

LOUISIANA STANDARDS ON INDIGENT DEFENSE

CHAPTER 1

STANDARDS RELATING TO THE PERFORMANCE OF INDIGENT DEFENSE SYSTEMS

Purpose and Scope of Standards. These standards provide recommended and aspirational guidelines for the consideration and use by district indigent defender boards in providing quality services to their indigent clients. The immediate attainment of these standards by a district indigent defender board is not a mandatory requirement for participation in the financial assistance programs of the Louisiana Indigent Defender Board. However, a district indigent defender board's assent to these standards, as goals to be immediately worked toward and to be achieved over time, is a requirement for such participation.

These standards are intended to supplement and in no way abrogate the Rules of Professional Conduct. Nor are these standards in any way intended to confer upon indigent defendants substantive rights beyond those recognized by the federal and state constitutions and enactments of the legislature.

These standards are intended to be used as a guide to professional conduct and performance. They are not intended to be used as criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

Part I. General Principles. The following general standards shall guide district indigent defender boards in providing quality services to their indigent clients:

Standard 1-1.1. Objective. The objective in providing counsel to indigent defendants is to assure that quality legal representation is afforded to such defendants at all stages of the proceedings against them.

Standard 1-1.2. Professional Independence. All district indigent defender boards should develop and implement plans to guarantee the integrity of the relationship between lawyer and client. The appointment of lawyers to represent indigent defendants should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice.

Standard 1-1.3. Supporting Services. All district indigent defender boards should provide for investigatory, expert, and other services necessary to quality legal representation. These supporting services should include not only those services and facilities needed for an effective defense at trial but also

those that are required for effective defense participation in every phase of the process.

Standard 1-1.4. Training and Professional Development. All district indigent defender boards should require and assist the attorneys under their control to fulfill the continuing legal education requirements set by the Louisiana Indigent Defender Board and to avail themselves of the other training and professional development services sponsored by the Louisiana Indigent Defender Board or by other entities.

Part II. Assigned Counsel Systems. The following standards shall guide district indigent defender boards in providing quality services to their clients through the use of assigned counsel:

Standard 1-2.1. Systematic Assignment. District indigent defender boards should assign counsel on the basis of a systematic and publicized method of distributing assignments. Except where there is a need for an immediate assignment for temporary representation, assignments should not be made to lawyers merely because they happen to be present in court at the time the assignment is made. A lawyer should never be assigned for reasons personal to the person making the assignments. The assigned-counsel program should be carefully managed and should be assisted and facilitated by the district indigent defender board.

Standard 1-2.2. Qualifications. District indigent defender boards should encourage lawyers licensed to practice law in the jurisdiction, who are also experienced and active in trial practice and familiar with the practice and procedures of the criminal courts, to submit their names for inclusion on the roster of attorneys from which assignments are made. Each district indigent defender board should develop and adopt specific qualification standards for attorney eligibility, and they should encourage the private bar to become qualified pursuant to such standards.

Standard 1-2.3. Rotation of Assignments. District indigent defender boards should work to distribute assignments as widely as possible among the qualified members of the bar. Assignments should be made in an orderly way to avoid patronage and its appearance, and to assure fair distribution of assignments among all whose names appear on the roster of eligible lawyers. Ordinarily, assignments should be made in the sequence that the names appear on the roster of eligible lawyers. Where the nature of the charges or other circumstances require, a lawyer may be selected because of his or her special qualifications to serve in the case, without regard to the established sequence.

Standard 1-2.4. Removal of Lawyers from Roster. District indigent defender boards should periodically revise their rosters of attorneys to remove

those who have not provided quality legal representation or who have refused to accept appointments on enough occasions to evidence lack of interest. Specific criteria for removal should be adopted in conjunction with the district indigent defender board's development of qualification standards.

Standard 1-2.5. Compensation. District indigent defender boards should ensure that assigned counsel receive prompt compensation at a reasonable hourly rate consistent with the guidelines and standards for compensation established by the Louisiana Indigent Defender Board. The district boards should also ensure that assigned counsel are promptly compensated for their reasonable out-of-pocket expenses. Assigned counsel should be compensated for all hours necessary to provide quality legal representation. Compensation for assigned counsel should be approved by the chief indigent defender of the district board.

