LOUISIANA PUBLIC DEFENDER BOARD

EQUAL JUSTICE FOR ALL

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James T. Dixon, Jr.
State Public Defender

June 10, 2015

Via email and FedEx Delivery
(Tracking NO: 8710 2511 2726)

Mr. Alan J. Golden
District Defender, 1st Judicial District
400 Travis St., Suite 2000
Shreveport, LA 71101

Dear Alan:

On April 10, 2015, you were notified of what the staff at the Louisiana Public Defender Board considered to be systemic violations of your clients' Fifth and Sixth Amendment rights in the Shreveport City Court process. We further provided you with a guideline for progress in correcting those deficiencies. The first guideline was to be addressed in thirty (30) days and included the following steps.

1. Meet with the City Marshal, City Prosecutor, and City Court Judges to explain why the present system constitutes Fifth and Sixth Amendment violations of their clients' right to the effective assistance of counsel using the *Louisiana Rules of Professional Conduct* and the LPDB Trial Court Performance Standards.
2. Explain that sufficient time needs to be given to the Municipal Court Defender to contact a given defendant's district court counsel to give notice to that counsel and confer regarding the Municipal Court charges.
3. Explain to the Marshal and Judges why the Municipal Court dockets need to be made sufficiently far in advance to allow for item 2 above, but above all, for sufficient time for the Municipal Court Defender to have adequate time to individually and privately interview each defendant prior to court proceedings.
4. Regardless of whether a client "admits" guilt, the Municipal Court Defender has a duty to investigate the facts surrounding the offense and to assure him/herself that the prosecutor has sufficient evidence as to each and every element of the offense, needed to prove the offense beyond a reasonable doubt.
5. Cease the practice of requesting to be relieved as counsel when a client fails to show at a court date.
6. Cease the practice of having the bailiff inform defendants they will not be represented unless they pay the $40 application fee.
7. Stop the practice of recording the receipt of a case by an attorney who does not provide any meaningful representation, rather simply instructs defendants on the completion of a plea form.
8. Stop the practice of allowing any attorney to handle or claim to handle thousands of cases in a single year.

You were also provided with a sixty (60) days deadline in in which to show significant progress toward implementing these changes. The deadline has now passed.

La. R.S. 15:161 sets forth the powers and duties of the District Defender. A District Defender must "ensure that public defender assignments within the judicial district comply with the standards and guidelines adopted pursuant to rule by the board and the Rules of Professional Conduct." La. R.S. 16:161 E (5). Paragraph E (5) states, the District Defender must implement the standards and guidelines and procedures established by the board. Paragraph E (11) provides the District Defender must maintain a client workload, as determined by the board and state public defender. Finally, the District Defender is responsible for managing and supervising public defender services provided within the district. E (1) and (13). Pursuant to our extensive review of your office, we have found you have failed to comply with these duties as District Defender.

By this letter and in accordance with La. R.S. 42:17, I am providing you with notice of disciplinary proceedings and that, as District Defender for the First Judicial District, your job performance may be discussed during executive session of the next board meeting scheduled for June 16, 2015 at 2:00 p.m. or you may require that this discussion be held at an open meeting.

The provisions for disciplinary actions can be found in R.S. 15:170. In particular, the board has the authority to take corrective or disciplinary action against any district defender for failure to adhere to the standards and guidelines for rendering indigent defender services as provided by the rules adopted by R.S. 15:148 and in accordance with the Administrative Procedure Act. A district defender may be terminated for just cause. R.S. 15:170 A (3). Actions which constitute just cause are set forth in paragraph B. The actions which constitute just cause in this instance are the willful refusal to comply with mandatory performance standards and guidelines, as required by rule adopted by the board, and willful failure to correct consistently ineffective practices to the detriment of clients. R.S. 15:170 B (2) and (4), respectively.

The primary symptom of the failure correct consistently ineffective practices to the detriment of clients and the willful refusal to comply with the mandatory Trial Court Performance Standards is seen in the caseload of your attorney for Shreveport City Court. By your own admission, this attorney opened and closed over 6000 cases over the course of the 2014 calendar year. This, standing alone, would raise the question of whether the number of cases handled is, per se, ineffective assistance of counsel.

The Trial Performance Standards were promulgated in accordance with the Administrative Procedures Act on April 20, 2009. Not only are they standards and guidelines established by the board, they have had the effect of law under the administrative code. Section 703 of these standards states, in pertinent part, "[t]he primary and most fundamental obligation of a criminal defense attorney is to provide zealous and effective representation for his or her clients at all stages of the criminal process." It is seemingly impossible for any attorney to provide zealous and effective representation on behalf of clients with a caseload of over 6000 cases. The challenges of investigation and preparation for trial, filing pretrial motions, negotiation of a knowing and voluntary plea, effectively trying a case, effective representation at sentencing, and protecting a client's rights after sentencing are great enough with caseloads under 450 new cases

per year. At 6000 new cases opened in one year, the requirement of zealous and effective representation cannot be met. Our inquiry into the workings of your office has clearly shown a willful refusal to comply with the Trial Court Performance Standards and willful failure to correct consistently ineffective practices to the detriment of clients.

In the course of our site visits to your office, we also visited the satellite office you have in the Shreveport City Court. While there, we were informed the office did not have a single file for any of the over 6000 cases handled by your office in the court of 2014. Without a file, how can attorney be expected to keep interview notes, investigative notes, motions, hearing notes, discovery, or development of a theory of the case? How can plea negotiations be documented or trial strategies? Clearly, none of these requirements of the standards were followed. During the course of our investigation, it was ascertained that not one motion was filed on behalf of any of those clients. Finally, despite a number of requests, your office has not been able to provide LPDB staff with any evidence of a single motion filed on behalf of any client represented in Shreveport City Court. Not one discovery motion, motion to suppress, motion to quash, motion to consider bond, or motion for preliminary examination, to name a few. This includes the time period since your office was placed on notice of our concerns at the March 2015 board meeting. Your office has ignored and refused to comply with Part III of the Trial Court Performance Standards, Pretrial Motions, in its entirety.

It is clear from Jean Faria's "jail clearance" observations that little representation was provided to these clients. It was clear these clients were met for the first time minutes prior to their guilty pleas. There were no interviews prior to the client's first appearance, nor was any investigation done or even attempted. In effect, Part II of the Trial Court Performance Standards, Investigation and Preparation, was ignored in its entirety. Without adherence to Parts II and II regarding investigation, preparation, and pretrial motions, it is virtually impossible to comply with Part IV, Disposition without Trial. When there has been no prior communication with a client, no investigation, no pretrial motions, no preparation for trial, how can an attorney possibly enter into plea negotiations with any leverage? Quite literally, thousands of guilty pleas were entered into under these conditions.

As if this situation were not bad enough, the conduct of your attorney during the "jail clearance" process only worsened the situation. As noted in Ms. Faria's memorandum dated April 6, 2015, your attorney's conduct bordered upon actively hostile to the interests of his clients. In interviewing one client, standing in line next to other clients and in the presence of a law enforcement office, your attorney asked a client charged with domestic abuse battery, "did you do it?" Then, that same attorney did not say or do anything to protect that client when the law enforcement officer standing next to him asked the client the same question, "did you do it?" These actions indicate you have an attorney actively pressuring clients into accepting plea offers. At the very least, it gives every client observing this exchange the impression of pressuring them in such a way. It is never acceptable to allow law enforcement to question a client regarding his innocence or guilt. The fact that it was done in the presence of the attorney makes the matter that much more disturbing.

Deficiencies were not limited to Shreveport City Court. We encountered evidence of attorneys requesting removal from a case due to a client's failure to appear on a court date or missing a

court appearance. There were placards and signs indicating potential clients would not be represented until they paid their $40 application fee. This was, in fact, office policy. Representation would not be provided until the $40 fee was paid. This fact is confirmed in Mr. Rubenstein's letter to the Shreveport City Court judges, dated May 28, 2015, wherein he states, "I had mentioned in my original letter preceding our meeting on May 4 about the Court helping us collect our $40.00 application fee by making payment a condition of probation. As we are no longer allowed to withdraw if they have not paid, such assistance would be appreciated." There are a couple of problems here. First, your policy excluded from representation the poorest of the poor. Those indigents who did not have the ability to pay the $40.00 are our most vulnerable clients and are the same clients excluded from representation by your office. Second, what happens to clients who cannot pay the $40 fee imposed as a condition of probation? There is nothing in the letter that alludes to a client's ability to pay. It may seem a small thing, but the tone of this statement seems to indicate your attorney's disregard for the most vulnerable of your clients remains.

There is also the issue of data entry. I sent an inquiry to you asking you why misdemeanors were opened and closed on the same day. You responded, stating this was the policy established by the board in 2007 and attached an email from Marsha Oliver indicating a streamlined process with the date opened/closed. I am not even certain that opening and closing misdemeanor cases on the same day satisfies the instructions to which you refer. In any event, that policy has been superseded since the advent of the defenderData system. I attended the trainings provided by staff, regarding defenderData, as a line defender. I could have told you five years ago that opening and closing any case on the same date was improper, unless the case was opened and disposed of on the same day. Your office has kept in place a data entry policy that has no basis under present policies and standards. It provides no meaningful information regarding a client's case, the case outcome (other than closed), or any indication that any meaningful work was done on behalf of the client.

We recognize you did implement changes in your office. You no longer turn away clients for failure to pay the $40 application fee and do not withdraw when a client fails to appear in court. While this is proper, it does not erase the fact that these policies were in place for years and the most vulnerable members of society, and people that you should have represented, were turned away due to their poverty and inability to pay the $40 fee. While you did meet with the City Court judges, it seems this meeting took place on May 4, 2015, almost six weeks after you knew of the problem due to issues that arose from the March 24, 2015 board meeting. Your attorney has made efforts to meet with clients the night before "jail clearance." There is still no time to provide any significant investigation or preparation on behalf of clients prior to their plea. In short, you were not able to significantly implement the changes proposed.

In light of all these facts, it is clear there has been a systemic violation of your clients' Fifth and Sixth Amendment rights in the Shreveport City Court process and that it is continuing despite your late efforts. It is also evident that this process has been in place since for years. In 2012, your attorney in Shreveport City Court opened and closed 5,851 cases. This process continued through 2013, when you attorney opened and closed 6,393 cases and 2014, in which he opened and closed 6,008 cases. These case numbers were obtained from the defenderData system and are based upon data entered by your office. This information is, and always has been, at your

and closed 6,008 cases. These case numbers were obtained from the defenderData system and are based upon data entered by your office. This information is, and always has been, at your disposal. While you have implemented changes over the past month, the basic facts remain. The caseloads are too high. While your attorney now interviews clients the night before court, there is still no time for any meaningful representation. There are still no client files. There have been no motions filed on behalf of any clients since we brought this situation to your attention. It needs to be said that it took our efforts to bring this matter to your attention.

Due to the glaring deficiencies in your office and the long-standing and willful refusal to comply with mandatory performance standards and guidelines, as required by rule adopted by the board, and willful failure to correct consistently ineffective practices to the detriment of clients, it is recommended that you be removed as district defender for the 1st Judicial District. R.S. 15:170 B (2) and (4), respectively. While we regret this conclusion, the deficiencies in your office have existed for years and there is no indication any meaningful changes will occur in the near future.

Earlier this year the Staff observed a failure to adhere to the standards and guidelines in rendering indigent defender services as provided by the Trial Court Performance Standards adopted pursuant to La.R.S.15:168. At the Louisiana Public Defender Board meeting on May 12, 2015, the First Judicial District Public Defenders Office was discussed. At that time, the board asked that the agenda for the June 16, 2015 meeting include an item for the institution of formal disciplinary proceedings and performance review of the District Defender in the First District (Caddo Parish). Pursuant to that request, I have placed this matter on the agenda for the referenced meeting. As District Defender for the First Judicial District, your job performance will be a subject of review during this executive session.

It is the Staff's recommendation that you be removed as the District Defender due the chronic problems with the legal services rendered in Shreveport City Court resulting in a complete failure to meet the standards and guidelines or provide indigent defender services as provided by rules adopted in the Trial Performance Standards, pursuant to La. R.S. 15:168.

Sincerely,

James T. Dixon, Jr.
State Public Defender

JTDjr/ag

Cc: Judge Robert J. Burns (Ret.)

Attachments:

1. 1st PDO Compliance letter.4.10.15
2. 01 Caddo Site Visit Assessment.pdf
3. Notes on Shreveport Site Visit.pdf
4. Alex Rubenstein Case Count for Calendar Year 2014

5. Shreveport Municipal Jail Court memo 4 6 15
6. Remedial Plan City Ct (Rev 17 Apr 15).pdf
7. Comments on Remedial Action Plan (Email & attachment).pdf
8. Caddo Field Report 2015 05 07.pdf
9. Caddo Oliver Email Misdemeanor data entry.pdf
10. JTD_Golden_Email_re Misdemeanor date entry issue
11. 19 May 2015 Rubenstein Let City Judges.pdf
12. 28 May 2015 Rubenstein Let City Judges.pdf
13. BGB-JTD_Golden_Notice_Jun 16 2015
14. Trial Court Performance Standards
15. La. R.S. 15:161
16. La. R.S. 15:170

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April 10, 2015

Via email and U.S. Mail

Mr. Alan J. Golden
District Defender, 1st Judicial District
400 Travis St., Suite 2000
Shreveport, LA 71101

Dear Alan:

Over the past few months, we have made numerous visits to your district to, among other things, observe court. As stated in an earlier email, we found the representation provided by your office in Shreveport City Court to be lacking.

Richard Pittman's initial report indicated your office has no files in any of the cases wherein it represents clients. He also found that in some cases your office represented clients and in some it did not, even though those clients were listed as yours in our database. Mr. Rubenstein told Mr. Pittman that clients are told they can receive representation by paying the $40 application fee. Another attorney informed Mr. Pittman that he would not represent people without application fees paid. (It should be noted that there is a sign in your district office that states the public defender services are not free and that clients will only be represented if they pay the $40 application fee.) Finally, he witnessed your attorneys routinely request to be relieved of their duty to represent a client when said client did not appear in court.

At a later date, two more of our staff observed Shreveport City Court: Barbara Baier, General Counsel, and Dr. Tiffany Simpson, Juvenile Compliance Office. While there, they observed the bailiff in the court inform defendants they could apply for a public defender, but would not be appointed counsel until they paid the $40 application fee. The sign outside the Public Defender Office door reflected this as well; the $40 application fee had to be paid before any representation would be provided.

These issues were raised at the last Louisiana Public Defender Board meeting on March 24, 2015. At that time, the Board instructed our office to conduct a performance evaluation of the 1st District Public Defender Office and address the discrepancy between your case count for Mr. Alex Rubenstein and ours.

With respect to the case count discrepancy, we looked to the DefenderData case management system used by the LPDB. A search of the cases received by Mr. Rubenstein during the 2014 calendar year, established he received 6004 cases. Of these 6004 cases, there is no recordation during any month in 2014 of a single open case, a single probation case, or a single fugitive case. These figures are based upon data entries made by your office. The DefenderData system also indicates Mr. Rubenstein closed 6004 cases during the 2014 calendar year. In fact, all of the

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cases viewed showed they were opened and closed within minutes. None of these cases have any indication that an interview was had with any client nor was any entry with respect to the outcome of the case. Further, there is no indication that a single motion was filed on any client's behalf.

In determining these numbers, we simply entered Mr. Rubenstein's name in the database and ran the case-received numbers for each month of 2014. We searched the total number of cases, the number of open cases, the number of fugitive cases, the number of probation cases, and the number of closed cases in each month. I have attached a month by month breakdown of the case totals. If you have a different figure for this time period, please let me know and explain how you arrived at your figures.

To satisfy the Board's request to conduct a performance evaluation, we sent Jean Faria to your offices. The report she prepared in conjunction with her visit provides, in pertinent part:

> "On March 30, 2015, I contacted Alan Golden to make arrangements to attend Shreveport Municipal Jail Clearance and Municipal Court. Arriving at Municipal City Jail a little before 8:00 a.m. on April 2, 2015, Alex Rubenstein and Alan Golden were in the lobby. We entered the facility, and Mr. Rubenstein led us to the video conference room. The small room contained a bench, holding 6 African American men who had been brought in from Caddo Correctional Center (CCC); one Municipal Marshal, Alex Rubenstein, Alan Golden, a Municipal Jailer and I were in the room. The video monitor and audio, connected to the Municipal Court were active.
>
> There was a bucket containing files on a table in the room. The files belonged to the clerk of court. Each file contained a stapled document on the left page of the folder produced by the clerk of court which contained three columns: one for the date; one for attorney initials, and one for outcome (e.g. PNG or PG). Two chairs were in the room by the door, where Mr. Golden and I sat.
>
> At the beginning of the instructions to the defendants Mr. Rubenstein introduced himself as the person who was representing them. Mr. Rubenstein informed the defendants that this was an arraignment, where each person had the right to plead not guilty and receive a trial date or plead guilty. Defendants were told if you plead not guilty you will be given my card, if you are still in jail I'll see you. Charges ranged from cracked windshield (defendant pled not guilty) expired plates (60 day sentence) to DUS, careless operation (four month sentence)
>
> If a person wished to plead guilty, the facts contained in the police report were read to them. If a person contested any fact he was informed that the judge would not take a guilty plea unless the person agreed to all the facts as presented. If a person wished to plead not guilty, the facts of the offense were not read to him and he was told that he would receive credit for all time served and it would run concurrently to any other sentence unless there was more than one crime occurring at different times, which would result in a consecutive sentence. Mr.

Rubenstein instructed the men that for every day each was in custody it was worth $10 a day. Were the court to impose a $100 fine then 10 days in jail would pay the fine. When asked about the court costs, he stated that those were separate and had to be paid.

Mr. Rubenstein explained that if any of the defendants was charged with DWI or DAB these were enhanceable meaning that a future conviction and sentence could be longer or result in felony charges.

