

Standards for Providing
Constitutionally and Statutorily
Mandated Legal Representation in
New York State

2004

Standards for Providing
Constitutionally and Statutorily
Mandated Legal Representation in
New York State

*Adopted by the Board of Directors,
New York State Defenders Association
July 25, 2004*

*Approved by the Chief Defenders of New York State
July 25, 2004*

New York State Defenders Association
194 Washington Avenue, Suite 500
Albany, NY 12210-2314
(518) 465-3524
(518) 465-3249 (fax)
www.nysda.org



TABLE OF CONTENTS

Introduction	vii
------------------------	-----

STANDARDS FOR PROVIDING CONSTITUTIONALLY AND STATUTORILY MANDATED LEGAL REPRESENTATION IN NEW YORK STATE

Statement of Purpose	1
I. Objective	2
II. Independence.	3
III. Funding	4
IV. Workload	5
V. Scope of Representation (Types and Stages of Proceedings)	7
VI. Training and Internal Supervision.	8
VII. Eligibility of Clients.	9
VIII. Duties of Counsel	11
A. Criminal Defense Counsel	11
B. Family Court Counsel	14

INTRODUCTION

The Board of Directors of the New York State Defenders Association (NYSDA) unanimously adopted these “Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State” on July 25, 2004. This followed a unanimous vote of the Chief Defenders of New York State¹ approving the standards.

Tailored to New York’s public defense scheme, the standards set out requirements covering: Independence (of defense services), Funding, Workload, Scope of Representation, Training and Supervision, and Eligibility (of Clients). Also addressing Duties of Counsel (in both criminal and family court representation), the standards provide a concise set of best practices.

A Timely Compilation of Requirements

Created with input from large urban defender programs and chief defenders in rural counties, from county public defender offices, legal aid societies, and assigned counsel programs, and from chief defenders across the political spectrum with myriad views on how best to conduct and improve mandated legal services, these standards are not aspirational. They contain what those in the best position to know agree is *required* of public defense programs and practitioners.

The standards come into existence at a propitious moment, as the New York State Bar Association and the Unified Court System examine indigent defense, as the legislative and executive branches prepare to monitor implementation of last year’s fee increase, as NYSDA’S Client Advisory Board completes the development of its own standards, and as headlines about wrongful convictions stir the public’s concern about problems in the justice system.

¹ The heads of every public defense program in New York State are invited to Chief Defender Convenings, including the one at which these standards were adopted, and comprise The Chief Defenders of New York State.

A Historical Perspective

These standards arose from a deliberative process spanning many years. In 1983, NYSDA's Board of Directors set up a committee to work toward adoption of NYSDA standards for public defense. Standards were deliberated upon. Thereafter, the Association sought comment on those proposed standards by publishing them serially in *The Defender*, NYSDA's magazine. The *Model Public Defense Case and System*, a document based on national standards, ethical canons and decisional law, was later published by NYSDA and used in a series of technical assistance visits throughout the state, demonstrating the need for state-wide standards.

National standards and other benchmarks also informed the development of the New York standards. A proliferation of standards at the national, state, and local levels—all reflecting basic principles including the importance of independence, sufficient funding, and proper training—demonstrated the importance of such guidelines. This was reinforced by the United States Department of Justice decision to compile public defense standards. The resulting 2001 publication, the “Compendium of Standards For Indigent Defense Systems,” was consulted in the development of these New York standards, which now take their place among those other standards.² All of these historical efforts informed the standards ultimately developed and adopted by the NYSDA Board on the recommendation of the Chief Defenders.

Between 1998 and 2004, NYSDA and the League of Women Voters of New York State conducted a series of fact-finding hearings throughout the State. Testifying at those hearings were public defenders, private lawyers, assigned counsel practitioners, legal aid attorneys, judges, county officials, clients, and other advocates. Simultaneously, discussions on public defense reform involving the Chief Defenders and representatives from the League of Women Voters of New York State, the New York State Association of Criminal Defense Lawyers and other bar associations underscored the need for statewide standards.

