Ten Principles of a Public Defense Delivery System

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ABA Standing Committee
On Legal Aid And Indigent Defendants

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TEN PRINCIPLES

OF A PUBLIC DEFENSE DELIVERY SYSTEM

February 2002

Approved by American Bar Association House of Delegates, February 2002. The American Bar Association recommends that jurisdictions use these Principles to assess promptly the needs of public defense delivery systems and clearly communicate those needs to policy makers.
INTRODUCTION

The ABA Ten Principles of a Public Defense Delivery System were sponsored by the ABA Standing Committee on Legal and Indigent Defendants and approved by the ABA House of Delegates in February 2002. The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney. The more extensive ABA policy statement dealing with indigent defense services is contained within the ABA Standards for Criminal Justice, Providing Defense Services (3d ed. 1992), which can be viewed on-line (black letter only) and purchased (black letter with commentary) by accessing the ABA Criminal Justice Section homepage at http://www.abanet.org/crimjust/home.html.

ACKNOWLEDGMENTS

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Special thanks go to the members of the Standing Committee and its Indigent Defense Advisory Group who reviewed drafts and provided comment. Further, the Standing Committee is grateful to the ABA entities that provided invaluable support for these Principles by co-sponsoring them in the House of Delegates, including: Criminal Justice Section, Government and Public Sector Lawyers Division, Steering Committee on the Unmet Legal Needs of Children, Commission on Racial and Ethnic Diversity in the Profession, Standing Committee on Pro Bono and Public Services. We would also like to thank the ABA Commission on Homelessness and Poverty and the ABA Juvenile Justice Center for their support.

L. Jonathan Ross
Chair, Standing Committee on Legal Aid and Indigent Defendants
ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

Black Letter

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.

2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.

4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

5. Defense counsel’s workload is controlled to permit the rendering of quality representation.

6. Defense counsel’s ability, training, and experience match the complexity of the case.

7. The same attorney continuously represents the client until completion of the case.

8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

9. Defense counsel is provided with and required to attend continuing legal education.

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.
The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.

Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar. The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services. The appointment process should never be ad hoc, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction. Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.

Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention, or request, and usually within 24 hours thereafter.

Defense counsel is provided sufficient time and a confidential space within which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date. Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.

Defense counsel’s workload is controlled to permit the rendering of quality representation. Counsel’s workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.

National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney’s nonrepresentational duties) is a more accurate measurement.
Defense counsel’s ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.

The same attorney continuously represents the client until completion of the case. Often referred to as “vertical representation,” the same attorney should represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases, and separately fund expert, investigative, and other litigation support services. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.

Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.
1 “Counsel” as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. “Defense” as used herein relates to both the juvenile and adult public defense systems.


3 NSC, supra note 2, Guidelines 2.10-2.13; ABA, supra note 2, Standard 5-1.3(b); Assigned Counsel, supra note 2, Standards 3.2.1, 2; Contracting, supra note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/ American Bar Association, Juvenile Justice Standards Relating to Counseling for Private Parties (1979) [hereinafter “ABA Counsel for Private Parties”], Standard 2.1(D).

2 Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Independence, 1997).

5 ABA, supra note 2, Standard 5-4.1

6 “Sufficiently high” is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase generally can be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

7 NAC, supra note 2, Standard 13.5; ABA, supra note 2, Standard 5-1.2; ABA Counsel for Private Parties, supra note 2, Standard 2.2. “Defender office” means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

8 ABA, supra note 2, Standard 5-1.2(a) and (b); NSC, supra note 2, Guideline 2.3; ABA, supra note 2, Standard 5-2.1.

9 NSC, supra note 2, Guideline 2.3; ABA, supra note 2, Standard 5-2.1.

10 ABA, supra note 2, Standard 5-2.1 and commentary; Assigned Counsel, supra note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

11 NSC, supra note 2, Guideline 2.4; Model Act, supra note 2, § 10; ABA, supra note 2, Standard 5-1.2(c); Gideon v. Wainwright, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

12 For screening approaches, see NSC, supra note 2, Guideline 1.6 and ABA, supra note 2, Standard 5-7.3.

13 NAC, supra note 2, Standard 13.3; ABA, supra note 2, Standard 5-6.1; Model Act, supra note 2, § 3; NSC, supra note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, supra note 2, Standard 2.4(A).

14 NSC, supra note 2, Guideline 1.3.

16 NSC, supra note 2, Guideline 5.10; ABA Defense Function, supra note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, supra note 15, Guideline 2.2.


18 NSC, supra note 2, Guidelines 5.1, 5.3; ABA, supra note 2, Standards 5-5.3; ABA Defense Function, supra note 15, Standard 4-1.3(e); NAC, supra note 2, Standard 13.12; Contracting, supra note 2, Guidelines III-6, III-12; Assigned Counsel, supra note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, supra note 2, Standard 2.2(B)(iv).

19 Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (NSC Guideline 5.1) or “under no circumstances exceed” (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation (Judicial Conference of the United States, 1998). See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter “Death Penalty”].

20 ABA, supra note 2, Standard 5-5.3; NSC, supra note 2, Guideline 5.1; Standards and Evaluation Design for Appellate Defender Offices (NLADA 1980) [hereinafter “Appellate”], Standard 1-F.

21 Performance Guidelines, supra note 15, Guidelines 1.2, 1.3(a); Death Penalty, supra note 19, Guideline 5.1.

22 NSC, supra note 2, Guidelines 5.11, 5.12; ABA, supra note 2, Standard 5-6.2; NAC, supra note 2, Standard 13.1; Assigned Counsel, supra note 2, Standard 2.6; Contracting, supra note 2, Guidelines III-12, III-23; ABA Counsel for Private Parties, supra note 2, Standard 2.4(B)(ii).

23 NSC, supra note 2, Guideline 3.4; ABA, supra note 2, Standards 5-4.1, 5-4.3; Contracting, supra note 2, Guideline III-10; Assigned Counsel, supra note 2, Standard 4.7.1; Appellate, supra note 20 (Performance); ABA Counsel for Private Parties, supra note 2, Standard 2.1(B)(iv). See NSC, supra note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). Cf. NAC, supra note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

24 ABA, supra note 2, Standard 5-2.4; Assigned Counsel, supra note 2, Standard 4.7.3.

25 NSC, supra note 2, Guideline 2.6; ABA, supra note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, supra note 2, Guidelines III-6, III-12, and passim.

26 ABA, supra note 2, Standard 5-3.3(b)(s); Contracting, supra note 2, Guidelines III-8, III-9.

27 ABA Defense Function, supra note 15, Standard 4-1.2(d).

28 NAC, supra note 2, Standards 13.15, 13.16; NSC, supra note 2, Guidelines 2.4(4), 5-6.8; ABA, supra note 2, Standards 5-1.5; Model Act, supra note 2, § 10(e); Contracting, supra note 2, Guideline III-17; Assigned Counsel, supra note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA Defender Training and Development Standards (1997); ABA Counsel for Private Parties, supra note 2, Standard 2.1(A).

29 NSC, supra note 2, Guidelines 5.4, 5.5; Contracting, supra note 2, Guidelines III-16; Assigned Counsel, supra note 2, Standard 4.4; ABA Counsel for Private Parties, supra note 2, Standards 2.1 (A), 2.2; ABA Monitoring, supra note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.