Mr. Rubenstein clearly did not know the defendants, the state district court charges or who was representing each defendant on his state district court cases. No one from the public defenders office interviews clients who go through this jail clearance process. Although clear from the proceedings, both Messrs. Rubenstein and Golden later verified that client interviews are not conducted prior to jail clearance. Neither district court public defenders nor private counsel representing the Caddo Correctional Center detainees/inmates are contacted prior to the jail clearance "arraignments" to determine what affect a plea to the municipal charges would have on the district court case.

When asked about jail capacity, the current jail population or the number of attorney interview rooms in the facility, how the defendants from Caddo Correctional Center were chosen to come to the municipal jail clearance, who made the municipal court dockets, neither lawyer knew the answers to these questions.[1]

One defendant did not want to plead guilty as the traffic ticket he had received at the time of his arrest did not contain all of the charges read to him by Mr. Rubenstein. At this point a City Marshal, armed with a what appeared to be a 45 caliber Glock on his hip, a flak jacket and handcuffs, took the file over to the defendant and started asking him questions and telling the defendant that the charges could have been added on after the ticket was written but they couldn't get to it [the ticket] as it was in the defendant's property.

The "Boykin" examination provided by Mr. Rubenstein was neither thorough nor complete. He told the men that if they pled guilty they would have no trial; no witnesses would be called as there would be no trial; and most importantly, they would be admitting their guilt. Elements of the offenses were not discussed with each defendant. Evidence needed to prove each element of each offense was never discussed. No mention of collateral consequences was made to any defendant. Lacking a thorough interview regarding each man's background, any advisement regarding collateral consequences would have been pure conjecture.

[1] When I met with Paula Goleman, a deputy marshal at the Municipal Court, she told me that jail capacity was 284, the day's population was 133; there were 7 attorney/client interview rooms available as one was used for storage; she made the call out lists for the Caddo Correctional Center pretrial/detainees. She knew on Friday, who she would bring over to jail clearance, subject to last minute changes in the Caddo Correctional Center population.

After this "advisement" Mr. Rubenstein moved the bucket of files to the hall outside the video conference room. He placed the bucket on a chair in the hallway next to a jailer while 11 men stood against the wall. Ten of the 11 men were African Americans. The white male appeared to be responding to auditory and visual hallucinations.

Mr. Rubenstein made the same introductory remarks as he had made in the video conference room and then asked the first man in line his name. The man responded and Mr. Rubenstein read him the charge: DWI 2nd. He was going to plead guilty and the police report was read to him. He had not blown into the intoxilizer nor had anyone viewed the video of the stop. At this point in time, Mr. Golden showed me the Clerk's files with the sheet containing the three columns previously mentioned.

The third man in line was charged with domestic abuse. Mr. Rubenstein told the man that he had been convicted in 2011 for domestic abuse. The current victim said that the defendant had bitten her on the arm. He said he did not do that, to which Mr. Rubenstein asked him "did you do this?" I was so shocked that it took me a second to register what was going on, at that moment the jailer asked the client "did you do it?" I looked at Mr. Golden and said this a violation of his 5th and 6th amendment rights. When Mr. Golden did nothing, I stopped the proceedings and said "you can't ask him that, you can't do this." The defendant waivered and said he was going to plead not guilty, when the defendant next to him said "you might as well plead guilty, 'cause it's going to be just like this when you come back." The defendant pled not guilty.

The white male who appeared to be having hallucinations was charged with public drunk. He had been in custody for three days. The jailer said the defendant was hearing voices and the jail had administered the wrong medication. The jail wanted him out of custody. I asked Mr. Rubenstein permission to speak to his "client" and asked him about his condition and medications. He normally took Seroquel and Wellbutrin which are used to treat schizophrenia in adults, sometimes these medications are used to treat bipolar disorders and major depressive disorders. Regardless, the defendant was not competent to proceed and again I injected myself into the proceeding. At this point, Mr. Golden leaned over to Mr. Rubenstein and instructed him to see if the prosecution could be dropped. Mr. Rubenstein returned from the video conference room and informed us that the charges would be dropped.[2]

The charges for this group of men were anything from sagging belt to domestic violence. There was one man who had the flu, he couldn't stand up, said he was burning up. The jailers clearly wanted him out of the facility. He said he would plead guilty, no facts were read to him, he was in obvious discomfort and too ill to enter any type of plea. He was taken back into the jail, hopefully to sick bay.

[2] It should be noted that Mr. Rubenstein was not present in the room when the defendants were appearing before the court during the video conference

Two women were brought in from the women's section of the Municipal Jail. Having seen enough, I went on to Municipal Court to observe DWI court, and to speak with the Municipal Court criminal misdemeanor attorneys. There I entered the DWI court, where Ms. Jacobs and Ms. Kammi Whately were present with Mr. Mark Frederick, the contract DWI attorney. There was one African American male at counsel table with Mr. Frederick who was clearly discussing the facts of the client's case with him in front of Ms. Jacobs, Ms. Whately, Mr. Zach Blanchard when he arrived, Mr. Golden and me. Court was not in session. Mr. Frederick explained that the court's "further proceedings" is issued to clients on bond for them to meet with their attorney prior to trial. During the time between a not guilty plea and trial, Mr. Frederick collects information about the offense, viewing video tapes and reviewing test results which are then conveyed to the client during the "further proceedings." Mr. Frederick explained that normally there were many more than the two defendants who appeared today (April 2, 2015) and that he addresses them all in the audience about their rights and then calls them up individually to discuss each client's case in front of all the other clients.

Mr. Golden introduced me to Mr. Zach Blanchard, who brought his notebooks containing the individual notes, Mr. Golden had referred to in the Board meeting. Mr. Blanchard showed me his notes which contained the date, the client's name and the offense. On occasion there would be a random note "which meant something to [Mr. Blanchard]."

When I asked the question why were so many of the defendants African American, Mr. Frederick told me that it was not about race, it was about poverty. When I asked him the demographics of the city he told me it was 50-50, to which I asked are you telling me that 99% of the poor people in the city are African American? The response was, "it's about poverty not race." No discussion about disproportionate minority contact was raised by these comments.

I met with Deborah Jacobs who provided a number of documents. One of which was the clients' history document. It is a list of every municipal offense for which a defendant was arrested. It does not contain dispositions. This document is used by the defender during the arraignment proceeding. Ms. Jacobs does intake and receives clients' public defender fee.

While I was in Ms. Jacob's office Judge Barber came by and asked to be introduced. He told me what a great job Mr. Rubenstein was doing and that they didn't want to see any changes and that the "flat line I mean bottom line" is that they do not want to lose Alex.

I met with Mr. Rubenstein in his office at the Municipal Court. He verified that he did not interview clients, did not know how CCC clients were selected for transportation to jail clearance, that he did not notify counsel for the CCC clients

that they were being arraigned; that he did not know who made the dockets or how the clients were selected. He suggested that we contact Paula Goleman in the Marshal's office which he did. We walked over to that part of the court building. Mr. Rubenstein's magnetic card opened every door except the City Attorney's office, to which he told me they would not grant him access.

We met with Ms. Goleman who told us exactly how she made the dockets and why she made them the way that she does, the jail capacity, the day's snap shot population, the number of attorney interview rooms.

I left Municipal Court and met up with Alan Golden at his office. I told him frankly what I had witnessed was the institutionalization of ineffective assistance of counsel. He told me that he had inherited this system, which is what Mr. Rubenstein had told me. I told Alan that Leadership is about making changes.

First Alan asked me if I would agree that it was OK to plead the Caddo Correctional Center inmates/detainees, since the municipal charges would serve as a hold on them once they had served their state sentences. I said "no." I gave Alan the example of Rodericus Crawford, who had been pled guilty to a misdemeanor charge while his first degree murder trial was pending. The misdemeanor conviction was used to show that he had a criminal record and that his adaptive functioning was poor or non-existent. No one had contacted his capital lawyers since no one knew why Mr. Crawford was in Caddo Correctional Center.

Then Alan asked me if I would agree that it's OK to plead the municipal court detainees, again, I said "no" as the defender did not know anything about the client. At this point Alan said "so we should be interviewing these clients?" Then he threw out all the facts that serve as an impediment to the idea of interviewing a client before making any decisions in the client's case.
I told Alan that leadership was all about changing systems that did not serve our clients. I then told Alan that I had no choice other than reporting what I had witnessed to the Board, having been charged with that duty."

In light of the facts provided above, it is clear there is a systemic violation of your clients' Fifth and Sixth Amendment rights in the Shreveport City Court process. These systemic deficiencies must be addressed. In the next thirty (30) days we expect to see meaningful progress in addressing this deficiencies. In particular, you should take the following steps.

1. Meet with the City Marshal, City Prosecutor, City Court Judges and explain why the present system constitutes Fifth and Sixth Amendment violations of their clients' right to the effective assistance of counsel using the *Louisiana Rules of Professional Conduct* and the LPDB Trial Court Performance Standards;

2 Explain that sufficient time needs to be given to the Municipal Court Defender to contact a given defendant's district court counsel to give notice to that counsel and confer regarding the Municipal Court charges;
3 Explain to the Marshal and Judges why the Municipal Court dockets need to be made sufficiently far in advance to allow for item 2 above, but above all, for sufficient time for the Municipal Court Defender to have adequate time to individually and privately interview each defendant prior to court proceedings; and,
4 Regardless of whether a client "admits" guilt, the Municipal Court Defender has a duty to investigate the facts surrounding the offense and to assure him/herself that the prosecutor has sufficient evidence as to each and every element of the offense, needed to prove the offense beyond a reasonable doubt.
5 Cease the practice of requesting to be relieved as counsel when a client fails to show at a court date.
6 Cease the practice of having the bailiff inform defendants they will not be represented unless they pay the $40 application fee.
7 Stop the practice of recording the receipt of a case by an attorney who does not provide any meaningful representation, rather simply instructs defendants on the completion of a plea form.
8 Stop the practice of allowing any attorney to handle or claim to handle thousands of cases in a single year.

Finally, you will have sixty (60) days in which to show significant progress toward implementing these changes. If you cannot accomplish these benchmarks in the given time frame, we shall pursue formal due process proceedings for termination.

Sincerely,

James T. Dixon, Jr.
State Public Defender

LOUISIANA PUBLIC DEFENDER BOARD SITE VISIT ASSESSMENT

Date of Visit: Several See Below **JDC:** 1st **DD:** Alan Golden

LPDB Staff Attending ☒JJCO ☐TLCO ☒DJDS ☐DOT ☐CCC ☒SPD ☐BO ☐SPA (CHECK ALL THAT APPLY):

District Staff Attendance: Alan Golden along with several attorneys and support staff

Others in Attendance: Barbara Baier, LPDB General Counsel

Observations (CHECK ALL THAT APPLY): ☒District office ☐Client/Attorney Meeting ☐ FINS Hearing ☐ CINC Hearing ☒ Delinquency Hearing ☒ Criminal Hearing ☐Capital Hearing ☒ Other

Comments: Staff made three separate visits to the 1st district as part of the site visit assessment. The SPD, DJDS, and JJCO visited on 1/14/15. At that time the DJDS viewed district, city, and juvenile courts. On that date, the JJCO interviewed staff while the SPD and DJDS reviewed files. On February 9th the JJCO and GC observed city court, later the SPD, JJCO, and GC visited the office for a staff meeting and later met with the DD. Again, on 2/10/15 the SPD, JJCO, and GC observed city court. The DJDS visited the district on 3/03/15 and observed jail clearance in district court. Staff will make another visit to view first hand "jail clearance". NOTE: There appears to be a complete lack of uniformity in office practices. Each division seems to operate in complete autonomy, it was very difficult to ascertain the inner working of the office among the attorney staff. With each interview, a separate process was described with separate standards and requirements. The responses included below are based on interviews with 4 staff attorneys all in separate divisions and may not be representative of the practices of the the other divisions. Additionally, court observations can not adequately be explained in this document. A separate memo will be prepared to describe court observations.

Compliance Division

__3__ The District Defender provides equitable distributions of caseloads considering practice levels of attorneys when relevant (DD Contract, §§2, 2.6.2, 3.1.3)

47 felony cases (30 LWOP) Min caseload per FTE excluding outliers

493 felony cases Max caseload per FTE excluding outliers

Y☐/N☒ Caseloads are equitably distributed

Comments: During CY14 Alex Rubenstein handled 6024 misdemeanor cases, not considered above. Other city court caseloads range from 499-1032 (all are part-time). With the exception of city court weighted caseloads range from 1.29 to 2.83. Section chiefs have a lower total number of cases but also handle the more serious cases for the district.

__3__ Caseloads fall within the monthly variance permitted by the Contract for Public Defense Services (DD Contract, §2.6.3, TCPS §707(E))

Y☐/N☐ Previous month variance ____ (yes, if less than 20%)

Y☐/N☐ If outside permitted variance, has the District Defender notified LPDB

Y☐/N☒ The District Defender has established a policy for addressing workload concerns

Y☐/N☒ Has LPBD received a copy of the policy?

Y☐/N☒ The office tracks individual attorney caseload to permit the rendering of quality representation

Comments: Click here to enter text.

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Choose The District Defender provides sufficient legal resources such as investigators and expert witnesses as requested by attorneys (DD Contract § 2.8; TCPS §707(A))

Y☐/N☒ Ratio of Attorneys to Investigative Staff ≤ 3:1

No. of FTE Attorneys __38_ No. FTE Investigative Staff __4 _

Y☐/N☒ Sufficient access to expert witnesses

Y☒/N☐ Attorneys have access to interpreters Types: Click here to enter text.

Comments: Lack of access to expert witnesses is more related to finding experts who will work for the allowable rate.

__2__ The District Defender provides sufficient administrative/clerical support for attorneys (DD Contract §§ 2.7, 3.1.3; TCPS §707(A))

Comments: Generally two attorneys per 1 secretary. Although there are instances where three attorneys share a secretary.

Choose The District Defender encourages and supports compliance with all LPDB performance standards (DD Contract §§ 2.5, 2.10; TCPS §§707, 709, 719, 721)

Counsel typically meets with incarcerated defendants within ___ hours of appointment

☒ 96+ hours ☐ 95 – 72 hours ☐ 72 – 48 hours ☐ 48 – 24 hours ☐ ≤ 24 hours

When do attorneys typically meet with their clients to discuss procedural and evidentiary issues, sentencing options, plea possibilities, and other issues relevant to the case?

☒ Client & attorney don't frequently meet ☒ Day of hearing ☐ Prior to hearing

Describe methods of discovery used in the District office

☐ None ☐ Open File Discovery ☐ Discovery Motion Practice ☒ Mixed

Y☐/N☐ The District Defender promotes the zealous use of pre-trial/adjudication motions

Y☐/N☐ Attorneys are encouraged to take cases to trial if that is the expressed interest of the client

Y☐/N☐ The District Defender promotes the zealous use of the writs/appeals process

Comments: The answers to the above questions vary dramatically among attorneys suggesting that compliance to the standards is not required by management but rather depends on the time, skill, dedication, etc of the individual attorney. What's of most concern is the responses to the question regarding when attorneys typically meet with clients. It is the policy of the office that it is the responsibility of each client to schedule and attend any appointments. As is the case in most jurisdictions, many clients do not schedule or attend these meetings. Two attorneys who were spoken to acknowledged that they will not meet with a client the day of court. One attorney noted that a continuance is filed for clients while the other noted that the attorney frequently makes it a condition of bond that the client makes and attends an appointment, adding also that if the client is revoked that the attorney be allowed to see them in court. I was never able to ascertain whether or not anyone has ever been revoked for failing to meet with his/her attorney. During the February 10th meeting, the issue was discussed with Mr. Golden who seemed to have no knowledge of this practice.

__2__ The District Defender ensures conflict-free representation for all appointed clients (DD Contract § 2.15; TCPS §707(B) (D))

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Y☒/N☐ The District Defender presumes there is a conflict whenever assigning attorneys to represent co-defendants

Y☒/N☐ The District Office includes active participation of the private bar or conflict office whenever a conflict of interest arises

If yes, check all that apply: ☐ Contract conflict attorneys ☐ Private bar

☐ Other: Click here to enter text.

Comments: As part of the district's ROS plan, the conflict panel will be disbanded, it is expected that cases will be assigned to the private bar.

__3__ The District Defender has a written Private Practice Policy

Y☐/N☒ The District Defender has written and distributed such a policy

Y☐/N☒ The District Defender has provided LPDB with a copy of the Private Practice Policy

Comments: Click here to enter text.

__3__ The District Defender regularly reviews attorney case files to ensure that they are appropriately maintained (DD Contract §§ 2.6.1, 2.13.4)

Y☒/N☐ The District Defender or a supervisor provides training to new attorneys as to how a case file should appropriately be maintained

Y☒/N☐ Managers and supervisors regularly spot check case files for accuracy and thoroughness

Frequency Based on section, some check regularly others are more infrequent.

Comments: Click here to enter text.

__3__ The District Defender encourages and monitors client contact such that it is appropriate (jail visits, in-office appointments, school visits, etc.) (DD Contract § 1.11)

Y☐/N☒ The District Defender monitors client contact through attorney's timesheet

Frequency Click here to enter text.

Comments: Click here to enter text.

__3__ The District Defender presides over the resolution of client complaints effectively and impartially (DD Contract § 2.5)

Y☐/N☒ The District Defender posts client complaint forms in the office

Complaints Received in Last FY Enter text. # Findings of Areas of Improvement Enter text.
Examples of Corrective Action Taken Click here to enter text.

Comments: Complaint process varies. One attorney described being handed a written complaint and told to handle it with no direction. Other attorneys referenced a chain of command wherein the section chief is first charged with speaking to clients about complaints. No one was able to describe the number of complaints that the office has received or how any of these complaints have been handled.