In December 2000 the Chief Defenders of New York agreed to participate in a project to create standards for the provision of public defense. The Chief Defenders reviewed and discussed draft standards,

² In standards development parlance, NYSDA staff has functioned as the Reporter in this development effort. Commentary, providing references to related standards and to documented examples of the practices and problems addressed by these standards, is being drafted.

as well as potential uses for statewide standards, at a series of meetings conducted between 2000 and 2004.

Standards Should Ensure Justice for All

Reflecting the broad range of mandated legal services in New York State and problems common to all, these standards emphasize that public defense clients and their lawyers should have resources in parity with agencies seeking to deprive eligible individuals of liberty and liberty interests. The standards provide New York governmental entities at all levels measures by which to ensure that they meet their constitutional and statutory duties. Ultimately, the standards should help guarantee that in New York State, there is truly justice for all.

November 2004

STANDARDS FOR PROVIDING CONSTITUTIONALLY AND STATUTORILY MANDATED LEGAL REPRESENTATION IN NEW YORK STATE

Statement of Purpose

The Federal and State Constitutions, and certain state statutes, mandate the provision of quality counsel in various New York State proceedings. State provision of quality legal services to those who cannot otherwise afford legal services in those proceedings serves the ends of justice and affirms the faith of our citizens in our government of laws. Representing clients eligible for these services is a unique governmental obligation. Lawyers provided as a result of governmental mandates must advocate for their clients, not for the government that pays them. These attorneys must demand due process in the government's forums against governmental efforts to limit or take away their clients' inalienable rights to life and liberty.

Standards to guarantee proper performance of this singular governmental function are essential. Clients represented by publicly-paid lawyers cannot use the mechanism of a free market to secure the best possible representation. These standards are meant to ensure that the methods of selecting, overseeing, and compensating such lawyers enable the lawyers to represent their clients ethically and professionally. These standards draw heavily on existing national and local standards, especially:

- American Bar Association [ABA], *Standards for Criminal Justice, Providing Defense Services* (3rd ed. 1990);
- Indigent Defense Organization Oversight Committee (First Department, Appellate Division, New York) [1st Dept.], *General Requirements for All Organized Providers of Defense Services to Indigent Defendants* (1996);
- National Study Commission on Defense Services [NSC], *Guidelines for Legal Defense Systems in the United States* (1976);

- National Advisory Commission on Criminal Justice Standards and Goals [NAC], *The Courts*, “The Defense” (1973);
- National Legal Aid and Defender Association [NLADA], *Standards for the Administration of Assigned Counsel Systems* (1989); NLADA, *Standards for Defender Services*; NLADA, *Defender Training and Development Standards* (1997); NLADA, *Performance Guidelines for Criminal Defense Representation* (1995);

and other national, state, and local standards and guidelines.

Providing mandated legal representation is a comparatively new phenomenon in the history of social and human services. Much has been learned, but improvements continue. These standards are intended to assure provision of high-quality publicly-provided legal services regardless of the type of plan or program administering such services. The standards should be read to allow innovation that improves quality and to disallow policies and practices that would sacrifice quality to fiscal savings, systemic expediency, or political pressure. “Should” as it appears throughout these standards is mandatory, not aspirational.

Unless explicitly noted otherwise, these standards apply to all constitutionally and statutorily mandated legal services in New York State, whether referred to as “publicly-provided legal services,” “publicly-funded legal services,” “public defense services,” “public legal services,” or by another term. Because death penalty cases involve unique legal issues, knowledge, and skills, standards developed specifically for capital cases should be used to evaluate such representation. *See e.g.* ABA, *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (revised 2003). (The United States Supreme Court has referred to the “well-defined norms” of the ABA *Guidelines*, *see, Wiggins v Smith*, 539 US 510, 524, 123 SCt 2527, 2537, 156 L Ed2d 471, 486 [2003], citing the 1989 edition of the *Guidelines*.) *See also*, Judiciary Law 35-b *et seq.* and related statutes, case law, and standards, including minimum standards for lead and associate counsel in capital cases established by the Capital Defender Office in consultation with the administrative board of the judicial conference.

