

LOUISIANA STANDARDS ON INDIGENT DEFENSE

CHAPTER 5

STANDARDS RELATING TO THE EARLY NOTIFICATION, ASSIGNMENT, AND CONTINUOUS REPRESENTATION OF INDIGENTS

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 acted upon 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. Stage of the Proceedings. The following standards shall guide district indigent defender boards in providing representation to their indigent clients at various stages of the proceedings:

Standard 5-1.1. Initial Provision of Counsel. Upon request, counsel should be provided to indigent persons who are in need of legal representation arising from criminal proceedings or as otherwise provided by law. Counsel should be provided to the accused as soon as feasible and, in any event, after custody begins, at appearance before a committing magistrate, or when formal charges are filed, whichever occurs earliest. The authorities should promptly notify the district indigent defender organization whenever the person in custody requests counsel or is without counsel.

Standard 5-1.2. Initial Provision of Counsel; Capital Cases. In capital cases, two qualified and certified trial attorneys should be assigned to represent the accused, in accordance with the *Louisiana Standards on Indigent Defense: Standards Relating to the Provision of Counsel to Indigents Accused of Capital Crimes*. In the event certified counsel is not immediately available to assume representation, uncertified counsel should be provided

to the accused as soon as feasible. Counsel appointed shall continue until such time as certified counsel is secured.

Standard 5-1.3. Providing Counsel to Persons in Custody.

(A) A person taken into custody or otherwise deprived of liberty should immediately be informed, preferably by defense counsel, of the right to legal representation. An offer of counsel should be made in words easily understood, and it should be stated expressly that one who is unable to pay for representation is entitled to counsel.

(B) Custodial authorities should provide access to a telephone, the telephone number of staff counsel, assigned counsel, or contract counsel, and any other means necessary to establish communication with a lawyer.

(C) District indigent defender organizations should ensure that information on access to counsel is provided to persons in custody. An attorney or representative from the district indigent defense organization should be available to respond as soon as feasible to a person in custody who requests the services of counsel.

Standard 5-1.4. Duration of Representation. Counsel should be provided by district indigent defender organizations at every stage of the proceedings as provided by law, including sentencing and appeal. When required, counsel should be provided for collateral proceedings, including certiorari and post-conviction review. When required in capital cases, counsel also should be provided in clemency proceedings. Whenever possible, counsel initially provided should continue to represent the defendant throughout the trial court proceedings and should preserve the defendant's right to appeal, if necessary.

Standard 5-1.5. Removal. Representation of an accused establishes an inviolable attorney-client relationship. Removal of counsel from representation of an accused by a district indigent defender board, therefore, should not occur over the objection of the attorney and the client except for good cause shown.