__1__ The District Defender is actively involved with other local criminal justice agencies as regards funding, criminal procedure decisions (DD Contract § 2.14)

Y☒/N☐ Has the District Defender met with any local Judges, District Attorneys, law enforcement, or leaders of other local criminal justice agencies in the six months?

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If yes, who? The DD has procured very good relationships with the judiciary and other members of the criminal justice system.

Y☒/N☐ Has the District Defender met with the leader of the agency handling local funds received by the District Office in the last six months?

Comments: Click here to enter text.

1 The District Defender is actively involved with local political entities as regards funding and criminal / juvenile justice decisions (DD Contract § 2.23)

Y☒/N☐ Has the District Defender met with any Mayors/Parish Presidents, City Council/Police Jury members, or members of the Legislature in the last year?

If yes, who? Many

Comments: Click here to enter text.

2 The District Defender proactively identifies, develops and maintains relationships among all local and state stakeholders (DD Contract § 2.14)

Description of activities Click here to enter text.

3 The District Defender maintains work plans and timekeeping files in a format approved by the State Public Defender (DD Contract §§ 2.3.1, 2.3.2, 2.6.2, 6.2)

Comments: Only contract attorneys

3 The District Defender conducts performance achievement reviews and/or evaluation protocol of attorneys and staff (DD Contract § 2.13.4)

Y☐/N☒ The District Defender holds regular staff meetings with all staff to present and support office values

Frequency Infrequent all staff meetings, variable by section, investigators meet quarterly

Y☒/N☐ Management observes in court Frequency Varies by section between very regularly to once a month

Y☐/N☒ Management has case meetings and systemic reviews

Frequency Click here to enter text.

Y☐/N☒ Attorneys and support staff are properly supervised, including participation in regular evaluations for performance, competence, and efficiency

Frequency Click here to enter text.

Y☐/N☒ The District Defender conducts exit interviews with select clients

Y☐/N☒ Client feedback is incorporated into office policies

Comments: No systematic observation or evaluation process

2 The district public defender office is professional, client-friendly and provides appropriate areas for clients to meet with their defenders (DD Contract § 4)

Y☒/N☐ The Public Defender office is easily identifiable in physical location, phone books, and other directories

Y☒/N☐ Attorneys ensure that clients know the name and contact of their public defender as well as his/her supervisor

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Y☐/N☒ Reception area of district office is comfortable and respectful (i.e. no locked doors, soundproof glass, or other barriers)

Y☒/N☐ District offices have appropriate, confidential meeting spaces to meet with clients

Y☒/N☐ Contract attorneys are required to have an office that has an appropriate area to meet clients

Comments: There is a sign at the receptionist desk which states that public defense services are not free and that clients will only be represented if they pay the $40 application fee.

__2__ The District Defender and/or Office Supervisors communicates promptly and effectively with LPDB on issues relevant to the Division (DD Contract § 3.4)

Comments: Click here to enter text.

Capital Division ☒Office/Program does not Perform Capital Services

Capital Case Audit (within the last 24 months)

☐ Complete, satisfactory performance by the district/program office

☐ A Capital Case Audit has not been completed within the last 24 months

☐ Complete, unsatisfactory performance by the district/program office

Comments: Click here to enter text.

Choose The District Defender provides access to and requires compliance with the Capital Defense Guidelines (DD Contract § 2.5; Capital defense Guidelines § 901 et seq.)

Y☐/N☐ Attorneys assigned capital cases are assigned no more than 3-5 open cases at any given time, and are assigned no other cases or supervisory duties of any kind

Y☐/N☐ All attorneys complete the Capital tab on defenderData

Y☐/N☐ The District Defender/Program Director requires capital attorneys to file the Capital Trial Review form upon case closure

Comments: Click here to enter text.

Choose The District Defender punctually submits properly completed Monthly Capital Case Reports (DD Contract § 2.4.3)

Y☐/N☐ The District Office/Contract Program submits completed prior month capital trial forms by the 5th of each month No. of months submitted timely previous CY ___

Y☐/N☐ The Capital Trial Forms are completed accurately

Y☐/N☐ Contract Programs submit prior month financial statements by the 10th of each month

No. of months submitted timely previous CY ___

Y☐/N☐ The financial statements are completed accurately

Comments: Click here to enter text.

Choose The District Defender ensures access to the appropriate capital defense team members, and team members are sufficiently equipped (both in resources and training) to provide effective advocacy (DD Contract § 2.8; TCPS § 705(C); Capital Defense Guidelines §§ 913, 915)

Y☐/N☐ All lead and associate trial attorneys are certified

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Y☐/N☐ Attorneys are encouraged to attend additional training beyond the LPDB Capital Defender Training

If yes, number of additional trainings attended by staff in previous calendar year _____

Y☐/N☐ The District Defender/Program Director provides adequate access to records procurement

Y☐/N☐ The District Defender/Program Director provides adequate access to support staff

Y☐/N☐ Team meetings include all core team members Frequency of meetings: _____

Comments: Click here to enter text.

Choose The District Defender appropriately procures experts through the Expert Witness Fund Request Protocol (DD Contract §2.8)

Y☐/N☐ Attorneys make legally appropriate requests for use of the Expert Witness Fund

Y☐/N☐ Attorneys follow protocols for pre-approval of all experts

Y☐/N☐ Forms are completed accurately

Y☐/N☐ Forms are submitted within the acceptable timelines from the date of application for amounts already pre-approved

Comments: Click here to enter text.

Choose The District Defender and/or Office Supervisors communicates promptly and effectively with LPDB on issues relevant to the Division (DD Contract § 3.4)

Y☐/N☐ District Defender/Program Director notifies LPDB when a new case is added or if there is a change to an existing case in a timely manner

Y☐/N☐ District Defender/Program Director notifies LPDB of issues related to certification in a timely manner

Y☐/N☐ District Defender/Program Director notifies LPDB of issues related to representation in a timely manner

Comments: Click here to enter text.

Juvenile Division

__1__ The District Defender demonstrates a commitment to juvenile defense by providing resource parity with criminal cases (DD Contract §2.8)

Y☒/N☐ Juvenile defenders have the same access to investigators, interpreters, expert witnesses, and support staff as criminal defenders

Comments: The four juvenile attorneys share 1 investigator.

__1__ Juvenile defenders are provided professional development opportunities to competently represent clients in this specialized area of law (DD Contract § 1.11)

Y☒/N☐ Juvenile defense is promoted as an area requiring experience and additional skills, rather than a starting place for new attorneys

_4__ # of Juvenile Defenders who attended the most recent Juvenile Defender Training

_0__ # of Juvenile Defenders who did not attend the most recent Juvenile Defender Training

_unk__ # of additional trainings attended by Juvenile defenders

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Y☐/N☒ Attorneys are required to attend to additional juvenile specific training

Describe Click here to enter text.

Y☒/N☐ Attorneys receive specific training for transfer/waiver cases

Y☒/N☐ Attorneys have been trained to recognize and are prepared to properly handle any issues concerning client incompetence, mental illness, or insanity

Comments: Click here to enter text.

__2__ Juvenile defenders are supported in promoting and protecting the client's expressed interests, including taking cases to trial, as appropriate, and are provided the resources to achieve successful outcomes (DD Contract § 2.5; TCPS § 703)

Defenders ensure that children do not waive appointment of counsel

☐ Waiver in all ☐Waivers in FINS & Misd ☐ Waivers in FINS only ☒ No waiver

Y☒/N☐ Defenders ensure that parents do not waive appointment of counsel in CINC proceedings

Y☐/N☒ Attorneys provide information, in writing, explaining the parents' rights to information & decision making while the child is in the state's custody

Y☒/N☐ Attorneys are encouraged to zealously protect the rights of parents while the child is in the state's custody

Y☒/N☐ Attorney's vigorously advocate on behalf of parents involved in CINC proceedings for regular visitation

__3__ The District Defender is familiar with current case law, representational best-practices and national developments in both the local and national juvenile justice movements

Y☒/N☐ Attorneys are familiar with and have access to the Louisiana Children's Code

Y☒/N☐ Attorneys are familiar with laws subjecting juveniles to the exclusive jurisdiction of a court exercising criminal jurisdiction

Y☐/N☒ During transfer proceedings, the attorney originally assigned to represent a child in juvenile court coordinates with the attorney assigned to represent the child in criminal court (if different)

Y☒/N☐ Attorneys are familiar with child and adolescent development issues

Y☒/N☐ Attorneys are familiar with sexual orientation and gender identity awareness issues

Y☒/N☐ Attorneys are familiar with special education issues

Y☒/N☐ Attorneys are familiar with zero tolerance and school suspension/expulsion policies

Y☒/N☐ Attorneys frequently obtain behavioral/physical health or educational records of the client

If no, why not Click here to enter text.

☐Do not seek to obtain ☐Clients refuse to consent ☐Providers do not comply

Y☒/N☐ Attorneys are familiar with diversionary programs available in the community

Comments: During the 2/10 meeting the DD referenced a judicial policy requiring juveniles to spend one night in detention for certain offenses so that they could get a taste of what detention was like. Mr. Golden explained that this policy is why the detention numbers in that district are so high. Mr. Golden

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praised the wisdom of this plan, although this practice is contrary to every empirical study conducted on the effects of detention on adolscents.

__2__ The District Defender and/or Office Supervisors communicates promptly and effectively with LPDB on issues relevant to the Division (DD Contract § 3.4)

Comments: Kristen Bernard, the juvenile supervisor is very active and communicates with LPDB frequently.

Budget Division

__1__ The District Defender submits the District's pro forma budget timely and sufficiently (DD Contract § 2.2)

Y☒/N☐ The pro forma budget is submitted timely

Y☒/N☐ The pro forma budget is submitted accurately

Comments: Click here to enter text.

__1__ The District Defender submits the District's formal budget request timely and sufficiently (DD Contract § 2.2)

Y☒/N☐ The District's formal budget request is submitted timely

Y☒/N☐ The District's formal budget request is submitted accurately

Comments: Click here to enter text.

__1__ The District Defender submits the District's completed Monthly Financial Reports timely and sufficiently (DD Contract § 2.4.1)

_0__ Number of months in the previous calendar year that the District's Monthly Financial Report was received timely

Y☒/N☐ Monthly Financial Report's are generally completed accurately

Comments: The parish handles the finances of the 1st so there is never an accurate accounting of the starting fund balance each FY.

__1__ The District Defender submits the District's completed Monthly Compensation Reports timely and sufficiently(DD Contract § 2.4.4)

_0__ Number of months in the previous calendar year that the District's Monthly Compensation Report was received timely

Y☒/N☐ Monthly Compensation Report's are generally completed accurately

Comments: Click here to enter text.

__2__ The District Defender is aggressively pursuing all due local revenues, or is in formal dispute if not (this includes the collection of the $40 application fee for appointed defendants) (DD Contract § 2.23)

During previous calendar year Fees Assessed # _3500+__ Fees Waived # 26___

90 % Percent of local revenues actually collecting

District Defender description of actions taken to increase local revenues Obtained a grant plus office space in city court, has also gained support in juvenile court. However, also allegedly only represents clients who provide the $40 application fee.

Comments: Click here to enter text.

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Choose The District Defender is balancing revenues and expenses effectively (DD Contract § 3.1.3)

The District is: ☐ Accruing ☐ Depleting ☒ Shortfall

Y☐/N☐ (If accruing) does the District Defender expend additional resources on staff and special projects to improve its service delivery to clients

Y☒/N☐ (If shortfall) does the District Defender reduce expenses where possible

Comments: ROS will be implemented beginning 4/01

__2__ The District Defender has a written policy on reimbursements (office supplies, travel, overhead, etc.) consistent with the State of Louisiana travel regulations that apply to district PDO's (DD Contract § 2.3)

Y☒/N☐ The District Defender has developed a written policy on reimbursements

Y☐/N☒ The District Defender has shared the policy with LPDB

Y☒/N☐ The District Defender checks expense accounts to ensure that staff are following the policy

Comments: Click here to enter text.

__1__ The District Defender and/or Office Supervisors communicate promptly and effectively with LPDB on issues relevant to the Division (DD Contract § 3.4)

Comments: Click here to enter text.

Special Projects Division

__3__ The District Defender is actively involved with community, non-profit and human services agencies (DD Contract § 2.14)

Y☐/N☒ The District Defender has created a bulletin board or other mechanism to prominently display and provide client information (i.e. information related to the justice system, community events, job opportunities, client issues, social service opportunities, etc) that is updated frequently

Y☐/N☒ The District Defender is aware of social services available in the community

Y☐/N☒ The District Defender has reached out to the faith community

Y☐/N☒ The District Defender attends community functions is his/her capacity as public defender

Y☐/N☒ The District Defender encourages attorneys to make referrals for appropriate community based services

Comments: Click here to enter text.

__2__ The District Defender appropriately engages the media to present a positive image of public defense programs (DD Contract § 2.14)

Y☒/N☐ The District Defender and staff/contract attorneys proactively reach out to relevant media sources to provide public defense prospective on important community issues

Y☒/N☐ The District Defender and staff/contract attorneys are prepared to provide public defense perspectives, on important community issues, that are consistent with zealous representation in response to media requests

Comments: Media spots portray caseloads that are excessive and against promulgated standards and guidelines, although in discussions of the ROS plan the DD has re-iterated that caseloads

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are manageable. The compliance officer will need to research caseloads and possibly amend the ROS plan to reduce attorney workload.

__3__ The District Defender leverages pro bono support or other innovations to provide supplemental services to district clients

Y☐/N☒ The District Defender encourages and supports the development of pro bono community services such as "Pro bono legal counsel nights" or "Know your Rights" trainings in the community

Y☐/N☒ The District Defender promotes the provision of additional services (i.e. accompanying a client who is surrendering to law enforcement, providing expungement services for eligible clients, willingness to be a reference for a client's job or educational program applications)

Y☒/N☐ The District Defender has developed a network of civil lawyers, health care professionals, and social service providers to provide other pro bono services

Comments: Per the DD he has developed a network of volunteer attorneys who are willing to handle conflict cases, however no information has been provided as to their qualifications.

__3__ The District Defender or appropriate staff pursues funding outside of the statutorily dedicated funding for special projects, technology or other appropriate programmatic improvements

Y☐/N☐ The District Defender appropriates money for special projects (i.e. Staff social workers, building improvements, other services not required by LPDB)

$_____ Total amount budgeted for special projects

Comments: Click here to enter text.

__2__ The District Defender and/or Office Supervisors communicates promptly and effectively with LPDB on issues relevant to the Division (DD Contract § 3.4)

Comments: Click here to enter text.

Training Division

__2__ The District Defender promotes and supports staff participation in LPDB training, including dedicating funds for attendance as appropriate (DD Contract § 2.18.2)

Y☒/N☐ The District Defender provides financial support to allow staff to attend trainings

__38_ Average number of staff/contract attorneys

__1_ Average number of certified Capital attorneys

__4_ Average number of investigators

Number of staff in attendance:

_4_ Juvenile Defender Training	_1_ Defender Leadership Training
_N/A_ Investigator Workshop	_1_ Defender Training Institute (2 held in 2014)
_3_ Capital Defender Training	_1_ Juvenile Regional Training (3 held in 2014)
_0_ Legislative Update	_0_ Team Model Representation in CINC Cases

Comments: One of the staff attorneys who has worked in the office for a number of years, was unaware that LPDB held trainings.

__2__ The District Defender/Office Supervisors pursue personal leadership training outside of LPDB training programs (DD Contract § 2.18.2)

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Y☐/N☒ The District Defender/Office Supervisors pursue additional leadership training

_1__ Number of additional trainings staff participated in during previous calendar year

Please list additional trainings: NJDC Summit in Louisville, KY.

Comments: Click here to enter text.

__2__ The District Defender/Office Supervisors provide either in-house training programs for their staff, or encourage and provide for other training opportunities on issues specific to the district (DD Contract § 2.18.2)

Y/N The District Defender/Office Supervisors provides additional training opportunities to the district

1 Number of additional trainings staff participated in during previous calendar year

Please list additional trainings: LACDL

Comments: Click here to enter text.

__1__ The District Defender and/or Office Supervisors communicate promptly and effectively with LPDB on issues relevant to the Division (DD Contract § 3.4)

Comments: Click here to enter text.

Information Technology & Management Division

__2__ Attorney salaries are within reasonable range in relation to District Defender salary (See DD Contract § 2.13 for LPDB's authority to regulate salaries)

(Excluding outliers) Min. salary by FTE $ __42,000____ Max salary by FTE $___83,000

District Defender salary $__94,000 (PT)____

Comments: DD salary is 1.81 times higher

Choose The District Defender has written contracts with non-staff attorneys (See DD Contract § 2.18.2 for requirements for contractors, inconsistent with not having written contracts)

Y☐/N☐ Contracts for all non-staff attorneys are available for review

Comments: Not assessed

__3__ The District Defender requires and maintains timekeeping files of all personnel and contractors (DD Contract §§ 2.3.2, 2.6.2)

Y☐/N☒ The District requires all staff and contractors to maintain timekeeping files

Y☐/N☐ The timekeeping files are available for review by LPDB staff

Review of timekeeping files show files to be (check one):

☐ Complete and accurate

☐ Somewhat complete and accurate

☐ Incomplete

Comments: Support staff and conflict attorneys must complete; staff attorneys do not (not uncommon practice statewide). JJCO did not request timekeeping files.

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__3__ The district's defenderData (CMS) entries are indicative of a district that effectively acts in the best interest of clients

Total # of arrests last CY 15,973 new cases__

___12 # Refusals

___ # Dismissals

_1025__ # Plea to lesser

1603___ # Plea Guilty as Charged

___ # Plea Guilty as Charged with probation

Comments: Disposition data in database inadequate. Dispositions are only input for 5,190 of the 14,634 cases closed during CY14

__3__ The District Defender requires hardcopy/scanned documentation of case files (DD Contract § 2.6.1)

Y☐/N☒ Hardcopy/scanned documentation of case files are available for review by LPDB staff

__20+_ Number of Case Files Reviewed

_100__ % Located in less than 15 minutes

___ % Not Located

Comments: District maintains no files in municipal court

__3__ The District Defender ensures that hardcopy/CMS case files are sufficiently documented (DD Contract § 2.6.1)

Y☒/N☐The District Defender reviews hardcopy/CMS case files to ensure sufficient documentation

Frequency: ☐Weekly ☐ Monthly ☐ Quarterly ☐ Yearly Other_Irregular_____

Comments: Limited electronic records of municipal court, no hard copy files.