I. Objective

The objective of providing counsel is to ensure high-quality, zealous legal representation of all persons eligible for publicly-provided legal services, thereby guaranteeing individual rights and achieving equal justice under the law. This objective should inform the creation, imple-

mentation, and maintenance of all processes for providing publicly-funded counsel in New York State proceedings. It should also inform the representation provided by all publicly-compensated attorneys.

II. Independence

A. All plans and programs for providing publicly-funded legal services should be designed to guarantee the integrity of the relationships between lawyers and clients. All processes for providing counsel should be free from political influence and conflicts of interest. The lawyers provided should likewise be independent and conflict-free.

B. All local plans and programs for providing public legal services should be independent and free from political influence, while accountable for the provision of high-quality, zealous services. This requirement applies to offices or programs of all types permitted by law, whether they are free-standing or governed by local or regional boards. Actions that must be insulated from political influence and conflicts of interest include, but are not limited to:

1. funding a plan or program;
2. hiring or selecting and firing or retaining the chief attorney to head the office or program, other lawyers, and associated professionals;
3. matching the abilities of individual lawyers and associated professionals with particular cases;
4. paying salaries or fees; and
5. providing needed auxiliary resources.

C. To avoid even the appearance of improper influence, local or regional boards should not interfere with any lawyer's conduct in individual cases absent a clear violation of the Disciplinary Rules of the Code of Professional Responsibility (22 NYCRR 1200 *et seq.*) that precludes the attorney from providing effective assistance of counsel.

D. Publicly-compensated lawyers should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of lawyers for specific cases should not be made by elected officials, or *ad hoc* by the judiciary, but should be arranged through a process designed to ensure independence and quality of representation.

E. All public defense plans, programs, and individual attorneys should protect the confidences and secrets of public defense clients in

accordance with the Disciplinary Rules of the Code of Professional Responsibility (22 NYCRR 1200.19). No record or report concerning public defense representation should be deemed deficient for omitting information which would result in the disclosure of client confidences or secrets, or would otherwise compromise the interest of any public defense client. Client-related public defense records should be exempt from freedom of information law disclosure requirements.

F. Mechanisms should be created to provide all individuals involved in the provision of publicly-funded legal services an opportunity to participate in evaluating and improving the quality, cost, and effectiveness of public defense and the entire justice system.

G. Mechanisms should be created to provide formal procedures for soliciting the views of the client community on specific issues affecting statutorily and constitutionally mandated legal services. “Client community” includes clients—persons who are receiving or have received publicly-funded legal services—and clients’ families and others who care about them, representatives of geographic neighborhoods in which a significant number of clients live, and organizations dedicated to providing support and/or advocacy to clients and their families and neighborhoods.

III. Funding

A. Government has the responsibility to fund the full cost of quality legal representation for all eligible persons. Under no circumstances should the funding power be used to interfere with or retaliate against professional judgments made in the representation of clients.

B. The provision of constitutionally and statutorily mandated legal services is an ongoing function, and the efficient and effective provision of such services is dependent on administrative and individual planning. Governmental funding sources should maintain funding of existing public legal services plans or programs at the level of the prior funding cycle during any hiatus in budget authorizations. When changing public defense plans or programs, governmental authorities should maintain and fund existing plans and programs until establishment of one or more alternate, sufficiently-funded mechanism(s). Attorneys, other professionals rendering services to public defense clients, and staff of plans or programs providing public legal services should be paid in a timely fashion.

C. Funding for plans or programs must be sufficient to place the providers of publicly-funded legal services in a professional situation comparable to professional, high-quality law offices of similar size.

Salaries and fees should be sufficient to compensate attorneys, other professionals (such as investigators, social workers, sentencing experts, expert witnesses, and consultants), and support staff commensurate with their qualifications and experience, and should be at least comparable to compensation of their counterparts in the justice system. Operating expenses should provide for facilities, resources, training including continuing legal education, and all other requirements of these standards, at least comparable to, and in no event less than, that provided for other components of the justice system with whom public legal services providers must interact, including the courts, prosecution, police, presenting agencies, and others.

