

# LOUISIANA STANDARDS ON INDIGENT DEFENSE

## CHAPTER 8

### STANDARDS RELATING TO THE PROVISION OF COUNSEL TO INDIGENTS IN NON-CAPITAL CASES ON APPEAL

**Purpose and Scope of Standards.** These standards are designed to ensure that quality legal representation is afforded to indigents whose non-capital cases are on appeal. The certification process for appellate attorneys who represent indigent clients is intended not to restrict but to enlarge the available pool of qualified attorneys from which appointments in non-capital appellate cases can be made.

These standards address the establishment of a process for certifying attorneys as eligible to represent indigent clients in felony appeals, the provision of workload standards, and the establishment of guidelines relating to attorney performance and support.

**Part I. General Principles of Certification Eligibility.** The following standards shall guide the certification process by which an attorney may be considered eligible to represent on appeal indigent clients convicted of non-capital felonies.

**Standard 8-1.1. Attorney in Good Standing.** To be eligible for certification with respect to the provisions of this Chapter, an attorney shall be familiar with the practice and procedure of the courts of appeal of Louisiana and shall be a member in good standing of the Louisiana Bar or admitted to practice *pro hac vice*.

**Standard 8-1.2. Initial Training Requirement.** Within one year of an initial application for certification under any of the provisions of this Chapter, an attorney shall complete at least one appellate training program approved by the Louisiana Indigent Defender Board.

**Standard 8-1.3. Continuing Training Requirement.** To maintain certification under any of the provisions of this Chapter, previously certified counsel shall complete, every two years, at least one appellate training program, approved by the Louisiana Indigent Defender Program.

**Part II. Appellate Counsel.** Appellate counsel in a non-capital case shall meet the following requirements, in addition to the minimum requirements provided in Part I of this Chapter:

**Standard 8-2.1. Sentences of Five Years or Less.** In felony cases in which a sentence has been suspended and the defendant placed on probation or the sentence is five years or less, with or without hard labor, appellate counsel shall:

(A) Have filed at least one brief in a Louisiana appellate court in a criminal case within the past two years;

(B) Have equivalent appellate experience, including filing civil or criminal appellate briefs in other jurisdictions, serving as an appellate law clerk, or other comparable work; or

(C) Have completed at least one appellate training program approved by the Louisiana Indigent Defender Program.

**Standard 8-2.2. Sentences of Over Five Years.** In felony cases in which the sentence actually imposed is over five years, with or without hard labor, appellate counsel shall:

(A) Have filed at least three briefs in Louisiana appellate courts in criminal cases within the past two years; or

(B) Have equivalent appellate experience, including filing civil or criminal appellate briefs in other jurisdictions, serving as an appellate law clerk, or other comparable work; and

(C) Have submitted one sample of an appellate brief for review by the Louisiana Indigent Defender Board.

**Part III. Certification Procedure.** Any attorney who desires to be certified under the guidelines of this Chapter shall do so in accordance with the policies and procedures established and promulgated by the Louisiana Indigent Defender Board.

**Part IV. Removal.** Attorneys certified within the guidelines of this Chapter shall be monitored to ensure eligibility.

**Standard 8-4.1.** An attorney who fails to maintain his or her good standing before the bar or the educational requirements as defined in Part I of this Chapter shall be decertified by the Louisiana Indigent Defender Board for purposes of appointment in non-capital appellate cases. An attorney may seek recertification once the criteria of Part I are satisfied.

**Standard 8-4.2.** When there is compelling evidence that an attorney has inexcusably ignored basic responsibilities of an effective lawyer, resulting in prejudice to an indigent client's case, the attorney shall not be considered certified for purposes of appointment in appellate cases. In this instance, an attorney shall be given an opportunity to respond in writing to specific charges of ineffectiveness.

**Standard 8-4.3.** Representation of an accused establishes an inviolable attorney-client relationship. Thus, an attorney's eligibility to represent an indigent client may not be reviewed, except by a court of proper jurisdiction, on the basis of conduct involving a case in which the attorney is presently actively representing the indigent client.

**Standard 8-4.4.** An attorney decertified under Standard 8-4.2 shall not be recertified unless the decertification is shown to have been erroneous or it is established by clear and convincing evidence that the cause of the failure to meet basic responsibilities has been identified and corrected.