__3__ The District Defender requires and maintains up-to-date data entry in the CMS for all cases

_Minimal__ Number of cases on auto-dormant

Review of CMS entries show entries to be (check one):

☐ Complete and accurate

Click here to enter text. Somewhat complete and accurate

X Incomplete and/or inaccurate

Comments: Misdemeanor cases in municipal court are opened and closed on the same date. No contact information, no demographics, no charge information, no notes or events.

__3__ The District Defender encourages and monitors motion practice/has made attorneys aware of the Motions & Documents Bank in the CMS

Y☐/N☐ Document attorney active

___ # of motions filed in last quarter ___ # of motions filed in last calendar year

Comments: LPDB needs to do a better job of publicizing feature, this response is common.

__1__ The District Defender punctually submits properly completed Annual Compensation Reports

Y☒/N☐ Annual compensation report submitted timely

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Y☒/N☐ Annual compensation reported completed accurately

__1__ The District Defender punctually submits properly completed Annual District Narratives

Y☒/N☐ Annual District Narrative submitted timely

Y☒/N☐ Annual District Narrative completed accurately

__3__ The District Defender and/or Office Supervisors communicate promptly and effectively with LPDB on issues relevant to the Division (DD Contract § 3.4)

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1st Judicial District PDO Court Observations

Covering the dates of January 14th, February 10th, February 11th, and March 3rd 2015

Shreveport Site Visit January 14, 2015 (as observed by Richard Pittman)

Court Observation at Shreveport City Court

I observed court at Shreveport City Court, which appears to be the court for all misdemeanors in the 1st district, though this is an oddity that we have not quite run down yet.

I observed the PD, in this case Ross Shacklette, call clients up. He says He will not represent people without application fees paid. He called out his "paid" clients, which were clearly fewer than all the cases in court.

I noted some names where the defendant was represented and some cases where the defendant was not. I emailed Gina Carley to look up some of the cases in which they PD was not providing representation and verified that these cases were listed in the database.

I talked briefly with Alex Rubenstein. He told me that the process is that they come for arraignment day and make note on the docket of all the clients they talk to. Each attorney marks a separate docket. They tell the defendants that they can get representation by paying the $40 application fee. They then take the marked-up dockets back to the office and the secretary enters each case in which they talked to a defendant into the database with the attorney who talked to the person listed as the attorney on the case in the database. The cases are then listed as closed.

They keep track of who pays the application fee. Those defendants are represented. Mr. Rubenstein told me they do not have physical files, and neither does the prosecutor. They come to court and negotiate pleas and whatnot. I observed the negotiation process, and it seemed like most cases ended up dismissed or continued because of failure of the victim to appear in domestic violence cases.

I also observed that they routinely request to be relieved of duty to represent when the client does not appear for court. This happened twice that I saw. I left city court around 10:00 to go to district court.

Court observation in the 1st District

Courtroom #1: I first observed the courtroom in which Sara Brown was the attorney. It was difficult for me to hear very much of what was going on because the acoustics in the room were bad. Most cases just came in on a status conference where discovery was reviewed and the case

re-set for motions or trial. I saw one preliminary exam, in a forgery case. Ms. Brown did a credible job on cross examining the officer about the video that he was testifying to having watched. The judge found probable cause, which in fairness was the correct decision. Ms. Brown then asked for a bond reduction for her homeless client and again, did a credible job of arguing for the reduction, but did not call any witnesses or present testimony, instead relying on the testimony of the preliminary exam. The judge denied the bond reduction. After a brief discussion with the prosecutor, the case plead out, and I believe the client was sentenced to a 2 year prison sentence. It was very surprising a) to see a forgery case result in prison at all, and b) to see a case plead out at such an early stage with a prison sentence. The judge called a recess and I went to a different courtroom.

Courtroom #2: I saw two preliminary exams in this courtroom. The attorney was James Andes. In both cases, the facts were not good for the defendant. Cross examination in the cases was short and generally ineffective. I spoke briefly with the public defender during a lull in the proceedings and suggested that in his case in which a person was accused of stealing a car and was identified by an automatic license plate reader that alerted the state police that the car was listed stolen, that he should consider filing a suppression motion because I have no idea if an alert from an automatic license plate reader constitutes cause for a vehicle stop. I suppose it probably does, but it bears researching. There was no request for bond reduction in either case. I then went to courtroom #3.

Courtroom #3: I looked at the docket outside the courtroom and noticed that the vast majority of the cases on this docket were coming from the jail. I learned that there was supposed to be a jury trial in front of this judge but it settled or otherwise did not go forward at the last minute, and they put together a last-minute docket of what they thought were “easy cases”. I suppose these would be agreed pleas or some other type of simple matter. It turned out not to be the case. One of the PD clients appeared to be going through an acute mental health problem and was unable to go forward with his agreed plea. He later caused a disruption and a police officer threatened to taze him. The PD in this courtroom was Katherine Bloomfield. David McClatchey was also there. There was some discussion in the courtroom that the disruptive Defendant may have been malingering, but Ms. Bloomfield did not believe so and said she would file for a sanity commission. Some other cases settled.

I talked to Mr. McClatchey and Ms. Bloomfield and mentioned that I was surprised so many felony cases were in jail, and was told that was typical. Bonds are high. People are poor. Plus, they often get picked up again while out on bond.

File Review

I then went to the PD office to review files. The PD office supplied me with a variety of files from many attorneys, including a few juvenile files. There were no misdemeanor files, but there were felony and LWOP files to review. My notes are as follows:

#1: Atty: Sara Brown Charge: Agg. Cruelty to Animals

- File is voluminous
- Case plan is detailed
- There is a copy of the statute
- There is a to-do list
- There are many notes in the file
- Motion for Change of Venue
- Motion related to jury intimidation
- This is a high profile case that has gotten attention in the community
- There are numerous investigative notes

I am impressed with the file, which has been extensively worked up and is reasonably well-organized

#2 Atty: Danielle Brown Charge: Robbery

- Case plan not filled out
- No real evidence of effort other than an initial interview
- Database shows this file is about 4 months old and that Def. is in jail

#3 Atty: Michael Bowers Charge: Drugs

- There is a partial reimbursement order
- This is a traffic stop case
- It is explicit in the police report that they were stopping people for drugs
- The 'probable cause' is illegal lane usage
- Not a lot of work-up in the file

#4 Atty: La Leshia Alford Charge: Drugs

- There is evidence of a client-complaint about not visiting the client in the jail
- It looks like the case may have been re-assigned to Ms. Alford around then
- There is a note about the complaint and an instruction to go see the client
- There are numerous motions in the file
  - Suppress statements
  - Suppress physical evidence
  - Bill of particulars
- There are notes of jail visits

This file looks to be pretty well worked up

#5 Atty: Kurt Goins Charge: 2nd degree murder

File has a lot of work in it, but is hard to follow because it is disorganized
Lots of requests for medical records
Sanity commission
Visits to jail
Atty sent an offer to plead to manslaughter
Jury was waived, and client found guilty at trial to manslaughter

Other than the file being disorganized, this looks like a good file with lots of work and a an apparently pretty good result, even if waiving the jury is unorthodox.

#6 Atty: Richard Fisher Charge: Drugs

Fairly new file (database shows it opened in October)
Not a lot of work in it
Database shows client is in jail

#7 Atty: Rickey Swift Charge: Att. 2nd degree murder

File needs to be pinned down
There is a lot of information in the file
It appears the victim stopped cooperating with the prosecution
Bond motion

#8 Atty: Kurt Goins Charge: 2nd degree murder

Again, file is disorganized but there is a lot of work in it
There are notes about theory of the case (self-defense)
I see a note about a conflict check

#9 Atty: George Harp Charge: TPR

This is an appeal
There are a lot of notes in the file. Mr. Harp keeps extensive notes
Appeal was filed after numerous extensions of time
I later got a notice from LEXIS that the appeal had been decided against the parent

#10 Atty: Heather Courtney Charge: Sexual Battery (juvenile)

There are a couple investigative memos
Extensive forensic interviews of the children
No trial yet

Shreveport City Court Observation February 10, 2015 (as observed by Barbara Baier and Tiffany Simpson)

The bailiff is the only "official" person in the courtroom. There is no judge, prosecutor, or public defender. The bailiff begins the court hearing by describing the process. Defendants who want to speak to a public defender are directed to line up and proceed to courtroom 4 to fill out an application. The bailiff instructs the defendants that the process to speak with the public defender is considerably longer because it takes more time for the paperwork and files to be moved from floor to floor. Everyone who wants to speak with a public defender begins to leave the courtroom. Barbara Baier went upstairs to observe the process. Her notes are included below.

The PDO secretary provides application to prepare; $40 fee must be mailed in (money order) or brought to PD office (cash) before next court date or attorney will not represent person; the applications ask about expenses and income; everyone remained in the upstairs courtroom until a PD called for consultation; thereafter the person returns to courtroom downstairs to get next court date. Outside courtroom 4, PD calls name to confer in conference room; one PD left door wide open where others could hear, although the meetings were not very long; the other closed the door (really elderly man); both had files; sometimes the meeting lasted about one minute; some of the things I overheard;
See you on court date, we'll see what we can do to drop charges maybe
Call me in 30 days, I'll have a look at DVD; if it looks incriminating I'll have you look at it
Identified on video; show to court, if it's not you you'll have your chance to explain

While Ms. Baier was upstairs, Tiffany Simpson remained downstairs to observe the remainder of the proceedings. After the defendants interested in speaking with the PDO left the room. The bailiff asked everyone charged with a domestic abuse charge to raise their hands. Each person who raised their hand was instructed to speak with the PDO by order of the court. At this point the city prosecutor entered the courtroom. The bailiff then proceeded to ask clients to raise their hands if they wanted to plead guilty or not guilty. As he described if a defendant chose to plead guilty the matter would be settled today with no need to return to court. If the defendant did not have the money to pay the applicable fine then the defendant should plead not guilty so as to allow time to gather the money. There was no discussion about actual innocence nor any discussion of possible jail time. The people interested in pleading not guilty were allowed to line up and get their next court date. At this time, the judge entered the courtroom. Most of the people who chose to plead guilty had a fine established and left the courtroom without incident. However, the last handful of people who plead guilty were charged with thefts. At this point the judge enacted her policy that all first time theft offenders be sentenced to a mandatory 5 day jail time (one stole $24.95 worth of goods). One woman sentenced to 5 days who was unaware of this court rule began to have a panic attack leading to EMS being called. She had no idea that a 5 day jail sentence was a possible sentence. The judge immediately recessed court and left the courtroom.

While court was in recess, another bailiff approached me to inquire as to why I was observing court. I introduced myself and stated my role in conducting site visits. He asked if I met Alex

Rubenstein, I told him that we had not been introduced and asked for him to point Mr. Rubenstein out to me. The bailiff told me that there were no public defenders in the court room, they were all upstairs. He also informed me that Alex Rubenstein was at jail clearance. I asked the bailiff to describe jail clearance. He stated that jail clearance was for the people who couldn't make bond and just wanted to plead so that they could get out of jail. At that time, I left the courtroom and joined Barbara upstairs, I do not know what happened with the woman who was sentenced to jail.

That same afternoon, Barbara Baier and Tiffany Simpson observed DWI trials. During the hearing 10 persons lined up to change their pleas to guilty to DWI (most first offense). At that time two public defenders entered the courtroom for a group Boykin. Two individuals required an interpreter which was provided by the court.

Shreveport City Court Observation February 11, 2015 (as observed by Barbara Baier, James Dixon, and Tiffany Simpson)

LPDB staff observed court again on February 11th. The hearing was a criminal trial docket however, there was not one case that went to trial. Again there was no public defender in the courtroom. One defendant who pled guilty was asked by the prosecutor if he was represented by the PDO to which he replied in the affirmative. At some point Mr. Rubenstein arrived in the courtroom to represent a client in a revocation hearing.

As Mr. Rubenstein waited for his client to be brought in from a holding cell, a female defendant who had mistakenly been giving the wrong court date was called forward. This woman had not been previously arraigned and was charged with a hit and run. The judge asked Mr. Rubenstein if she was his client, he responded that she had not paid an application fee and therefore was not his client. The judge instructed the woman to plead not guilty and another court date was given. Mr. Rubenstein remained in the courtroom for the remainder of the hearing. While Mr. Rubenstein remained in the courtroom two more women were brought forward. One woman faced attempted theft charges, while the other faced theft charges. Both claimed to have stolen or attempted to steal diapers and other baby items from a local dollar store. One woman was asked to have a seat and the other was sentenced to five days. The judge conversed with the city prosecutor regarding the appropriate sentence for the attempted theft, a sentence of 2 or 3 days was decided upon. The judge then asked the bailiff to return the woman who had previously been sentenced to five days. Apparently, at some point the judge realized that the woman had a prior theft charge in Bossier/Webster Parish. The woman was immediately resentenced to 60 days in city jail. At no point did Mr. Rubenstein attempt to advocate on behalf of the client or intervene.

Shreveport District Court Observation March 3, 2015 (as observed by Richard Pittman)

Mr. Pittman traveled back to Shreveport on March 3rd to view jail clearance, he was directed to the parish jail and watched a district court 72 hour hearing. The entire proceeding last less than 10 minutes. The questions surrounding jail clearance are related to city court, therefore another staff member will return at a later date to view jail clearance.

ALEX RUBENSTEIN CASE COUNT FOR CALENDAR YEAR 2014

*There is a discrepancy between the cases received and cases assigned. This document has the cases assigned, as well.

Month	Cases Received	Fugitive	Open	Probation	Closed
January	515	0	0	0	515
February	459	0	0	0	459
March	485	0	0	0	485
April	388	0	0	0	388
May	504	0	0	0	504
June	471	0	0	0	471
July	693	0	0	0	693
August	638	0	0	0	638
September	538	0	0	0	538
October	488	0	0	0	488
November	410	0	0	0	410
December	419	0	0	0	419
TOTAL	6008	0	0	0	6008

Month	Cases Assigned	Fugitive	Open	Probation	Closed
January	468	0	0	0	468
February	519	0	0	0	519
March	495	0	0	0	495
April	362	0	0	0	362
May	354	0	0	0	354
June	681	0	0	0	681
July	349	0	0	0	549
August	537	0	0	0	537
September	825	0	0	0	825
October	536	0	0	0	536
November	336	0	0	0	335
December	554	0	0	0	554
TOTAL	6016	0	0	0	6016

MEMORANDUM

To: Executive Staff
From: Jean M. Faria
Date: April 6, 2015
Re: Site visit to Shreveport Municipal Jail, Municipal Court, & District Defender

At the March 24, 2015 LPDB meeting, District Defender of Caddo Parish, Alan Golden, Municipal Court attorney and supervisor Alex Rubenstein and Deborah Jacobs, Mr. Rubenstein's secretary of many years both in Juvenile and Municipal Courts, appeared before the Board based on a request from the State Public Defender. After hearing the comments from the Shreveport personnel, the Board moved to defer any action on the issues to afford staff the opportunity to address the discrepancy in Mr. Golden's case count and that of the LPDB staff. Additionally, Board member Mr. Borghardt requested that staff conduct a performance evaluation.

Board member Professor Hector Linares correctly observed that the data provided by the District Defender did not cover the same period of time as the data presented by staff. Staff's data points were calendar year 2014. Mr. Golden's data covered July 1, 2014 to March 24, 2015. Extrapolating the numbers in Mr. Golden's count through the remaining three months, would account for approximately 6,000 cases. Whether one talks about 1,000 clients, 4,000, 6,008 or 6,800 cases, ethically any lawyer with any of these numbers is unable to provide the effective assistance of counsel. Based on my observations of jail clearance it is clear that the effective assistance of counsel, based on the *Strickland* standard is not being met.

On March 30, 2015, I contacted Alan Golden to make arrangements to attend Shreveport Municipal Jail Clearance and Municipal Court. Arriving at Municipal City Jail a little before 8:00 a.m. on April 2, 2015, Alex Rubenstein and Alan Golden were in the lobby. We entered the facility, and Mr. Rubenstein led us to the video conference room. The small room contained a bench, holding 6 African American men who had been brought in from Caddo Correctional Center (CCC); one Municipal Marshal, Alex Rubenstein, Alan Golden, a Municipal Jailer and I were in the room. The video monitor and audio, connected to the Municipal Court were active.

There was a bucket containing files on a table in the room. The files belonged to the clerk of court. Each file contained a stapled document on the left page of the folder produced by the clerk of court which contained three columns: one for the date; one for attorney initials, and one for outcome (e.g. PNG or PG). Two chairs were in the room by the door, where Mr. Golden and I sat.

At the beginning of the instructions to the defendants Mr. Rubenstein introduced himself as the person who was representing them. Mr. Rubenstein informed the defendants that this was an arraignment, where each person had the right to plead not guilty and receive a trial date or plead guilty. Defendants were told if you plead not guilty you will be given my card, if you are still in jail I'll see you. Charges ranged from cracked windshield (defendant pled not guilty) expired plates (60 day sentence) to DUS, careless operation (four month sentence)

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If a person wished to plead guilty, the facts contained in the police report were read to them. If a person contested any fact he was informed that the judge would not take a guilty plea unless the person agreed to all the facts as presented. If a person wished to plead not guilty, the facts of the offense were not read to him and he was told that he would receive credit for all time served and it would run concurrently to any other sentence unless there was more than one crime occurring at different times, which would result in a consecutive sentence. Mr. Rubenstein instructed the men that for every day each was in custody it was worth $10 a day. Were the court to impose a $100 fine then 10 days in jail would pay the fine. When asked about the court costs, he stated that those were separate and had to be paid.