D. Funding must be sufficient to obtain and maintain appropriate facilities for all necessary activities. These include but are not limited to: confidential client interviews; legal research; and appropriate means of communication with courts, opposing counsel, clients, and others, including but not limited to telephone, fax, and e-mail capabilities. Funding must also be available for interpretive assistance, such as language (including sign language) interpreters, TDD or similar equipment for persons who are deaf or hard of hearing or have other communication barriers.

E. Funding must be sufficient to prevent excessive workloads (see Standard IV).

IV. Workload

A. Plans and programs, and individual assigned counsel, that provide publicly-funded legal services should refuse to accept workloads that by reason of their excessive size interfere with the rendering of high-quality representation or lead to the breach of professional obligations. Courts should not require public defense plans and programs, or individual assigned counsel, to accept excessive workloads.

B. Local geographical, procedural, policy, and other differences make statewide numerical workload limits difficult to establish. Therefore, each plan or program should establish local numerical workload standards. Among factors that should be considered in establishing workload formulas are the types of cases being handled, workload and resources of the prosecutor or other attorney(s) handling the case for the government, distance between court(s) and public defense program or attorney offices, time needed to interview clients and witnesses (distance to jails, location of confidential interview facilities, etc.), and existing national and other workload standards.

C. Workloads should be continuously monitored, assessed, and predicted so that whenever possible, excessive workload problems can be anticipated and preventive action taken. Where an individual attorney in a public defender or legal aid office believes that he or she has an excessive caseload, there should be internal office mechanisms to review the caseload of that attorney and appropriate steps should be taken.

D. Whenever plans or programs, or individual assigned counsel, determine in the exercise of their best professional judgment that the acceptance of additional cases or continuing representation in previously-accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the plan or program, or individual assigned counsel, should take appropriate steps to reduce their pending or projected workload. Appropriate steps may include but are not limited to declining additional cases, seeking leave to withdraw from existing cases, and seeking funds for additional attorneys or other needed staff or resources.

E. Where the administrator or supervisor in a plan or program determines that an individual attorney's workload is excessive, and that the attorney has declined to take measures to correct the problem or that measures to correct the problem have failed, the administrator or supervisor of the plan or program should, after notice to the attorney, preclude the attorney from receiving further publicly-funded cases until the excessive workload problem has been resolved. Except where the workload is creating a situation such as would subject any law firm to professional liability for the neglect of a legal matter if allowed to continue, the plan or program should not interfere in the continuing representation by the lawyer of existing public defense clients.

F. Where local or regional boards or commissions determine that the workload of a plan or program is excessive, and that the plan or program has declined to take measures to correct the problem or that measures to correct the problem have failed, the boards or commissions should, after notice to the plan or program, take steps to preclude the plan or program from receiving further publicly-funded cases until the excessive workload problem has been resolved. Except where the workload is creating a situation such as would subject any law firm to professional liability if allowed to continue, the boards or commissions should not interfere in the continuing representation of existing public defense clients.

V. Scope of Representation (Types and Stages of Proceedings)

A. In criminal matters:

1. Counsel should be provided in all matters relating to offenses punishable by incarceration, regardless of whether the offenses are denominated felonies, misdemeanors, or other breaches of any law, local law, or ordinance of a political subdivision of the State.
2. An offense is deemed to be punishable by incarceration if the fact of conviction on that offense may subject the defendant to incarceration in a subsequent proceeding.
3. Counsel should be provided to the accused as soon as feasible and, in any event, when counsel is requested during government interrogation, at lineups and similar events, when custody begins, at appearance before any court, or when formal charges are filed, whichever occurs earliest. The authorities should promptly notify the local plan or program responsible for publicly-provided counsel whenever a person in custody requests counsel or is without counsel. The right to counsel should be explained to the suspect or defendant, and an offer of counsel made, preferably by counsel, in words easily understood. The suspect or defendant should be expressly told that one who is unable to pay for representation is entitled to have counsel provided. Custodial authorities should provide telephone access to public defense counsel, and any other means necessary for an accused in custody to establish communication with a lawyer. The plan or program for providing public counsel should ensure that information about access to counsel is provided to those in custody, and that an attorney is available to respond promptly to requests for counsel. An attorney should have timely and confidential access to a person requesting counsel.
4. Counsel initially provided should continue to represent a defendant throughout trial court proceedings absent some reason why a change in counsel would benefit the client. When structural or staffing changes occur, the interest of the client in maintaining continuity of representation should be given significant weight in implementing those changes. Trial counsel should preserve the client's right to