**Part V. Number of Attorneys in Felony Appeals.** The following number of attorneys should be appointed in appellate cases involving an indigent client convicted of a non-capital felony:

**Standard 8-5.1. Appellate Counsel.** In cases in which a defendant is convicted of a felony and an appeal as of right has been granted, at least one attorney certified as appellate counsel in accordance with this Chapter shall be assigned to represent the defendant.

**Part VI. Workload.** The following standards shall serve as guides to attorneys eligible for appointment in felony appeals.

**Standard 8-6.1. Professional Obligation.** Attorneys accepting appointments pursuant to these standards should provide each indigent client with quality representation in accordance with constitutional and professional standards. Counsel should not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

**Standard 8-6.2. Determination of Workload.** To determine maximum workload, an attorney should consider, among other factors, quality of representation, speed of turnover of cases, number and type of cases pending on appeal, percentage of cases tried, extent of support services available, court procedures, and involvement in complex litigation.

**Part VII. Standards of Appellate Representation.**

**Standard 8-7.1. Attorney-Client Relationship.** Appellate counsel shall, to the

best of his or her ability, act as the client's counselor and advocate, undeflected by conflicting interests and subject to the applicable law and rules of professional conduct.

**Standard 8-7.2. Conflict of Interest.** Appellate counsel may represent more than one of multiple co-defendants on appeal if there is no conflict of interests.

**Standard 8-7.3. Communication with Client.** Appellate counsel shall:

(A) Apprise the client of the reasonably foreseeable consequences of pursuing an appeal in the particular case under consideration;

(B) Apprise the client of the progress of the case and promptly forward to the client copies of pleadings filed on his or her behalf, and orders and opinions issued by the court in his or her case; and

(C) Apprise the client, upon disposition of the case, of the courses of action which may be pursued as a result of that disposition, and the scope of any further representation counsel will provide.

**Standard 8-7.4. Compliance with Court Rules.** In any appeal of right, appellate counsel shall comply with the applicable court rules regarding the timely and proper filing of claims on appeal and shall take any other steps which may be necessary to protect the client's right to review, even in cases where appellate counsel is of the opinion that no errors should be urged.

**Standard 8-7.5. Review of Record.** Appellate counsel shall promptly request and review all pertinent transcripts and lower court records.

**Standard 8-7.6. Claims of Error.** Appellate counsel shall:

(A) Investigate potentially meritorious claims of error not reflected in the trial court record when counsel has a reasonable belief that such claims exists;

(B) Move for and conduct such evidentiary hearings as may be required to create or supplement a record for review of any claim of error not adequately supported by existing records when counsel has a reasonable belief that such a claim is meritorious;

(C) Assert claims of error which are supported by facts of record, which will benefit the client if successful, which possess arguable legal merit, and which

should be recognizable by a practitioner familiar with criminal law and procedure who engages in diligent legal research; and

(D) Not hesitate to assert claims which may be complex, unique, or controversial in nature, such as issues of first impression, challenges to the effectiveness of other defense counsel, or arguments for change in the existing law.

**Standard 8-7.7. Representation *In Propria Persona*.** When a client insists that a particular claim be raised on appeal against the advice of appellate counsel, counsel shall inform the defendant that he or she has the right to present the claim to the appellate court *in propria persona*. Should the client elect to proceed in that manner, counsel shall provide necessary advice to assist the client in conforming the pleadings for acceptability to the court.

**Standard 8-7.8. Dismissing Appeal.** Appellate counsel shall not take steps towards dismissing an appeal without first obtaining the defendant's informed consent.

**Standard 8-7.9. Termination of Services.** At whatever point in the proceedings appellate counsel's representation terminates, counsel shall cooperate with the client and any successor counsel in the transmission of records and information.

**Standard 8-7.10. Fees.** Appellate counsel shall not seek or accept fees from the client or from any other source on the client's behalf other than those authorized by the appointing authority.

## **Part VIII. Support Services.**

**Standard 8-8.1. Securing Support Services.** Counsel appointed to represent an indigent client on appeal should secure all proper and necessary support services necessary to prepare and present an adequate case on appeal. An attorney should use all available support services and facilities needed for an effective performance at every stage of the appellate process. Counsel should seek financial and technical assistance from all possible sources, including the district indigent defender board and the Appellate Program and District Assistance Fund of the Louisiana Indigent Defender Board.