Mr. Rubenstein explained that if any of the defendants was charged with DWI or DAB these were enhanceable meaning that a future conviction and sentence could be longer or result in felony charges.

Mr. Rubenstein clearly did not know the defendants, the state district court charges or who was representing each defendant on his state district court cases. No one from the public defenders office interviews clients who go through this jail clearance process. Although clear from the proceedings, both Mssrs. Rubenstein and Golden later verified that client interviews are not conducted prior to jail clearance. Neither district court public defenders nor private counsel representing the Caddo Correctional Center detainees/inmates are contacted prior to the jail clearance "arraignments" to determine what affect a plea to the municipal charges would have on the district court case.

When asked about jail capacity, the current jail population or the number of attorney interview rooms in the facility, how the defendants from Caddo Correctional Center were chosen to come to the municipal jail clearance, who made the municipal court dockets, neither lawyer knew the answers to these questions.[1]

One defendant did not want to plead guilty as the traffic ticket he had received at the time of his arrest did not contain all of the charges read to him by Mr. Rubenstein. At this point a City Marshal, armed with a what appeared to be a 45 caliber Glock on his hip, a flak jacket and handcuffs, took the file over to the defendant and started asking him questions and telling the defendant that the charges could have been added on after the ticket was written but they couldn't get to it [the ticket] as it was in the defendant's property.

The "Boykin" examination provided by Mr. Rubenstein was neither thorough nor complete. He told the men that if they pled guilty they would have no trial; no witnesses would be called as there would be no trial; and most importantly, they would be admitting their guilt. Elements of the offenses were not discussed with each defendant. Evidence needed to prove each element of each offense was never discussed. No mention of collateral consequences was made to any defendant. Lacking a thorough interview regarding each man's background, any advisement regarding collateral consequences would have been pure conjecture.

[1] When I met with Paula Goleman, a deputy marshal at the Municipal Court, she told me that jail capacity was 284, the day's population was 133; there were 7 attorney/client interview rooms available as one was used for storage; she made the call out lists for the Caddo Correctional Center pretrial/detainees. She knew on Friday, who she would bring over to jail clearance, subject to last minute changes in the Caddo Correctional Center population.

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After this "advisement" Mr. Rubenstein moved the bucket of files to the hall outside the video conference room. He placed the bucket on a chair in the hallway next to a jailer while 11 men stood against the wall. Ten of the 11 men were African Americans. The white male appeared to be responding to auditory and visual hallucinations.

Mr. Rubenstein made the same introductory remarks as he had made in the video conference room and then asked the first man in line his name. The man responded and Mr. Rubenstein read him the charge: DWI 2nd. He was going to plead guilty and the police report was read to him. He had not blown into the intoxilizer nor had anyone viewed the video of the stop. At this point in time, Mr. Golden showed me the Clerk's files with the sheet containing the three columns previously mentioned.

The third man in line was charged with domestic abuse. Mr. Rubenstein told the man that he had been convicted in 2011 for domestic abuse. The current victim said that the defendant had bitten her on the arm. He said he did not do that, to which Mr. Rubenstein asked him "did you do this?" I was so shocked that it took me a second to register what was going on, at that moment the jailer asked the client "did you do it?" I looked at Mr. Golden and said this a violation of his 5th and 6th amendment rights. When Mr. Golden did nothing, I stopped the proceedings and said "you can't ask him that, you can't do this." The defendant waivered and said he was going to plead not guilty, when the defendant next to him said "you might as well plead guilty, 'cause it's going to be just like this when you come back." The defendant pled not guilty.

The white male who appeared to be having hallucinations was charged with public drunk. He had been in custody for three days. The jailer said the defendant was hearing voices and the jail had administered the wrong medication. The jail wanted him out of custody. I asked Mr. Rubenstein permission to speak to his "client" and asked him about his condition and medications. He normally took seroquel and welbutrin which are used to treat schizophrenia in adults, sometimes it is used to treat bipolar disorders and major depressive disorders. Regardless, the defendant was not competent to proceed and again I injected myself into the proceeding. At this point, Mr. Golden leaned over to Mr. Rubenstein and instructed him to see if the prosecution could be dropped. Mr. Rubenstein returned from the video conference room and informed us that the charges would be dropped.[2]

The charges for this group of men were anything from sagging belt to domestic violence. There was one man who had the flu, he couldn't stand up, said he was burning up. The jailers clearly wanted him out of the facility. He said he would plead guilty, no facts were read to him, he was in obvious discomfort and too ill to enter any type of plea. He was taken back into the jail, hopefully to sick bay.

Two women were brought in from the women's section of the Municipal Jail. Having seen enough, I went on to Municipal Court to observe DWI court, and to speak with the Municipal Court criminal misdemeanor attorneys. There I entered the DWI court, where Ms. Jacobs and Ms. Kammi Whately were present with Mr. Mark Frederick, the contract DWI attorney. There

[2] It should be noted that Mr. Rubenstein was not present in the room when the defendants were appearing before the court during the video conference

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was one African American male at counsel table with Mr. Frederick who was clearly discussing the facts of the client's case with him in front of Ms. Jacobs, Ms. Whately, Mr. Zach Blanchard when he arrived, Mr. Golden and me. Court was not in session. Mr. Frederick explained that the court's "further proceedings" is issued to clients on bond for them to meet with their attorney prior to trial. During the time between a not guilty plea and trial, Mr. Frederick collects information about the offense, viewing video tapes and reviewing test results which are then conveyed to the client during the "further proceedings." Mr. Frederick explained that normally there were many more than the two defendants who appeared today (April 2, 2015) and that he addresses them all in the audience about their rights and then calls them up individually to discuss each client's case in front of all the other clients.

Mr. Golden introduced me to Mr. Zach Blanchard, who brought his notebooks containing the individual notes, Mr. Golden had referred to in the Board meeting. Mr. Blanchard showed me his notes which contained the date, the client's name and the offense. On occasion there would be a random note "which meant something to [Mr. Blanchard]."

When I asked the question why were so many of the defendants African American, Mr. Frederick told me that it was not about race, it was about poverty. When I asked him the demographics of the city he told me it was 50-50, to which I asked are you telling me that 99% of the poor people in the city are African American? The response was, "it's about poverty not race." No discussion about disproportionate minority contact was raised by these comments.

I met with Deborah Jacobs who provided a number of documents. One of which was the clients' history document. It is a list of every municipal offense for which a defendant was arrested. It does not contain dispositions. This document is used by the defender during the arraignment proceeding. Ms. Jacobs does intake and receives clients' public defender fee.

While I was in Ms. Jacob's office Judge Barber came by and asked to be introduced. He told me what a great job Mr. Rubenstein was doing and that they didn't want to see any changes and that the "flat line I mean bottom line" is that they do not want to lose Alex.

I met with Mr. Rubenstein in his office at the Municipal Court. He verified that he did not interview clients, did not know how CCC clients were selected for transportation to jail clearance, that he did not notify counsel for the CCC clients that they were being arraigned; that he did not know who made the dockets or how the clients were selected. He suggested that we contact Paula Goleman in the Marshal's office which he did. We walked over to that part of the court building. Mr. Rubenstein's magnetic card opened every door except the City Attorney's office, to which he told me they would not grant him access.

We met with Ms. Goleman who told us exactly how she made the dockets and why she made them the way that she does, the jail capacity, the day's snap shot population, the number of attorney interview rooms.

I left Municipal Court and met up with Alan Golden at his office. I told him frankly what I had witnessed was the institutionalization of ineffective assistance of counsel. He told me that he

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had inherited this system, which is what Mr. Rubenstein had told me. I told Alan that Leadership is about making changes.

First Alan asked me if I would agree that it was OK to plead the Caddo Correctional Center inmates/detainees, since the municipal charges would serve as a hold on them once they had served their state sentences. I said "no." I gave Alan the example of Rodericus Crawford, who had been pled guilty to a misdemeanor charge while his first degree murder trial was pending. The misdemeanor conviction was used to show that he had a criminal record and that his adaptive functioning was poor or non-existent. No one had contacted his capital lawyers since no one knew why Mr. Crawford was in Caddo Correctional Center.

Then Alan asked me if I would agree that it's OK to plead the municipal court detainees, again, I said "no" as the defender did not know anything about the client. At this point Alan said "so we should be interviewing these clients?" Then he threw out all the facts that serve as an impediment to the idea of interviewing a client before making any decisions in the client's case. I told Alan that leadership was all about changing systems that did not serve our clients. I then told Alan that I had no choice other than reporting what I had witnessed to the Board, having been charged with that duty.

I believe that as the District Defender he should be instructed that he has 30 days to show meaningful progress in addressing the systemic deficiencies in the Municipal Jail Clearance process. Namely he should:

1. Meet with the City Marshal, City Prosecutor, City Court Judges and explain why the present system constitutes a Fifth and Sixth Amendment violations of their clients' right to the effective assistance of counsel using the *Louisiana Rules of Professional Conduct* and the LPDB Trial Court Performance Standards;
2 Explain that sufficient time needs to be given to the Municipal Court Defender to contact a given defendant's district court counsel to give notice to that counsel and confer regarding the Municipal Court charges;
3 Explain to the Marshal and Judges why the Municipal Court dockets need to be made sufficiently far in advance to allow for item 2 above, but above all, for sufficient time for the Municipal Court Defender to have adequate time to individually and privately interview each defendant prior to court proceedings; and,
4 Regardless of whether a client "admits" guilt, the Municipal Court Defender has a duty to investigate the facts surrounding the offense and to assure him/herself that the prosecutor has sufficient evidence as to each and every element of the offense, needed to prove the offense beyond a reasonable doubt.

Further, it is my opinion that the District Defender should be given a total of 60 days in which to show significant progress toward implementing these changes. If the District Defender cannot accomplish these bench marks within the given time frame, it is my recommendation that the due process proceedings for termination should begin at the end of the 60 day period.

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Remedial Action Plan for Shreveport City Court
April 17, 2015
By Alan Golden, District Defender, 1st JD

Purpose: To improve client representation at Shreveport City Court

A) JAIL CLEARANCE SERVICE

1) **Set up meetings, preferably joint meetings, with the City Marshal, City Jail, City Prosecutor, City Court Judges to propose the following changes:**

   a. Have the City Marshal provide a list of inmates 24 hours in advance of the scheduled 72 hour appearance;

   b. Have the City Judges and City Prosecutor agree to move back the time for Jail Clearance from 8:30 am to around 10:30 to 11:00 am to provide sufficient time for individual client interviews;

   c. Have the City Jail provide at least two rooms or suitable spaces for the conduction of private attorney-client interviews.

   d. Have the City Jail make clients available for individual interviews both during the afternoon/evening prior to and in morning before the 72 hour appearance.

2) **Add a second fulltime attorney to assist the Supervising Attorney, and both will:**

   a. Meet defendants, one-on-one, in private to discuss the elements of the offenses, possible defenses and the direct and collateral consequences of any plea;

   b. Provide lateral representation until resolution;

   c. Provide meaningful adversarial assistance, including fact investigations and motions practice including, motions to quash and suppress.

3) **Create files containing the following:**

   a. Clients name, docket number and charges;

   b. Copy of the charging instruments (tickets) and police reports

   c. Interview forms

B) ARRAIGNMENT SERVICE:

1. **Continuation of services;**
   a. Attorneys shall not refuse or discontinue services to any client who otherwise qualifies for our services but who does not pay the application fee.

   b. Attorneys shall not request the court to relieve us of our representation of a client when a client fails to show at a court date.

2. **Presence of Attorneys:**
   a. Attorneys shall be required to be present with clients at all hearings and pleas.

   b. Prior to any pleas, attorneys shall instruct clients regarding the elements of the offenses, possible defenses and the direct and collateral consequences of any plea.

   c. Provide meaningful adversarial assistance, including fact investigations and motions practice including, motions to quash and suppress.

3. **All attorneys shall maintain files on each client, as specified above.**
   a. Clients name, docket number and charges;

   b. Copy of the charging instruments (tickets) and police reports

   c. Interview form

C) FEE COLLECTIONS:

1) **We will immediately discontinue the practice of informing defendants that they will not be represented unless they pay the application fee.**

2) **We will instead inform clients as follows:**

   a. Verbal instruction to be delivered by the secretary or attorney:

   "If you cannot afford a lawyer and would like to have the assistance of a court-appointed lawyer, you must go the public defender office and fill out an application certifying that you are unable to employ counsel. You will be required to pay a $40 dollar application fee; however if you are unable to pay this fee, it may be waived in whole or in part upon showing of good cause."

b. Display the following placard at the public defender office specifying the law regarding application fees and partial reimbursement:

NOTICE TO CLIENTS

Attorney services are not free!

If you have received appointed counsel, you are required by law to fill out an application certifying that you are financially unable to hire counsel and to pay a $40 application fee. (La. R.S. 15:175)

You may also be required to make partial reimbursement to help defray the costs of our services. (La. R.S. 15:176)
Payments shall be made to the "Public Defender's Office."

If you cannot afford to pay these fees, all or part of them may be waived upon the showing of good cause.

CASH OR MONEY ORDER ONLY.

Remedial Action Plan for Shreveport City Court

A) JAIL CLEARANCE SERVICE

1) Set up meetings, preferably joint meetings, with the City Marshal, City Jail, City Prosecutor, City Court Judges to propose the following changes:
   a) Have the City Marshal provide a list of inmates 24 hours in advance of the scheduled 72 hour appearance;
   b) Have the City Judges and City Prosecutor agree to move back the time for Jail Clearance from 8:30 am to around 10:30 to 11:00 am to provide sufficient time for individual client interviews;
   c) Have the City Jail provide at least two rooms or suitable spaces for the conduction of private attorney-client interviews;
   d) Have the City Jail make clients available for individual interviews both during the afternoon/evening prior to and in morning before 72 hour appearance;
   e) Object to every plea in which the PDO is asked to participate wherein no discovery has been provided, no investigation has been conducted and have no information related to the charge independent of what has been provided by the state.
   - For every client transported from Caddo Correctional Center, the city court defender will contact and confer with the client's lawyer in district court, prior to taking any action other than entering a plea of not guilty to the city court charges
     a. The name of the client's district court attorney shall be contained in the defender file, as well as the contact information and a dated and detailed description of the conversation with the client's district court attorney. The district court attorney's recommendation shall be contained in the file.
2) Add a second full-time attorney to assist the Supervising Attorney, and both will:
   a) Meet defendants, one-on-one, in private to discuss the elements of the offenses, possible defenses, and the direct and collateral consequences of any plea;
   b) Provide lateral representation until resolution;
   c) Provide meaningful adversarial assistance, including fact investigation and motions practice including motions to quash, motions to suppress, discovery motions and bond reduction motions.
   d) with respect to any and all clients brought to City Court from the correctional center, attorneys shall contact client's counsel for the charges related to their incarceration in the correctional center prior to any plea taken in City Court
3) Create files containing the following:
   a) Client's name, docket number, and charges
   b) Copy of the charging instrument (tickets) and police report
   c) Interview forms

d) Entry of information into DefenderData

B. Arraignment Service:

1) Continuation of services:

a) Attorneys shall not refuse or discontinue services to any client who otherwise qualifies for our services but who does not pay the application fee.

b) Attorneys shall not request the court to relieve us of our representation of a client when a client fails to show at a court date.

c) With respect to any and all clients brought to City Court from the correctional center, attorneys shall contact client's counsel for the charges related to their incarceration in the correctional center prior to any plea taken in City Court.

2) Presence of Attorneys:

a) Attorneys shall be required to be present with clients at all hearing and pleas.

b) Prior to any please, attorneys shall instruct clients regarding the elements of the offenses, possible defenses and direct and collateral consequences of any plea.

c) Provide meaningful adversarial assistance, including fact investigations and motions practice including but not limited to, motions to quash, motions to suppress, discovery motions, and motions for bond reduction.

3) All attorneys shall maintain files on each client, as specified above.

a) Client's name, docket number, and charges;

b) Copy of the charging instrument (tickets) and police reports

c) Interview form

d) Object to every plea in which the PDO is asked to participate wherein no discovery has been provided, no investigation has been conducted and have no information related to the charge independent of what has been provided by the state.

C. FEE COLLECTIONS:

1) We will immediately discontinue the practice of informing defendants that they will not be represented unless they pay the application fee.

2) We will instead inform clients as follows:

a) Verbal instruction to be delivered by the secretary or bailiff:

"*If you cannot afford a lawyer and would like to have the assistance of a court-appointed lawyer, you must go to the public defender office and fill out an application certifying that you are unable to employ counsel. You will be required to pay a $40 application fee; however if you are unable to pay this fee, it may be waived in whole or in part upon showing of good cause."*

b) Display the following placard at the public defender office specifying the law regarding application fees and partial reimbursement:

NOTICE TO CLIENTS

If you have received appointed counsel, you are required by law to fill out an application certifying that you are financially unable to hire counsel and to pay a $40 application fee. (La. R.S. 15:175

You may also be required to make partial reimbursement to help defray the costs of our services. (La. R.S. 15:176).

Payments shall be made to the "Public Defender's Office"

If you cannot afford to pay these fees, all or part of them may be waived upon a showing of good cause.

CASH OR MONEY ORDER ONLY

Louisiana Public Defender Board

Field Report

Date of Field Visit: May 7, 2015 ***Location:*** Shreveport Municipal Jail

LPDB Staff Attendance: Jean Faria

Defender Attendance: Alex Rubenstein

Other Attendance: Municipal Jailer, Monica Davis, City Prosecutor; City Marshal,

Field Visit: *Unsolicited*

Purpose of Field Visit: This was an unannounced follow-up site visit to see what changes, if any, had been implemented since the previously documented Shreveport Municipal "Jail Clearance" proceedings.