appeal. Procedures should be established and followed for maintaining case files, transferring case files and shifting responsibility whenever a client's case is transferred from one attorney to another, and preserving case files at the conclusion of representation.

B. In all other matters counsel should be provided as required by constitutional or statutory mandate, in accordance with best practices in the field.

C. Representation of a client establishes an inviolable attorney-client relationship. Removal of counsel from representation of a client should not occur over the objection of the attorney and the client except where substitution of counsel is required by law.

VI. Training and Internal Supervision

A. Local plans or programs should provide for the effective training, professional development, and continuing education of all attorneys, other professionals, and staff involved in publicly-provided legal services.

1. A clear, written training plan for offering these required training opportunities should exist for every locality. The training plan should include specific goals and objectives based on regular needs assessments and reflect best training practices and existing national standards.
2. Plans or programs may choose to provide training directly and/or to pay for attendance of persons involved in public defense at appropriate local, state, or national training sessions.

B. All attorneys providing publicly-funded legal services should receive systematic, comprehensive training. Attorney training should include intensive entry-level training, regular in-service training, and opportunities to participate in regional and national training. Attorneys should have the opportunity to attend programs to keep them abreast of changes in law and procedure, make them aware of relevant developments in science, technology, and social science, and continue development of their advocacy, negotiation, and communication skills. The training should be relevant to the types of cases handled by publicly-funded lawyers. Mandatory continuing legal education credits received for training taken in areas of the law not applicable to cases in which the attorneys are providing publicly-funded representation should not count as training within the meaning of this standard nor be paid for with government funds.

C. Non-lawyer professionals, including but not limited to investigators, sentencing advocates, and paralegals, working in plans or programs or for individual attorneys providing publicly-funded legal services, or contracting with such plans or programs, should be offered training relevant to their work.

D. Support staff working in plans or programs or for individual attorneys providing publicly-funded legal services should be offered training relevant to their work, to increase efficiency and morale. Such training should include training in the use of automation technology, communication skills, and other relevant areas.

E. Offices and programs should provide supervision and mentoring of attorneys.

1. Lawyers within an office or program are subject to supervision to ensure high-quality representation and compliance with professional responsibility mandates. Lawyers should resist attempts at interference with the conduct of their individual cases on the basis of any other factors.
2. Practices and procedures consistent with these standards, including the Duties of Counsel set out in Section VIII, should guide supervision in offices and programs. The practices and procedures should include a method for resolving disagreements within an office or program about the appropriate way to proceed in an individual case. The final determination of how to proceed in an individual case, as to all matters that are not reserved to the client, should be made by the lawyer of record, or according to established practices and procedures where an office or program is the attorney of record.

VII. Eligibility of Clients

A. Persons who are financially unable to obtain representation without substantial hardship to themselves or their families should be eligible for publicly-funded, quality representation.

B. The plan for providing public legal services should provide an effective, efficient, and fair system for determining the eligibility of potential clients that effectuates the constitutional and statutory right to counsel. Provision of counsel should not be delayed while eligibility is verified. Any doubt concerning a potential client's eligibility should be resolved in favor of eligibility of the client.

C. Counsel should not be denied because friends or relatives of the potential client have resources to retain counsel, or because bond has been or can be posted, or because of the potential client's ability to make partial payment of the cost of representation.