Part III. Contract Defense Systems. The following standards should guide district indigent defender boards in providing quality services to their indigent clients through the use of contract attorneys:

Standard 1-3.1. General Principles. District indigent defender boards should develop and promulgate procedures for the award of contracts substantially in advance of the scheduled date of award. They should ensure the professional independence of the contractor from the board and should avoid having a contract that creates conflicts of interest between the contractor and the board and the contractor and the indigent client. They should not award contracts primarily on the basis of cost but rather the quality of representation.

Standard 1-3.2. Specific Contractual Elements. District indigent defender boards should develop contracts with provisions that ensure quality legal representation and fully describe the rights and duties of the parties, including the compensation to be paid to the contracting attorney. Such contracts should also include, but not be limited to, the following specific contractual elements:

- (A) The categories of cases in which the contractor is to provide services;
- (B) The term of the contract and the responsibility of the contractor for completion of cases undertaken within the contract term;
- (C) The basis and method for determining eligibility of persons served by the contract, consistent with the standards for determining indigency recommended by the Louisiana Indigent

Defender Board;

(D) Identification of attorneys who will perform legal representation under the contract and prohibition of substitution of counsel without prior approval;

(E) Allowable workloads for individual attorneys, and measures to address excessive workloads, consistent with standards recommended by the Louisiana Indigent Defender Board;

(F) Minimum levels of experience and specific qualification standards for contracting attorneys, including special provisions for complex matters such as capital cases, consistent with the standards recommended by the Louisiana Indigent Defender Board;

(G) A policy for conflict of interest cases and the provision of funds outside the contract to compensate conflict counsel for fees and expenses;

(H) Guidelines on the practice of law outside of the contract by the contractor;

(I) Reasonable compensation levels and a designated method of payment;

(J) Sufficient support services and reasonable expenses for investigative services, expert witnesses and other litigation expenses;

(K) Supervision, evaluation, training and professional development;

(L) Provision of or access to an appropriate library;

(M) Protection of client confidences, attorney-client information and work product related to contract cases;

(N) A system of case management and reporting; and

(O) The grounds for termination of the contract by the parties.

Part IV. Staff Defense Systems. The following standards should guide district indigent defender boards in providing quality services to their indigent clients through the use of staff attorneys:

Standard 1-4.1. Chief Defender and Staff. Selection of the chief defender and staff should be made on the basis of merit. Recruitment of attorneys should include special efforts to employ women and members of minority groups. The chief defender and staff should be compensated at the rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in prosecutorial offices. The chief defender should be appointed for a fixed term of years and be subject to renewal. Neither the chief defender nor staff should be removed except upon a showing of good cause.

Standard 1-4.2. Restrictions on Private Practice. Defense organizations should be staffed with full-time attorneys. All such attorneys should be prohibited from engaging in the private practice of criminal law in the jurisdiction in which the attorney serves as a staff attorney. An attorney may be permitted by the district indigent defender board to have a private civil law practice, provided that such practice does not conflict with or otherwise adversely affect the duties owed by the attorney to his or her indigent clients.

Standard 1-4.3. Facilities; Library. Every defender office should be located in a place convenient to the courts and be furnished in a manner appropriate to the dignity of the legal profession. A library of sufficient size, considering the needs of the office and the accessibility of other libraries, and other necessary facilities and equipment should be provided.

Part V. Types of Proceedings and Quality of Representation. The following standards should guide district indigent defender boards in providing counsel in various proceedings and in maintaining a high quality of representation:

Standard 1-5.1. Criminal Cases. Counsel should be provided in all proceedings for offenses punishable by death or incarceration, regardless of their denomination as felonies, misdemeanors, or otherwise. An offense is also deemed to be punishable by incarceration if the fact of conviction may be established in a subsequent proceeding, thereby subjecting the defendant to incarceration.

Standard 1-5.2. Collateral Proceedings. Counsel should be provided in all proceedings arising from or connected with the initiation of criminal actions against the accused, in accordance with law, including but not limited to extradition, mental competency, post-conviction relief, and probation and parole revocation, regardless of the designation of the tribunal in which they occur or classification of the proceedings as civil in nature.

Standard 1-5.3. Impact Litigation. The following standards shall guide district indigent defender boards in providing representation in actions involving classes of defendants and fundamental rights:

- (A) The defense system should permit pursuit of litigation which

affects:

(1) Substantial numbers of similarly situated clients of the program; or

(2) Fundamental rights which cannot otherwise be effectively protected.

(B) Any such litigation should be undertaken only when it is in the best interests of the affected clients.