I arrived at 7:20 a.m. and was admitted to the booking area, where I waited for a few minutes before being escorted to the video/conference room. Before leaving the booking area, I noted there were several empty attorney visitation rooms. The video/conference/courtroom was empty and the audio/video equipment was off.

The same "bucket" of city court clerk's files was on the table. There were no motions in the files.

At 8:00 a.m. a visibly surprised Mr. Rubenstein entered the video conference room. He stated that he had interviewed everyone last night, however, most everyone had bonded out before he had a chance to meet with them.

8:05 the Deputy City Marshal entered the room and turned on the city court video camera.
8:10 the City Court personnel respond to the video.

The first female client was charged with domestic violence (DAB) 2nd, Mr. Rubenstein took the bucket of files saying that he needed to speak with her, which he did in the presence of the other female detainees.

The "Legal Lane" sign in the jail hall is still there. I asked the jailer how many attorney client interview rooms were available. He told me five (which is not the number given to me by the deputy city marshal).

Monica Davis, an assistant city prosecutor arrived at 8:35. She had just received via fax an arrest report for one of the defendants coming through "jail clearance." There was no interview or break taken for this client to discuss his case with counsel.

Clients who chose to go to trial were given trial dates in July from the 20-27th, 2015. Of the 16 detainees who went through jail clearance, all but two were African-American.

The first detainee had pending criminal charges and did not want to plead guilty in light of the pending criminal charge.

The second detainee had been in custody for 24 hours. He lived in alternative housing and to which he failed to return. "Just get him out of here." He pled to simple criminal damage to property w/ 24 hours CFTS. When asked where the client could stay someone in the room said "what do we care where he goes?"

The third detainee was on the docket to plead guilty but decided to maintain his innocence. The Court set his trial date for July 27, 2015 at 1:30 pm, almost four months away.

The fourth client entered a guilty plea to theft of goods from a food market. At the time the client said he wanted to plead guilty the court stated that the client would receive 2 days CFTS. The court told the client that by pleading guilty he gave up certain rights: 1) trial before a judge; 2) the right to call witnesses; 3) his Fifth Amendment right to remain silent. When the factual basis was read, the value of the alcohol taken from the food market was $2.50. The client agreed with the factual basis. The court told the client the maximum legal penalties and then enhanced the sentence to 10 days in the city jail CFTS. No objection was made.

The next client stated he wanted to plead guilty to criminal trespass. He was told he would receive 11 days credit for time served. There was no factual basis or Boykin examination.

The sixth client was charged with simple battery and simple battery on an officer. The city prosecutor dismissed the charge of resisting an officer. The client was doing 30 days for a traffic offense, with 19 days down. There was no factual basis for the plea. The client was sentenced to 30 days concurrent with the traffic offense sentence on the first count of simple battery. On the simple battery on a police officer the client was sentenced to 30 days consecutive to the time he was currently serving. Mr. Rubenstein objected that it was "too stiff" a sentence. The objection was overruled.

The seventh client was told that could plead guilty to a hit and run for 3 days CFTS. Mr. Rubenstein offered the fact that no one was hurt. The court sentenced the client to 10 days CFTS. Mr. Rubenstein then stated that the other individual ran a red light, presumably causing the damage. The court reduced the sentence to seven days CFTS.

The next client was charged with dogs and cats at large and failure to vaccinate. No factual basis was provide No waiver of rights was made. He received CFTS.

The next defendant pled guilty to two counts of theft in exchange for a sentence of 8 days. He asked whether the time was concurrent with his six months of probation. He was given part of a Boykin, told that he was giving up his right to a trial before the judge, right of confrontation and his right of appeal. This client was asked the highest grade he completed, whether he could read and write. He said he had a GED. Some facts were presented. Mr. Rubenstein said there was a mistake in the facts – but the clarification did not help and led

to an enhanced sentence. The client had 8 days down on the charge; was on probation for simple assault in Texas. The court sentenced the client to 10 days flat.

The remaining clients were similarly served in terms of the level of advocacy each received.

Of note was a client brought in on a municipal charge which occurred May 29, 2009. No review of whether notice had issued occurred. No questions were asked. No motion to quash for failure to timely institute prosecution was made.

Another noteworthy case was that of a client charged with domestic abuse-battery. The client was told by the judge not to have any contact with the victim. The client explained to the judge that the victim is his wife. Mr. Rubenstein asked the client, "did I talk with you last night?" Mr. Rubenstein had a yellow tablet and there were several handwritten notes, however, he did not refer to those notes at all throughout the proceedings. The client began crying, and after some interchange it became clear that this is a 2nd charge of DAB and that the client is currently on probation for the first charge arising out of DeSoto Parish. The client sought assurance that the sentences would run concurrently. "I completed classes on the same charge with the same victim." The Court told the client that she will not run anything concurrent and will not accept his guilty plea. She set his trial date for July 20, 2015. He asked the court to wait until his wife came for visitation later in the day. Someone contacted the jail and a jailer entered the room saying that as the victim, his wife would not be permitted to enter the facility.

No argument, motions, or offers to contact the DeSoto parish probation officer were tendered by Mr. Rubenstein. All the while the client continues crying and saying "you can't do this to me that's my wife." He is ignored by the court, prosecutor and his lawyer.

The four remaining cases are treated in the same manner as the others. No one with domestic abuse was allowed to plead guilty. All of them will do DA time through the end of July.

At one point in time, when Mr. Rubenstein was out of the room the court asked questions about one of his clients charged with domestic battery. No one asked for counsel to be present and no one told counsel about the inquiry.

When I left the jail, Mr. Rubenstein accompanied me with the "bucket" of clerk's files. He told me that he had not been aware that the jail was short-handed until last night when he came to interview clients. The jailers asked if he would mind being in the video/conference/courtroom, as it was much closer to the line. He did not appreciate that the jailers would be feeding during this time.

He rested his bucket on the hood of another person's truck and asked me whether I understood that the changes the Board was asking him to make affected other people? I said that I did, that whenever one part of the system changed, it affected all the other parts of the system. He said he had had a meeting with the judges and they were willing to work with him to push back the start of court. He was waiting for Mr. Golden to hire the other two lawyers, he had promised to assist Mr. Rubenstein. His last words to me were "just tell us what you want us to do." The owner of the truck wanted to leave and Mr. Rubenstein picked up the bucket of the clerk's files and we both went our separate ways.

Outcomes: These clients seemed no more familiar with Mr. Rubenstein than those whom he represented during my earlier observations. There was no privacy in the room. There did not appear to be any type of attorney-client relationship with these clients. The only legal action taken by Mr. Rubenstein was the one objection

referenced above. Mr. Rubenstein appeared to be disengaged with the clients and more concerned with his relationships with the court, city prosecutor, jailer and deputy marshal.

Mr. Rubenstein should be required to read the Rules of Professional Conduct and the Trial Performance Standards, promulgated by the Board in 2009. His supervisor should have completed annual performance evaluations since the promulgation of the TPS. The lack of advocacy and care for the clients as people was apparent to the clients and to this evaluator. The entire "jail clearance" process, particularly the role of defense counsel, remains a mockery of the right to counsel and in no way should this conduct be condoned nor should it be considered as the effective assistance of counsel.

Date of Field Report: May 7, 2015 ***Signature:*** s/ Jean M. Faria

Anne Gwin

From: agolden@caddopdo.org
Sent: Tuesday, May 12, 2015 10:46 AM
To: James Dixon
Cc: cmurray@caddopdo.org; alexrubenstein@caddopdo.org
Subject: RE: Misdemeanor cases and caseloads
Attachments: Misdemeanor data entry

Follow Up Flag: FollowUp
Flag Status: Completed

Jay,

I found the email confirming the Board's policy regarding the entry of misdemeanors into the database, and have attached a copy of it hereto.

The reason behind this policy was to allow misdemeanor attorneys (who get paid only a nominal salary) to handle their misdemeanor cases without having to do significant clerical work. When the database was established, our misdemeanor attorneys objected to having to make the required data entries, which were daunting and very time consuming.

Ed Greenlee, the director of LIDAB at the time, suggested that we implement the following simple method:

1. Have the attorneys place their initials on the dockets next to the clients they represent,
2. Upon receipt of the dockets, the data entry person (We used to get a special grant for this.) will then input the client's name, the docket number(s) the offense type, the attorney assigned and the **date open/closed**.

The reason for entering the one date, namely the "open/closed" date was to solve the problem of having the attorneys and the data entry personnel keep up with the numerous pending cases. It was my understanding that the Board favored a "one and done" approach because they were was mainly interested in tabulating misdemeanor stats and little else.

For this reason we have continued to utilize this process.

I hope this answers your questions.

Best regards,

Alan

From: James Dixon [mailto:JDixon@lpdb.la.gov]
Sent: Friday, May 01, 2015 5:42 PM
To: agolden@caddopdo.org
Cc: ExecutiveStaff
Subject: RE: Misdemeanor cases and caseloads

Alan,

Thank you for your prompt response. I do have a couple of questions.

1. Do you have a copy of the LIDAB policy that required the entry of misdemeanors as you suggest?

2. Why do you still follow that policy, as LPDB has been in existence for eight year?

3. Why would you not follow the data entry methods provided in the state-wide training sessions put on by LPDB six years ago and relied upon since?

4. The case disposition sheet provided is for all cases in the system. That is it includes all cases represented by private counsel, all cases wherein the defendant proceeded pro se, and all cases represented by the PDO. Do you have any documentation for just those cases wherein the PDO provided representation or is there any way we can extract the figures for just the cases handled by the PDO from the documents provided?

Thanks and have a good weekend.

Jay Dixon
James T. Dixon, Jr.
State Public Defender
500 Laurel Street, Suite 300
Baton Rouge, LA 70801
(225) 219-9305

From: Alan Golden [mailto:agolden@caddopdo.org]
Sent: Friday, May 01, 2015 12:28 PM
To: James Dixon
Cc: alexrubenstein@caddopdo.org; cmurray@caddopdo.org
Subject: RE: Misdemeanor cases and caseloads

Jay,

This is in response to your inquiry.

1. I agree that Mr. Rubenstein did handle 6008 newly opened **cases in 2014** (which were a combination of misdemeanors and traffic tickets) for **1543 actual clients.** (Please be advised, I am adding two (2) more attorneys to assist Alex with jail clearance, which should substantially lower his caseload.)

2. As per LIDAB policy to streamline the misdemeanor data inputting process (enacted during Ed Greenlee's tenure) all misdemeanor cases are shown as closed the same day they are opened, regardless of their actual duration.

3. As for case dispositions, attached please find a copy of the 2014 case data furnished by the City Marshal's office. This indirectly shows:
   A) The number of trials held, which can be gleaned from the number of "judgments of acquittals," "found guilty," "found not guilty" and so forth.
   B) This also shows the number of cases that were pled.

I do not yet have the information on the number of motions filed for 2014, as this is not reflected by the above data. Accordingly, we will do an empirical count and report back to you.

Best regards,

Alan

From: James Dixon [mailto:JDixon@lpdb.la.gov]
Sent: Thursday, April 30, 2015 3:26 PM
To: agolden@caddopdo.org
Cc: ExecutiveStaff
Subject: Misdemeanor cases and caseloads

Alan,

At the Board Meeting in March, the Board asked for a few things. First, they asked that our two offices explain the discrepancy in the caseload numbers for Mr. Alex Rubenstein. We ran a caseload count for Mr. Rubenstein for calendar year 2014. From January 1, 2014 through December 31, 2014, Mr. Rubenstein had 6008 newly opened cases. Of those, 5,851 (97.4%) were closed on the same day they were opened. As we obtained this figure from the data your office entered into DefenderData, please let us know whether there is a discrepancy and, if so, the amount of the discrepancy. As we have discussed by telephone, you maintain the 6008 figure over-states Mr. Rubenstein's caseload. For the sake of clarity, and because I do not want to misconstrue our telephone conversation, please provide your position with respect to Mr. Rubenstein's caseload numbers.

In addition to the above, the Board also requested that your office provide information regarding the number of motions filed in the misdemeanors in question, that is the misdemeanors opened in calendar year 2014. The Board then asked that your office provide the total number of misdemeanor trials held during the course of this time period. Finally, the Board asked that your office provide them with the number of cases plead during that period.

Please let me know, should you have any questions. Upon providing us with the information above, a telephone conversation would be advised to discuss the matter.

Sincerely,

Jay Dixon
James T. Dixon, Jr.
State Public Defender
500 Laurel Street, Suite 300
Baton Rouge, LA 70801
(225) 219-9305

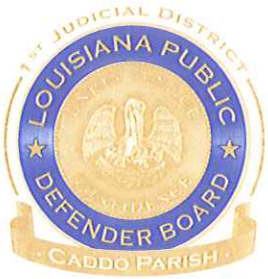
Anne Gwin

From: Marsha Oliver <moliver@lidab.com>
Sent: Friday, May 18, 2007 2:56 PM
To: agolden@caddopdo.org
Subject: Misdemeanor data entry

Alan,
This is to confirm that Dieter Pichowiak and Jim Looney are designing a new streamlined data entry screen for misdemeanors. The board voted to limit the information to name, docket number, 3 choices of case type, disposition, assigned attorney & date opened/closed. I'm not sure when design of the new screen will be complete, but I'll let you know. I hope this solves your problem.
Marsha

Marsha Austtun Oliver
Staff Attorney
Louisiana Indigent Defense Assistance Board
1010 Common Street, Suite 2710
New Orleans, LA 70112
(504) 568-8530
(504) 568-8499 - fax

ALAN J. GOLDEN
DISTRICT PUBLIC DEFENDER



ALEX RUBENSTEIN
SUPERVISOR, SHREVEPORT CITY COURT DIVISION

OFFICE OF THE
DISTRICT PUBLIC DEFENDER

May 19, 2015

TO: THE HON. JUDGES OF SHREVEPORT CITY COURT
FROM: ALEX RUBENSTEIN, ASSISTANT PUBLIC DEFENDER

This note will update the Court following our meeting on May 4. To prepare for jail clearance on Thursday, May 6, I was able to obtain and take the files to the jail with me to interview my clients the day prior to the hearing date. I spent from 4:00-7:00pm doing so, but did talk to all who were said to be there (There was an additional woman the next morning who must have been skipped.). The same representative from the Public Defender from Baton Rouge was present, as well. I thought the docket ran fairly smoothly because of the prior interviews.

When I got through with my interviews on the 5th, the Jail personnel had questions as to what I was doing as well as some comments of their own. They pointed out that the present shift (I believe it was the "evening shift") is responsible for dispensing medications, feeding and transferring inmates to CCC and is shorthanded. They asked that I come earlier in the day and that a deputy marshal accompany me so that their people would not be involved with bringing inmates back and forth to see me. If jail clearance were pushed back to 10:00 or 10:30 am, I and another attorney would be able to interview our clients timely and avoid the evening shift problems. On Wednesday, May 13, I again went to the jail just before 5:00 pm as I had had probation revocations and a DWI trial on the afternoon dockets. Upon my arrival I was told they were shorthanded, and I replied I would wait. My first client was brought in just before 6:00 pm and I was there until 8:15 pm.

On May 6 we had NO CCC inmates involved in jail clearance. On May 12; however, it was a different story. As previously stated, the State Board was concerned that CCC inmates were entering pleas without their FELONY ATTORNEYS being consulted. I thought to simply enter NOT GUILTY PLEAS on their behalf, obtain a trial date and consult with their attorneys during the interim. The female inmates brought over on the 12th immediately expressed their dislike of this procedure and began asking if they could represent themselves to which the City Prosecutor replied "Yes" before I could answer. I explained to them the reason we had this policy, but they were adamant in their desire to get these matters behind them. I then informed the Court that each of the participants who entered a GUILTY plea was doing so against the wishes and instructions of appointed counsel. I invoked the same admonition to the CCC male inmates brought in for the 14th. A few of them did take my advice and enter NOT GUILTY pleas, and I again noted to the Court that those who pled were doing so against counsel's advice.

1244 TEXAS AVENUE, SHREVEPORT, LOUISIANA 71101
TELEPHONE: (318) 673-5480

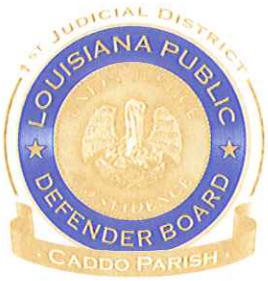
I have spoken to both Deputy Marshal Golemon and Deputy Johns about the situation and they both had some ideas that I asked they share with the Court. While Deputy Golemon could provide us with a CCC list one week in advance of the jail clearance date, she indicated that about ½ of the list will have bonded or possibly been freed or transferred before the City Court date. Since the number of CCC inmates is limited by the size of the van—8 per day, we might be able to speak to them individually at the jail before their arraignments.

The clerk's office has been most helpful in providing me not only with the files, but with a copy of each arrest sheet that comes in. Since we do not always have the whole police report, the information from the sheet provides us with a brief description of the alleged offense. However, if the person was picked up on a warrant, there is NO information on the sheet other that "Arrested on warrant #'s...."

Mr. Golden has authorized me to hire two (2) attorneys to help me with this situation and I have begun calling possible candidates. I have also been notified by Mr. Golden that due to budgetary constraints, the new positions will not be filled until July 1, 2015. I hope with these additions and your cooperation, we can effectively represent our clients in compliance with the State Board's mandates.

Thank you again for your attention and cooperation.