D. No single factor, such as income, should establish a potential client's ineligibility for publicly-funded legal services. Factors to consider in determining eligibility should include, but need not be limited to: income; bank account; other liquid assets; number of dependents; cost of subsistence for the potential client and any to whom a legal duty of support is owed; current financial obligations, and whether private counsel would be interested in representing the potential client given all the charges, potential auxiliary costs of representation, and the potential client's present economic circumstances. The ownership of a motor vehicle or home should not be considered unless the value of the vehicle or home is such that immediate liquidation or encumbrance is possible and would provide the potential client with sufficient funds to maintain adequate transportation and housing in addition to immediately hiring private counsel. The potential client's assessment of the feasibility of obtaining competent representation should be given substantial weight.

E. Publicly-funded services, including but not limited to transcription of court proceedings, investigators, interpreters, and experts, should not be denied to a person who is financially eligible for publicly-provided legal services but is represented by counsel acting pro bono or paid by a third person. Nor should publicly-funded auxiliary services be denied to a person whose financial condition after payment of a reasonable fee to retained counsel makes that person unable to obtain necessary auxiliary services without substantial hardship to themselves or their families.

F. Post-representation reimbursement for the cost of providing counsel should not be required except on the ground of fraud in obtaining publicly-provided counsel.

G. Partial payment (contribution) toward the cost of counsel, if implemented at all, should not be required without adequate procedural safeguards including, but not limited to:

1. providing an opportunity for a hearing on the person's ability to make a contribution and on the amount and method of payment of that contribution, to ensure that the contribution requirement does not impose a substantial financial hardship and does not chill the exercise of the right to counsel;

2. advising the person that counsel will be provided at all stages of proceedings regardless of payment or nonpayment of the contribution;
3. advising the person that failure to pay the contribution will not lead to a finding of contempt unless the failure is willful;
4. providing a mechanism by which a person may seek remission of payment of any or all of the contribution amount on the grounds that payment will impose manifest hardship on the person or the person's family;
5. requiring a proper waiver before any of these safeguards are to be relinquished;
6. providing that the court or its designee, not the public defense provider, should be responsible for collecting mandated payments; and
7. providing that the determination of initial or continuing eligibility or ability to make partial payment should not require public counsel to disclose, except where mandated by binding ethical rules, facts concerning a client's financial status.

VIII. Duties of Counsel

The paramount obligation of publicly-funded counsel is to provide zealous and high-quality representation at all stages of the matters for which they represent their clients.

A. Criminal Defense Counsel

1. The paramount obligation of criminal defense counsel is to provide zealous and high-quality representation to their clients at all stages of the criminal process.
2. To provide high-quality representation, counsel should be familiar with the substantive criminal law and the law of criminal procedure and its application in the particular jurisdiction. Counsel has a continuing obligation to stay abreast of changes and developments in the law. Counsel should become informed as to the practices of the specific judge before whom a case is pending and of relevant policies of the district attorney's office. Before handling a criminal matter, counsel should have sufficient experience and training to provide high-quality representation.

3. Before accepting a public defense matter, counsel should make sure that counsel has available sufficient time, resources, skill, knowledge and experience to offer high-quality representation to the defendant. If it later appears that counsel is unable to offer high-quality representation, counsel should seek to withdraw. Required resources include but are not limited to: the office facilities and support staff necessary to an efficient legal practice; interview facilities that promote and protect client confidentiality and trust; and access to legal information such as an adequate law library and computerized research tools.
4. Counsel should act to avoid all potential and actual conflicts of interest that would impair counsel's ability to represent a client, and avoid handling matters where such conflicts arise. Where appropriate, counsel should consider seeking an advisory opinion on a potential conflict.
5. Counsel should keep the client informed of the progress of the case.
6. Unless inconsistent with the best interest of the client, counsel should conduct an independent investigation regardless of the accused's admissions or statements to the lawyer of facts constituting guilt. The investigation should be conducted as promptly as possible. Counsel should secure the assistance of investigators and/or other experts, including providers of social services, whenever needed for preparing any aspect of the defense, including but not limited to bail applications, pretrial motions, plea negotiations, defense at trial including developing an understanding of or rebuttal of the prosecution's case, and sentencing.
7. Counsel should ordinarily meet with the client before entering into any plea negotiation, and should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial. Counsel should know and fully explain the rights that would be waived by entering a plea rather than proceeding to trial, and should not accept any plea agreement without the client's express authorization, nor let the existence of plea negotiations preclude steps necessary to preserve and prepare a defense. Counsel should be fully aware of, and make sure the client is fully aware of, all

direct and potential collateral consequences of a conviction by plea. Counsel should develop a negotiation strategy based on knowledge of the facts and law of the particular case, the practices and policies of the particular jurisdiction, and the wishes of the client. Where prosecutorial or judicial policies purport to preclude consideration of the facts and law of individual cases in plea negotiation, counsel's negotiating strategy should include consideration of ways to challenge such policies.

