

LOUISIANA STANDARDS ON INDIGENT DEFENSE

CHAPTER 9

STANDARDS RELATING TO CONFLICTS OF INTERESTS IN THE 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.

Standard 9-1.1. Conflicting Interests.

(A) Counsel's professional judgment or obligations should not be affected by his or her own political, financial, business, property, or personal interests.

(B) Counsel should disclose to the defendant at the earliest feasible opportunity any interest in or connection with the defendant's case or any other matter that might be relevant to counsel's continued representation of the defendant. Such disclosure should include communication of information reasonably sufficient to permit the client to appreciate the significance of any conflict or potential conflict of interest.

Standard 9-1.2. Associated Counsel.

(A) Except for preliminary matters such as initial hearings or applications for bail, counsel who are associated in practice should not undertake to defend more than one defendant in the same criminal case if the duty to one defendant may conflict with the duty to

another.

(B) Except as the law may otherwise expressly permit, defense counsel should not negotiate to employ or associate any person who is significantly involved as an attorney or employee of the government in a matter in which defense counsel is participating personally and substantially if to do so would lead one reasonably to believe that such negotiations may influence the prospective employee in the handling of the matter in common.

Standard 9-1.3. Multiple Representation. The potential for conflict of interest in representing multiple defendants is so grave that ordinarily defense counsel should decline to act for more than one of several codefendants except in unusual situations when, after careful investigation, it is clear either that no conflict is likely to develop at trial, sentencing, or at any other time in the proceeding or that common representation will be advantageous to each of the codefendants represented and, in either case, that:

(A) The several defendants give an informed consent to such multiple representation; and

(B) The consent of the defendants is made a matter of judicial record. In determining the presence of consent by the defendants, the trial judge should make appropriate inquiries respecting actual or potential conflicts of interest of counsel and whether the defendants fully comprehend the difficulties that defense counsel may encounter in defending multiple clients.

Standard 9-1.4. Former Representation. Counsel who has formerly represented a defendant should not thereafter use or reveal confidential information related to the former representation to the disadvantage of the former client unless the information has become generally known or the ethical obligation of confidentiality otherwise does not apply.

Standard 9-1.5. Employment by the Prosecution.

(A) Counsel should not defend a criminal case in which counsel's partner or associate is or has been the prosecutor in the same case.

(B) Counsel who formerly participated personally and substantially in the prosecution of a defendant should not thereafter represent any person in the same or a substantially related matter.

(C) Defense counsel who was formerly a prosecutor should not use or reveal confidential or privileged information about a person acquired when defense counsel

was a prosecutor in the representation of a client whose interests are adverse to that person in a matter.

(D) Counsel who is related to a prosecutor as parent, child, sibling, or spouse should not represent a client in a criminal matter where counsel knows the government is represented in the matter by such prosecutor. Nor should counsel who has an intimate or significant financial relationship with a prosecutor represent a client in a criminal matter where defense counsel knows the government is represented in the matter by such prosecutor, except upon consent by the client after full disclosure regarding the relationship.