to show that I have legitimate concerns that threaten my constitutional rights under the Sixth and Fourteenth Amendments to the United States Constitution, are:

1. I have no meaningful ability to communicate with my court-appointed lawyer despite repeated efforts on my part.

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2. My court-appointed lawyer either refuses to investigate my case, or has completely failed to keep me informed of the status of the investigation in my case. I have been unable to reasonably participate in my defense because my lawyer will not communicate with me.

I have tried to resolve these problems with my appointed attorney directly, without success. I have sought help from the State Bar Association's Client Attorney Assistance Program (CAAP) in communicating with my appointed attorney, and that did not help either. My appointed lawyer has no supervisor I could ask to help ensure that I am receiving my constitutionally-guaranteed representation. Therefore, I must ask this Court to replace my appointed attorney, because nobody else has the authority to ensure that I have effective assistance of counsel.

Because I am incarcerated, it is difficult for me to provide physical documentation of some of my complaints, although some of those documents do exist. I can and would substantiate my request for replacement counsel given an opportunity to explain my concerns to the Court.

I ask that the Court order that my appointed counsel be replaced with a different appointed lawyer. In the alternative, if the Court does not grant that motion then I ask the Court to grant my request for an *ex parte* hearing with a sealed record so that I can further substantiate my request for replacement counsel and the Court can rule on whether I am entitled to replacement counsel with that additional information. I have included proposed orders for each of these requests.

I am entitled to replacement counsel if there is “good cause,” which can include a “complete breakdown in communications” or a conflict of interest. *United States v. Young*, 482 F.2d 993, 995 (5th Cir. 1973). Texas courts will require me to substantiate my request for replacement counsel. *Hill v. State*, 686 S.W.2d 184, 187 (Tex. Crim. App. 1985). While Texas courts have sometimes said that they do not have to appoint my preferred lawyer, *Solis v. State*, 792 S.W.2d 95, 100 (Tex. Crim. App. 1990), they have also found that a trial court has a ministerial duty to allow someone a hearing to explain why they believe they are entitled to replace their appointed lawyer, *Melendez v. Salinas*, 895 S.W.2d 714, 715 (Tex.App– Corpus Christi 1994).

I understand that in many contexts, the Court does not rule on *pro se* motions when the defendant has a lawyer enrolled in the case. Because my complaint is specifically that the attorney enrolled in my case is not representing my interests, is not providing effective assistance of counsel, and is directly violating my personal constitutional rights, I believe the Court has a duty to look into this specific complaint on my behalf even though counsel is enrolled in this case. Otherwise, I would have no recourse for a court-appointed lawyer who refuses to represent me adequately and would have no way of meeting the burden, placed on me by Texas courts, to establish why I am entitled to replace my appointed counsel.

For the reasons stated above, I respectfully request that the Court either replace my appointed counsel or set a hearing on my Request for Replacement Court-Appointed Counsel.

Respectfully Submitted,

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**STATE OF TEXAS**

**V.**

\_\_\_\_\_

§  
§  
§  
§  
§

**IN THE \_\_\_\_ DISTRICT COURT**

**OF**

\_\_\_\_\_**COUNTY, TX**

After considering the defendant's *pro se* request to replace court-appointed counsel, and after an appropriate inquiry, this Court finds good cause exists under Texas Code of Criminal Procedure article 26.04(j)(2) to order present counsel to withdraw. Good cause exists to replace counsel because, as described by the defendant and based on the Court's independent inquiries:

- The Court appoints \_\_\_\_\_ to represent the defendant in this matter.

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JUDGE PRESIDING

CAUSE NUMBER \_\_\_\_\_

STATE OF TEXAS	§	IN THE ____ DISTRICT COURT
	§	
V.	§	OF
	§	
_____	§	_____ COUNTY, TX

**[PROPOSED] ORDER SETTING HEARING**

It is ORDERED that a hearing on the defendant's *pro se* motion to replace court-appointed counsel filed in the above-captioned cause will be held on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, at \_\_\_\_ o'clock \_\_\_\_ m. in the \_\_\_\_\_ Judicial District of Texas.

It is further ordered that this hearing be held *ex parte* to discuss the defendant's court-appointed representation without the presence of attorneys for the State. A record of the *ex parte* hearing shall be made, and that record shall be sealed.

**SIGNED** this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
JUDGE PRESIDING