8. At the trial level, counsel:
 - a. Should determine what if any pretrial motions to make based on knowledge of the law and the facts of the individual case.
 - b. Should discuss with the client the relevant strategic considerations of the decision to proceed to trial with or without a jury, which decision rests solely with the client.
 - c. Should fully prepare for pretrial proceedings and trial. Throughout the case, counsel should endeavor to establish a proper record for appellate review, consider the potential effects of particular actions upon sentencing if there is a finding of guilt, and be alert for ways to best present the client and the client's case. Counsel should obtain expert assistance whenever it is needed for any aspect of case preparation and presentation, including but not limited to the assistance of mental health experts, forensic scientists, and persons knowledgeable about any aspect of the case that counsel cannot adequately understand or present without assistance.
 - d. Should fully prepare for sentencing. Counsel should consider the need for and availability of sentencing specialists and seek the assistance of such specialists whenever possible and warranted. Counsel should develop a plan that seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the case. Counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or

length of sentence be imposed, and determine an appropriate response. Counsel should present a defense sentencing memorandum unless counsel determines that not doing so would demonstratively benefit the client. Counsel should also seek to ensure that all reasonably available and helpful mitigating information is presented, that the client is not harmed by inaccurate or improper information, and that any such information is stricken from the record and the text of the presentence investigation report. Counsel at sentencing should advocate fully for the requested sentence and protect the client's interest.

9. This list of duties is not intended to be exhaustive. It does not cover every step that counsel should make, or every proceeding in which counsel may or should represent a client. Counsel should become familiar with the client, facts of the client's case, and relevant substantive and procedural law before embarking on representation in any matter or proceeding regarding a matter.

B. Family Court Counsel

1. The paramount obligation of family court counsel is to provide zealous and high-quality representation to their clients at all stages of the family court process including those periods during which a client's matter may be adjourned for lengthy periods.
2. To provide high-quality representation, counsel should be familiar with substantive family, social services and domestic relations law and procedure, including applicable federal regulations, and their application in the particular jurisdiction. Counsel should stay abreast of developments in the law and in relevant medical and social sciences, including child development, substance abuse, and causes of and treatment for child abuse and neglect. Counsel should stay abreast of the services and benefits available to children and parents in the jurisdiction. Where appropriate, counsel should become informed of the practices of the specific judge before whom a case is pending and of relevant policies of the presenting agency, law guardian provider, county attorney or corporation counsel's office. Before

- handling a family or surrogates court matter, counsel should have sufficient experience and training to provide high-quality representation.
3. Before agreeing to act as counsel or accepting appointment by a court, counsel should make sure that counsel has available sufficient time, resources, knowledge and experience to offer high-quality representation to a client in a particular matter. If it later appears that counsel is unable to offer high-quality representation in the case, counsel should seek to withdraw. Required resources include but are not limited to the office facilities and support staff necessary to an efficient legal practice, interview facilities that promote and protect client confidentiality and trust and access to legal information such as an adequate law library and computerized research tools. Counsel should discuss the matter with the client sufficiently in advance to allow time for investigation and case preparation.
 4. Counsel should act to avoid all potential and actual conflicts of interest that would impair counsel's ability to represent a client. Where appropriate, counsel may be obliged to seek an advisory opinion on any potential conflicts.
 5. Counsel should keep the client informed of the progress of the case and to explain the family court process, including the important role of the law guardian in family court proceedings. Counsel should also advise the client to arrange for meetings with the law guardian and, when necessary, counsel should prepare the client for the law guardian interview.
 6. Counsel should conduct an independent investigation of the facts as promptly as possible. Counsel should secure the assistance of investigators and/or other experts, including private providers of social services, whenever needed for preparing any aspect of the case, including but not limited to placement, pretrial motions, custody determinations, strategy at trial including developing an understanding of or rebuttal of the plaintiff's case, and possible resolution of the matter. Counsel should also help clients access any needed services that could impact on the outcome of the proceedings, such as services related to housing, mental health treatment, substance abuse treatment, and others.

Counsel should also advise clients about the need for close communication with persons and entities related to the matter at hand and about the potential impact on the matter at hand of other legal proceedings including drug courts and other criminal courts.

7. Counsel should ordinarily meet with the client before entering into any negotiations for resolution of the proceeding, and should explore with the client the possibility and desirability of reaching a negotiated disposition of the case rather than proceeding to a trial. Counsel should know and fully explain the rights that would be waived by agreeing to any particular negotiated settlement rather than proceeding to trial, and should not accept any negotiated settlement without the client's express authorization, nor let the existence of such negotiations preclude steps necessary to preserve and prepare a case for trial. Counsel should be fully aware of, and make sure the client is fully aware of, all direct and potential collateral consequences of any particular resolution of the matter. Counsel should explain in detail the implications of agreeing to a fact-finding, especially in article 10 child protective proceedings or any other matter, where placement of the children outside the home is a dispositional option. Counsel should carefully advise clients about the implication of placement outside the home in terms of permanency planning in relation to the possibility of termination of parental rights. When children have been placed, counsel should meet with the client to help the client develop a concrete strategy to maximize the opportunity for the children to be returned to the home. Counsel should develop a negotiation strategy based on knowledge of the facts and law of the particular case, the practices and policies of the particular jurisdiction, and the wishes of the client.
8. At the trial level, counsel:
 - a. Should determine what if any pretrial motions to make based on knowledge of the law and the facts of the individual case including but not limited to requesting the court to order pretrial home studies, alcohol and illegal substance evaluations, and mental health evaluations. Counsel should also consider if there are other

- legal actions to pursue that might obviate the action in question.
- b. Counsel should discuss with the client the relevant strategic considerations of the decision to proceed to trial, which decision rests solely with the client.
 - c. Counsel should fully prepare for trial including thorough pre-trial discovery and investigation which should include, but not be limited to, obtaining access to the client's DSS file, as well as appropriate school and mental health records. Where applicable, counsel should prepare parents for the possibility of their children having an in-camera hearing with the judge. Throughout the trial process counsel should endeavor to establish a proper record for appellate review, consider the potential effects of particular actions upon disposition, and be alert for ways to best present the client and the client's case. Counsel should obtain expert assistance whenever it is needed for any aspect of trial preparation and presentation, including but not limited to mental health experts, forensic scientists, and persons knowledgeable about any aspect of the case that counsel cannot adequately understand or present without assistance. Counsel should interview and subpoena necessary witnesses in advance of any court proceeding at which such witnesses might be needed.
 - d. Counsel should fully prepare for the dispositional hearing. Counsel should consider the need for and availability of specialists and seek the assistance of such specialists whenever possible and warranted. Counsel should develop a plan that seeks to achieve the least restrictive and burdensome dispositional alternative that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the case. Counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether counsel's adversary will advocate that a particular type or length of disposition be imposed, and determine an appropriate response. Counsel should present a memorandum of law in support of the disposition sought unless counsel determines that not doing

so would demonstratively benefit the client. Counsel should also seek to ensure that all reasonably available and helpful mitigating information is presented, that the client is not harmed by inaccurate or improper social service or other information, and that any such information is stricken from the record and the text of any probation or other report. Counsel at dispositional hearings should advocate fully for the requested disposition and protect the client's interest.

9. This list of duties is not intended to be exhaustive. It does not cover every step that counsel should make, or every proceeding in which counsel may or should represent a client. Counsel should become familiar with the client, facts of the client's case, and relevant substantive and procedural law before embarking on representation in any matter or proceeding regarding a matter.