ALAN J. GOLDEN
DISTRICT PUBLIC DEFENDER



ALEX RUBENSTEIN
SUPERVISOR, SHREVEPORT CITY COURT DIVISION

OFFICE OF THE
DISTRICT PUBLIC DEFENDER

May 28, 2015

TO: HON. JUDGES OF SHREVEPORT CITY COURT
FROM: ALEX RUBENSTEIN, ASSISTANT PUBLIC DEFEDER

Enclosed herewith, please find a memo from the Marshal's office suggesting some changes in jail clearance. To this memo I would ask that the Court also consider the possibility of having jail clearance on Wednesday mornings, as the DA has only one docket at that time. There could continue to be a Friday pm jail clearance if deemed necessary and if it were only for the purpose of taking traffic pleas and continuing all criminal matters until Wednesday or the Tuesday setting if that day is still preferred. The Friday setting would simply be used to meet the 72 hr. rule. It has come to my attention, however, that pleas and sentencing on criminal matters is occurring on Fridays without benefit of counsel or the Prosecutor being present. Another suggestion is to simply have the Tuesday and Thursday jail clearance only. One arrested on Thursday could be held until Tuesday without violating the 72 hr. rule.

The key to whatever day and time for jail clearance is the time at which I get a docket. I am repeatedly being told that the docket is "fluid" or changing and that it cannot t be finalized until 2-3:00 pm. While the docket may then be finished, there are times when the clerk cannot get all of the actual files together. Why cannot the DOCKET be finalized earlier? I do not know who decides when the docket is ready!! If we go to later Tuesday mornings, we will still need a docket on Monday to be able to see clients that afternoon or first thing in the morning. The same for Thursday, if it remains a jail clearance day, or for any other day we need to be present.

In the meantime, the jail has actually helped me with a solution to the visitation problems. They have agreed as soon as they are notified of the names of the inmates to go through jail clearance the next day, they will pull them and make them available to us by putting them all in Alpha Pod where they can feed them and medicate them and allow us access to them. Again, as soon as the jail is notified (sent a list or docket) they will move to get our clients available to us. This all depends upon the prompt finalization of the docket. The jail has also asked that a Marshal accompany me to help out with the inmates due to the jail's being shorthanded.

In addition, I had mentioned in my original letter preceding our meeting on May 4 about the Court helping us collect our $40.00 application fee by making payment a condition of probation. As we are no longer allowed to withdraw if they have not paid, such assistance would be appreciated.

1244 TEXAS AVENUE, SHREVEPORT, LOUISIANA 71101
TELEPHONE: (318) 673-5480

Please give these thoughts your consideration. Thank you.

CC: Alan Golden, Dep. J. Johns, Robert Shemwell, Justin Smith

CITY MARSHAL
SHREVEPORT, LA
CHARLIE CALDWELL, JR.
SHREVEPORT CITY MARSHAL

May 22, 2015

To whom it may concern:

Mr. Rubenstein has suggested changes pertaining to policies and procedures relating to Jail Clearance dockets.

A few changes that have already been implemented includes giving Mr. Rubenstein a copy of the Caddo Parish jail list one week in advanced and doing Caddo Jail transportation on Thursday's only.

I also suggested to Mr. Rubenstein that if we could change the Jail Clearance docket on Tuesday from 8 A.M. to 1 P.M. and, changing Thursday's Jail Clearance docket to Friday at 1 P.M. giving Mr. Rubinstein ample time to talk to the defendants.

We are here to help in any way deemed necessary to make this transition as simple and as easy as possible.

If you need any help, please feel free to contact this office at 318-673-6800.

Thank you,

Chief J. Johns
Shreveport City Marshal's Office

CITY COURT BUILDING • 1244 TEXAS AVENUE • SHREVEPORT, LA 71101 • PHONE 318-673-6800 • FAX 318-673-6816

LOUISIANA PUBLIC DEFENDER BOARD

EQUAL JUSTICE FOR ALL

Bobby Jindal
Governor

Judge Robert J. Burns (Ret.)
Chairman

James T. Dixon, Jr.
State Public Defender

June 3, 2015

Delivered by Hand

Mr. Alan J. Golden
District Defender, 1st Judicial District
400 Travis Street, Suite 2000
Shreveport, LA 71101

Re: Board Meeting Scheduled for June 16, 2015
Notice of Request for Executive Session

Dear Mr. Golden:

At the board meeting on May 12, 2015, the Louisiana Public Defender Board requested that an executive session regarding personnel matters be placed on the agenda for the Louisiana Public Defender Board meeting scheduled for June 16, 2015. As District Defender for the First Judicial District, your job performance may be discussed during this executive session. In accordance with La. R.S. 42:17, this is to advise you that as District Defender for the First Judicial District, you may be the subject of this executive session. La. R.S. 42:17 also provides that you may require that this discussion be held at an open meeting.

If you have any questions concerning this matter, please contact me.

Sincerely yours,

Barbara S. Baier

Barbara Baier
General Counsel

BGB/ag

cc: Ret. Judge Robert J. Burns

500 Laurel Street, Suite 300 Baton Rouge, LA 70801 225-219-9305 225-219-9326 fax www.lpdb.la.gov

Louisiana Public Defender Board

www.lpdb.la.gov

Louisiana Public Defender Board
Trial Court Performance Standards

Note: The entire Trial Court Performance Standards can be found in Chapter 7, Part XV of Title 22 of the Louisiana Administrative Code also available online at: http://doa.louisiana.gov/osr/lac/books.htm

Louisiana Public Defender Board
500 Laurel Street, Suite 300 Baton Rouge, LA 70801
(225) 219-9305 (office) (225) 219-9326 (fax)

Louisiana Public Defender Board
Trial Court Performance Standards

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Printing of the Trial Court Performance Standards was supported by subgrant number B11-8-005 awarded by the Louisiana Commission on Law Enforcement and the Administration of Justice through the Bureau of Justice Assistance.

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"Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status."

— *Justice Lewis Powell, Jr., United States Supreme Court*

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Mission

In pursuit of equal justice, the Louisiana Public Defender Board advocates for clients, supports practitioners and protects the public by continually improving the services guaranteed by the constitutional right to counsel.

Through its commitment to performance standards, ethical excellence, data-driven practices and client-centered advocacy, the Louisiana Public Defender Board oversees the delivery of high quality legal services affecting adults, children and families, and supports community well-being across Louisiana.

Trial Court Performance Standards

Note: The entire Trial Court Performance Standards can be found in Chapter 7, Part XV of Title 22 of the Louisiana Administrative Code, also available online at: http://doa.louisiana.gov/OSR/

Part I Duties and Obligations of Defense Counsel

§701. Purpose

A. The standards are intended to serve several purposes, first and foremost to encourage public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of indigent defendants.

B. The standards are intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions that must be taken in each case to ensure that the client receives the best representation possible. The standards are also intended to provide a measure by which the performance of individual attorneys and district public defender offices may be evaluated, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action which is appropriate to the situation. Use of judgment in deciding upon a particular course of action is reflected by the phrases "should consider" and "where appropriate." In those instances where a particular action is absolutely essential to providing quality representation, the standards use the words "should" or "shall." Even where the standards use the words "should" or "shall," in certain situations the lawyers' best informed professional judgment and discretion may indicate otherwise.

D. These standards are not criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. The standards may or may not be relevant to such a judicial determination, depending upon all of the circumstances of the individual case.

§703. Obligations of Defense Counsel

A. The primary and most fundamental obligation of a criminal defense attorney is to provide zealous and effective representation for his or her clients at all stages of the criminal process. The defense attorney's duty and responsibility is to promote and protect the best interests of the client. If personal matters make it impossible for the defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct and to act in accordance with the Louisiana Rules of Court.

§705. Training and Experience of Defense Counsel

A. In order to provide quality legal representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the state of Louisiana. Counsel has a continuing obligation to stay abreast of changes and developments in the law.

B. Prior to agreeing to undertake representation in a criminal matter, counsel should have sufficient experience or training to provide effective representation.

C. Attorneys who are being considered for appointment to represent individuals who are charged with capital offenses in which the state is seeking death must meet the special criteria as adopted by the Supreme Court of Louisiana.

§707. General Duties of Defense Counsel

A. Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer effective representation to a defendant in a particular matter. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

B. Counsel must be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. When appropriate, counsel may be obliged to seek an advisory opinion on any potential conflicts.

C. Counsel has the obligation to keep the client informed of the progress of the case.

D. If a conflict develops during the course of representation, counsel has a duty to notify the client and the court in accordance with the Louisiana Rules of Court and in accordance with the Louisiana Rules of Professional Conduct.

E. When counsel's caseload is so large that counsel is unable to satisfactorily meet these performance standards, counsel shall inform the district defender for counsel's judicial district and, if applicable, the regional director, the court or courts before whom counsel's cases are pending. If the district defender determines that the caseloads for his entire office are so large that counsel is unable to satisfactorily meet these performance standards, the district defender shall inform the court or courts before whom cases are pending and the state public defender.

§709. Obligations of Counsel Regarding Pretrial Release

A. Counsel or a representative of counsel have an obligation to meet with incarcerated defendants within 72 hours of appointment, and shall take other prompt action necessary to provide quality representation including:

   1. Counsel shall invoke the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoke any waivers of these protections purportedly given by the client, as soon as practicable via a notice of appearance or other pleading filed with the state and court.

   2. Where possible, counsel shall represent an incarcerated client at the La.C.Cr.P. Art. 230.1 First Appearance hearing (County of Riverside v. McLaughlin, 500 U.S. 44 (1991)) in order to contest probable cause for a client arrested without an arrest warrant, to seek bail on favorable terms (after taking into consideration the adverse impact, if any, such efforts may have upon exercising the client's right to a full pretrial release hearing at a later date), to invoke constitutional and statutory protections on behalf of the client, and otherwise advocate for the interests of the client.

B. Counsel has an obligation to attempt to secure the pretrial release of the client.

Part II Investigation and Preparation

§711. Counsel's Initial Interview with Client

A. Preparing for the Initial Interview
   1. Prior to conducting the initial interview the attorney should, where possible:
      a. Be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known; and
      b. Obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports made by bail agencies concerning pretrial release, and law enforcement reports that might be available.
   2. In addition, where the client is incarcerated, the attorney should:
      a. Be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;
      b. Be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and
      c. Be familiar with any procedures available for reviewing the trial judge's setting of bail.

B. Conducting the Interview
   1. The purpose of the initial interview is to acquire information from the client concerning the case, the client and pre-trial release, and also to provide the client with information concerning the case. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, be overcome. In addition, counsel should obtain from the client all release forms necessary to obtain client's medical, psychological, education, military, prison and other records as may be pertinent.
   2. Information that should be acquired from the client, includes, but is not limited to:
      a. The facts surrounding the charges leading to the client's arrest, to the extent the client knows and is willing to discuss these facts;
      b. The client's version of arrest, with or without warrant; whether client was searched and if anything was seized, with or without warrant or consent; whether client was interrogated and if so, was a statement given; client's physical and mental status at the time the statement was given; whether any exemplars were provided and whether any scientific tests were performed on client's body or body fluids;
      c. The names and custodial status of all co-defendants and the name of counsel for co-defendants (if counsel has been appointed or retained);
      d. The names and locating information of any witnesses to the crime and/or the arrest; regardless of whether these are witnesses for the prosecution or for the defense; the existence of any tangible evidence in the possession of the state (when appropriate, counsel should take steps to insure this evidence is preserved);
      e. The client's ties to the community, including the length of time he or she has lived at the current and former addresses, any prior names or alias used, family relationships, immigration status (if applicable), employment record and history, and Social Security number;
      f. The client's physical and mental health, educational, vocational and armed services history;
      g. The client's immediate medical needs including the need for detoxification programs and/or substance abuse treatment;
      h. The client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges or outstanding warrants from other jurisdictions or agencies and also whether he or she is on probation (including the nature of the probation, such as "first offender") or parole and the client's past or present performance under supervision;

i. The names of individuals or other sources that counsel can contact to verify the information provided by the client (counsel should obtain the permission of the client before contacting these individuals);
j. The ability of the client to meet any financial conditions of release (for clients who are incarcerated); and
k. Where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense, including releases from the client for any records for treatment or testing for mental health or mental retardation.

3. Information to be provided to the client, includes, but is not limited to:
   a. A general overview of the procedural progression of the case, where possible;
   b. An explanation of the charges and the potential penalties;
   c. An explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney; and
   d. The names of any other persons who may be contacting the client on behalf of counsel.
4. For clients who are incarcerated:
   a. An explanation of the procedures that will be followed in setting the conditions of pretrial release;
   b. An explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and also an explanation that the client should not make statements concerning the offense; and
   c. Warn the client of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by jail officials.

C. Counsel must be alert to a potential plea based on client's incompetency, insanity, mental illness or mental retardation. If counsel or the client raises a potential claim based on any of these conditions, counsel should consider seeking an independent psychological evaluation. Counsel should be familiar with the legal criteria for any plea or defense based on the defendant's mental illness or mental retardation, and should become familiar with the procedures related to the evaluation and to subsequent proceedings.
   1. Counsel should be prepared to raise the issue of incompetency during all phases of the proceedings, if counsel's relationship with the client reveals that such a plea is appropriate.
   2. Where appropriate, counsel should advise the client of the potential consequences of the plea of incompetency, the defense of insanity, or a plea of guilty but mentally ill or guilty but mentally retarded. Prior to any proceeding, counsel should consider interviewing any professional who has evaluated the client, should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate.

D. If special conditions of release have been imposed (e.g., random drug screening) or other orders restricting the client's conduct have been entered (e.g., a no contact order), the client should be advised of the legal consequences of failure to comply with such conditions.

§713. Counsel's Duty in Pretrial Release Proceedings

A. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release.

B. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

C. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

§715. Counsel's Duties at Preliminary Hearing

A. Where the client is entitled to a preliminary hearing, the attorney should take steps to see that the hearing is conducted in a timely fashion unless there are strategic reasons for not doing so.

B. In preparing for the preliminary hearing, the attorney should become familiar with:
   1. The elements of each of the offenses alleged;
   2. The law of the jurisdiction for establishing probable cause;
   3. Factual information which is available concerning probable cause; and
   4. The subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

§717. Duty of Counsel to Conduct Investigation

A. Counsel has a duty to conduct a prompt investigation of each case. Counsel should, regardless of the client's wish to admit guilt, insure that the charges and disposition are factually and legally correct and the client is aware of potential defenses to the charges.

B. Sources of investigative information may include the following.
   1. Arrest warrant, accusation and/or indictment documents, and copies of all charging documents in the case should be obtained and examined to determine the specific charges that have been brought against the accused. The relevant statutes and precedents should be examined to identify:
      a. The elements of the offense(s) with which the accused is charged;
      b. The defenses, ordinary and affirmative, that may be available;
      c. Any lesser included offenses that may be available; and
      d. Any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.
   2. Information from the Defendant. If not previously conducted, an in-depth interview of the client should be conducted as soon as possible and appropriate after appointment of counsel. The interview with the client should be used to obtain information as described above under the performance standards applicable to the initial interview of the client. Information relevant to sentencing should also be obtained from the client, when appropriate.
   3. Interviewing Witnesses. Counsel should consider the necessity to interview the potential witnesses, including any complaining witnesses and others adverse to the accused, as well as witnesses favorable to the accused. Interviews of witnesses adverse to the accused should be conducted in a manner that permits counsel to effectively impeach the witness with statements made during the interview, either by having an investigator present or, if that is not possible, by sending the investigator to conduct the interview.
   4. The Police and Prosecution Reports and Documents. Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless sound tactical reasons exist for not doing so. Counsel should obtain NCIC or other states criminal history records for the client and for the prosecution witnesses.
   5. Physical Evidence. Where appropriate, counsel should make a prompt request to the police or investigative agency for any physical evidence or expert reports relevant to the offense or sentencing. Counsel should examine any such physical evidence.
   6. The Scene of the Incident. Where appropriate, counsel should attempt to view the scene of the alleged offense as soon as possible after counsel is appointed. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions).
   7. Securing the Assistance of Experts. Counsel should secure the assistance of experts where it is necessary or appropriate to:

a. The preparation of the defense;
b. Adequate understanding of the prosecution's case; or
c. Rebut the prosecution's case.

§719. Formal and Informal Discovery

A. Counsel has a duty to pursue as soon as practicable, discovery procedures provided by the rules of the jurisdiction and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations.
B. Counsel should consider seeking discovery, at a minimum, of the following items:
   1. Potential exculpatory information;
   2. Potential mitigating information;
   3. The names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;
   4. All oral and/or written statements by the accused, and the details of the circumstances under which the statements were made;
   5. The prior criminal record of the accused and any evidence of other misconduct that the government may intend to use against the accused;
   6. All books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
   7. All results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
   8. Statements of co-defendants;
   9. All investigative reports by all law enforcement and other agencies involved in the case; and
   10. All records of evidence collected and retained by law enforcement.

§721. Development of a Theory of the Case

A. During investigation and trial preparation, counsel should develop and continually reassess a theory of the case. Counsel, during the investigatory stages of the case preparation must understand and develop strategies for advancing the appropriate defenses on behalf of the client.

Part III Pretrial Motions

§723. The Duty to File Pretrial Motions

A. Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the defendant is entitled to relief which the court has discretion to grant.
B. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.
C. Among the issues that counsel should consider addressing in a pretrial motion are:
   1. The pretrial custody of the accused;
   2. The constitutionality of the implicated statute or statutes;
   3. The potential defects in the charging process;
   4. The sufficiency of the charging document;
   5. The propriety and prejudice of any joinder of charges or defendants in the charging document;
   6. The discovery obligations of the prosecution and the reciprocal discovery obligations of the defense;

7. The suppression of evidence gathered as a result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding state constitutional provisions, including:
   a. The fruits of illegal searches or seizures;
   b. Involuntary statements or confessions;
   c. Statements or confessions obtained in violation of the accused's right to counsel or privilege against self-incrimination;
   d. Unreliable identification evidence which would give rise to a substantial likelihood of irreparable misidentification;
8. Suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
9. Access to resources which, or experts, who may be denied to an accused because of his or her indigence;
10. The defendant's right to a speedy trial;
11. The defendant's right to a continuance in order to adequately prepare his or her case;
12. Matters of trial evidence which may be appropriately litigated by means of a pretrial motion in limine;
13. Matters of trial or courtroom procedure.

D. Counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the defendant's rights, including later claims of waiver or procedural default. In making this decision, counsel should remember that a motion has many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:
   1. The time deadline for filing pretrial motions warrants filing a motion to preserve the client's rights, pending the results of further investigation;
   2. Changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted;
   3. Later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

§725. Preparing, Filing, and Arguing Pretrial Motions

A. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, counsel should be aware of the effect it might have upon the defendant's speedy trial rights.

B. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:
   1. Investigation, discovery and research relevant to the claim advanced;
   2. The subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;
   3. Full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client testify; and
   4. Familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial.

§727. Continuing Duty to File Pretrial Motions

A. Counsel should be prepared to raise during the subsequent proceedings any issue which is appropriately raised pretrial, but could not have been so raised because the facts supporting the motion were

unknown or not reasonably available. Further, counsel should be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

Part IV Disposition without Trial

§729. Performance Standard 6.A Duty of Counsel in Plea Negotiation Process

A. Counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and in doing so should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.
B. Counsel should keep the client fully informed of any continued plea discussion and negotiations and promptly convey to the accused any offers made by the prosecution for a negotiated settlement.
C. Counsel shall not accept any plea agreement without the client's express authorization.
D. The existence of ongoing tentative plea negotiations with the prosecution should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

§731. The Process of Plea Negotiations

A. In order to develop an overall negotiation plan, counsel should be aware of, and make sure the client is aware of:
   1. The maximum term of imprisonment and fine or restitution that may be ordered, and any mandatory punishment or sentencing guideline system; and counsel should make the client aware that a guilty plea may have adverse impact upon;
   2. The possibility of forfeiture of assets;
   3. Other consequences of conviction including but not limited to deportation, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office; and the registration and notification requirements for sexual offenders;
   4. Any possible and likely sentence enhancements or parole consequences.
B. In developing a negotiation strategy, counsel should be completely familiar with:
   1. Concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to:
      a. Not to proceed to trial on merits of the charges;
      b. To decline from asserting or litigating any particular pretrial motions;
      c. An agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and
      d. Providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity;
   2. Benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:
      a. That the prosecution will not oppose the client's release on bail pending sentencing or appeal;
      b. To dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;
      c. That the defendant will not be subject to further investigation or prosecution for uncharged alleged criminal conduct;
      d. That the defendant will receive, with the agreement of the court, a specified sentence or

sanction or a sentence or sanction within a specified range;

e. That the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;

f. That the prosecution will not present, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, certain information; and

g. That the defendant will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and he information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration;

3. The position of any alleged victim with respect to conviction and sentencing. In this regard, counsel should:

a. Consider whether interviewing the alleged victim or victims is appropriate and if so, who is the best person to do so and under what circumstances;

b. Consider to what extent the alleged victim or victims might be involved in the plea negotiations;

c. Be familiar with any rights afforded the alleged victim or victims under the Victim's Rights Act or other applicable law; and

d. Be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

C. In conducting plea negotiations, counsel should be familiar with:

1. The various types of pleas that may be agreed to, including but not limited to a plea of guilty, not guilty by reason of insanity, a plea of nolo contendere, a conditional plea of guilty, (State v. Crosby, 338 So.2d 584 (La. 1976)), and a plea in which the defendant is not required to personally acknowledge his or her guilt (North Carolina v. Alford plea);

2. The advantages and disadvantages of each available plea according to the circumstances of the case; and

3. Whether the plea agreement is binding on the court and prison and parole authorities.

D. In conducting plea negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department which may affect the content and likely results of negotiated plea bargains.

§733. The Decision to Enter a Plea of Guilty

A. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement, and the advantages and disadvantages of the potential consequences of the agreement.

B. The decision to enter a plea of guilty rests solely with the client, and counsel should not attempt to unduly influence that decision.

C. If the client is a juvenile, consideration should be given to the request that a guardian be appointed to advise the juvenile if an adult family member is not available to act in a surrogate role.

D. A negotiated plea should be committed to writing whenever possible.

§735. Entering the Negotiated Plea before the Court

A. Prior to the entry of the plea, counsel should:

1. Make certain that the client understands the rights he or she will waive by entering the plea and that the clients decision to waive those rights is knowing, voluntary and intelligent;

2. Make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions and collateral consequences the client will be exposed to by entering a plea;

3. Explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense; and
4. Make certain that if the plea is a non-negotiated plea, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court.

B. When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

C. After entry of the plea, counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for and present to the court all reasons warranting the client's release on bail pending sentencing.

Part V Trial

§737. Counsel's Duty of Trial Preparation

A. The decision to proceed to trial with or without a jury rests solely with the client. Counsel should discuss the relevant strategic considerations of this decision with the client.

B. Where appropriate, counsel should have the following materials available at the time of trial:
1. Copies of all relevant documents filed in the case;
2. Relevant documents prepared by investigators;
3. Voir dire questions;
4. Outline or draft of opening statement;
5. Cross-examination plans for all possible prosecution witnesses;
6. Direct examination plans for all prospective defense witnesses;
7. Copies of defense subpoenas;
8. Prior statements of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements;
9. Prior statements of all defense witnesses;
10. Reports from defense experts;
11. A list of all defense exhibits, and the witnesses through whom they will be introduced;
12. Originals and copies of all documentary exhibits;
13. Proposed jury instructions with supporting case citations;
14. Where appropriate, consider and list the evidence necessary to support the defense requests for jury instructions:
15. Copies of all relevant statutes and cases; and
16. Outline or draft of closing argument.

C. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

D. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

E. Throughout the trial process counsel should endeavor to establish a proper record for appellate review. Counsel must be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should insure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for

not doing so.

F. Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, counsel should be alert to the possible prejudicial effects of the client appearing before the jury in jail or other inappropriate clothing. If necessary, counsel should file pre-trial motions to insure that the client has appropriate clothing and the court personnel follow appropriate procedures so as not to reveal to jurors that the defendant is incarcerated.

G. Counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences.

H. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

I. Counsel shall take necessary steps to insure full official recordation of all aspects of the court proceeding.

§739. Jury Selection

A. Preparing for Voir Dire

1. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.
2. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.
3. Prior to jury selection, counsel should seek to obtain a prospective juror list.
4. Where appropriate, counsel should develop voir dire questions in advance of trial. Counsel should tailor voir dire questions to the specific case. Among the purposes voir dire questions should be designed to serve are the following:
   a. To elicit information about the attitudes of individual jurors, which will inform counsel and defendant about peremptory strikes and challenges for cause;
   b. To convey to the panel certain legal principles which are critical to the defense case;
   c. To preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;
   d. To present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and
   e. To establish a relationship with the jury.
5. Counsel should be familiar with the law concerning mandatory and discretionary voir dire inquiries so as to be able to defend any request to ask particular questions of prospective jurors.
6. Counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Counsel should also be aware of the law concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.
7. Where appropriate, counsel should consider whether to seek expert assistance in the jury selection process.

B. Examination of the Prospective Jurors

1. Counsel should personally voir dire the panel.
2. Counsel should take all steps necessary to protect the voir dire record for appeal, including, where appropriate, filing a copy of the proposed voir dire questions or reading proposed questions into the record.
3. If the voir dire questions may elicit sensitive answers, counsel should consider requesting that questioning be conducted outside the presence of the other jurors and counsel should consider requesting that the court, rather than counsel, conduct the voir dire as to those sensitive questions.
4. In a group voir dire, counsel should avoid asking questions which may elicit responses which are

likely to prejudice other prospective jurors.

C. Challenging the Jurors for Cause
   1. Counsel should consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client.

§741. Opening Statement

A. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, unless a strategic reason exists for not doing so.
B. Counsel should be familiar with the law of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.
C. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring the opening statement until the beginning of the defense case.
D. Counsel's objective in making an opening statement may include the following:
   1. To provide an overview of the defense case;
   2. To identify the weaknesses of the prosecution's case;
   3. To emphasize the prosecution's burden of proof;
   4. To summarize the testimony of witnesses, and the role of each in relationship to the entire case;
   5. To describe the exhibits which will be introduced and the role of each in relationship to the entire case;
   6. To clarify the jurors' responsibilities;
   7. To state the ultimate inferences which counsel wishes the jury to draw; and
   8. To establish counsel's credibility with the jury.
E. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement in the defense summation.
F. Whenever the prosecutor oversteps the bounds of proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:
   1. The significance of the prosecutor's error;
   2. The possibility that an objection might enhance the significance of the information in the jury's mind;
   3. Whether there are any rules made by the judge against objecting during the other attorney's opening argument.

§743. Preparation for Challenging the Prosecution's Case

A. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.
B. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.
C. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.
D. In preparing for cross-examination, counsel should:
   1. Consider the need to integrate cross-examination, the theory of the defense and closing argument;
   2. Consider whether cross-examination of each individual witness is likely to generate helpful information;
   3. Anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;

4. Consider a cross-examination plan for each of the anticipated witnesses;
5. Be alert to inconsistencies in a witness' testimony;
6. Be alert to possible variations in witnesses' testimony;
7. Review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
8. Have prepared a transcript of all audio or video tape recorded statements made by the witness;
9. Where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;
10. Be alert to issues relating to witness credibility, including bias and motive for testifying; and
11. Have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness.

E. Counsel should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

F. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should request adequate time to review these documents before commencing cross-examination.

G. Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel should move for a judgment of acquittal on each count charged. Counsel should request, when necessary, that the court immediately rule on the motion, in order that counsel may make an informed decision about whether to present a defense case.

§745. Presenting the Defendant's Case

A. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Counsel should also consider the tactical advantage of having final closing argument when making the decision whether to present evidence other than the defendant's testimony.

B. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully.

C. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

D. In preparing for presentation of a defense case, counsel should, where appropriate:
1. Develop a plan for direct examination of each potential defense witness;
2. Determine the implications that the order of witnesses may have on the defense case;
3. Determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
4. Consider the possible use of character witnesses;
5. Consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
6. Review all documentary evidence that must be presented; and

7. Review all tangible evidence that must be presented.

E. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

F. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

G. Counsel should conduct redirect examination as appropriate.

H. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

§747. Preparation of the Closing Argument

A. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

B. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.

C. In developing closing argument, counsel should review the proceedings to determine what aspects can be used in support of defense summation and, where appropriate, should consider:
   1. Highlighting weaknesses in the prosecution's case;
   2. Describing favorable inferences to be drawn from the evidence;
   3. Incorporating into the argument:
      a. Helpful testimony from direct and cross-examinations;
      b. Verbatim instructions drawn from the jury charge; and
      c. Responses to anticipated prosecution arguments;
   4. And the effects of the defense argument on the prosecutor's rebuttal argument.

D. Whenever the prosecutor exceeds the scope of permissible argument, counsel should consider objecting, requesting mistrial, or seeking cautionary instructions unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:
   1. Whether counsel believes that the case will result in a favorable verdict for the client;
   2. The need to preserve the objection for appellate review; or
   3. The possibility that an objection might enhance the significance of the information in the jury's mind.

§749. Jury Instructions

A. Counsel should be familiar with the Louisiana Rules of Court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.

B. Counsel should always submit proposed jury instructions in writing.

C. Where appropriate, counsel should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Where possible, counsel should provide citations to case law in support of the proposed instructions.

D. Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.

E. If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including, where appropriate, filing a written copy of proposed instructions.

F. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary request additional or curative instructions.

G. If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury. Counsel should renew or make new objections to any additional instructions given to the jurors after the jurors have begun their deliberations.
H. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

Part VI Sentencing

§751. Obligations of Counsel at Sentencing Hearing

A. Among counsel's obligations in the sentencing process are:
   1. Where a defendant chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, financial and collateral implications;
   2. To ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;
   3. To ensure all reasonably available mitigating and favorable information, which is likely to benefit the client, is presented to the court;
   4. To develop a plan which 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 offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;
   5. To ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful or is otherwise improper is stricken from the text of the pre-sentence investigation report before distribution of the report; and
   6. To consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever possible and warranted.

§753. Sentencing Options, Consequences and Procedures

A. Counsel should be familiar with the sentencing provisions and options applicable to the case, including:
   1. Any sentencing guideline structure;
   2. Deferred sentence, judgment without a finding, and diversionary programs;
   3. Expungement and sealing of records;
   4. Probation or suspension of sentence and permissible conditions of probation;
   5. The potential of recidivist sentencing;
   6. Fines, associated fees and court costs;
   7. Victim restitution;
   8. Reimbursement of attorneys' fees;
   9. Imprisonment including any mandatory minimum requirements;
   10. The effects of "guilty but mentally ill" and "not guilty by reason of insanity" pleas; and
   11. Civil forfeiture implications of a guilty plea.
B. Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:
   1. Credit for pre-trial detention;
   2. Parole eligibility and applicable parole release ranges (if applicable);
   3. Place of confinement and level of security and classification criteria used by Department of Corrections;
   4. Eligibility for correctional and educational programs;

5. Availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs;
6. Deportation and other immigration consequences;
7. Loss of civil rights;
8. Impact of a fine or restitution and any resulting civil liability;
9. Possible revocation of probation, possible revocation of first offender status, or possible revocation of parole status if client is serving a prior sentence on a parole status;
10. Suspension of a motor vehicle operator's permit;
11. Prohibition of carrying a firearm; and
12. Other consequences of conviction including but not limited to, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, registration as a sex offender, loss of public housing and the loss of the right to hold public office.

C. Counsel should be familiar with the sentencing procedures, including:
1. The effect that plea negotiations may have upon the sentencing discretion of the court;
2. The availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;
3. The use of "victim impact" evidence at any sentencing hearing;
4. The right of the defendant to speak prior to being sentenced;
5. Any discovery rules and reciprocal discovery rules that apply to sentencing hearings; and
6. The use of any sentencing guidelines.

D. Where the court uses a pre-sentence report, counsel should be familiar with:
1. The practices of the officials who prepare the pre-sentence report and the defendant's rights in that process;
2. The access to the pre-sentence report by counsel and the defendant;
3. The prosecution's practice in preparing a memorandum on punishment; and
4. The use of a sentencing memorandum by the defense.

§755. Preparation for Sentencing

A. In preparing for sentencing, counsel should consider the need to:
1. Inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;
2. Maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;
3. Obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, and financial status, family obligations, and obtain from the client sources through which the information provided can be corroborated;
4. Inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial or trial on other offenses;
5. Inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, or other judicial proceedings, such as forfeiture or restitution proceedings;
6. Prepare the client to be interviewed by the official preparing the pre-sentence report; and ensure the client has adequate time to examine the pre-sentence report, if one is utilized by the court;
7. Inform the client of the sentence or range of sentences counsel will ask the court to consider; if the client and counsel disagree as to the sentence or sentences to be urged upon the court, counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;

8. Collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence; and
9. Inform the client of the operation of the Louisiana Sentence Review Panel and the procedures to be followed in submitting any possible sentence to the Panel for review, if applicable.

§757. The Prosecution's Sentencing Position

A. 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.

§759. The Sentencing Process

A. Counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.
B. Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.
C. In the event there will be disputed facts before the court at sentencing, counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will beheld, counsel should ascertain who has the burden of proving a fact unfavorable to the defendant, be prepared to object if the burden is placed on the defense, and be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.
D. Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.
E. Where the court has the authority to do so, counsel should request specific orders or recommendations from the court concerning the place of confinement, probation or suspension of part or all of the sentence, psychiatric treatment or drug rehabilitation.
F. Where appropriate, counsel should prepare the client to personally address the court.

Part VII After Sentencing

§761. Motion for a New Trial

A. Counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.
B. When a judgment of guilty has been entered against the defendant after trial, counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:
   1. The likelihood of success of the motion, given the nature of the error or errors that can be raised; and
   2. The effect that such a motion might have upon the defendant's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the defendant's right to raise on appeal the issues that might be raised in the new trial motion.

§763. The Defendant's Right to an Appeal

A. Following conviction, counsel should inform the defendant of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. In circumstances where the

defendant wants to file an appeal but is unable to do so without the assistance of counsel, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the defendant's right to appeal, such as ordering transcripts of the trial proceedings.

B. Where the defendant takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.

§765. Bail Pending Appeal

A. Where a client indicates a desire to appeal the judgment and/or sentence of the court, counsel should inform the client of any right that may exist to be released on bail pending the disposition of the appeal.

B. Where an appeal is taken and the client requests bail pending appeal, trial counsel should cooperate with retained appellate counsel in providing information to pursue the request for bail. Pursuant to the contracts between the Louisiana Appellate Project and the district defender offices, district defenders are responsible for pursuing bail pending appeal for those clients requesting bail.

§767. Expungement or Sealing of Record

A. Counsel should inform the client of any procedures available for requesting that the record of conviction be expunged or sealed.

Part VIII Defense of Children

§769. Children Prosecuted as Adults

A. Counsel representing a child as an adult should be familiar with the law and procedure covering children prosecuted as adults and the law and procedure of the juvenile courts. Counsel should, where possible, have received specialized training in the defense of children in the adult and juvenile courts.

B. When representing a child who is prosecuted as an adult a transfer to Juvenile Court may be a desirable defense goal; counsel should consider involving the Juvenile Court in plea negotiations.

C. The use of experts in evaluating juvenile sex offenders should be strongly considered.

1. Developing issues of competency, developmental disability, Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder should also be explored.

D. The Juvenile Courts have, unlike the adult courts, treatment resources for children. Counsel should be familiar with Juvenile Court, Office of Juvenile Justice and the resources and policies at the parish, district and regional levels regarding treatment programs and funding.

E. Counsel should, whenever a child is eligible, pursue expungement of the child's criminal record.

The Louisiana Public Defender Board Trial Court Performance Standards were promulgated in accordance with R.S. 15:142 147 and 148.

The Louisiana Public Defender Board Trial Court Performance Standards were Promulgated by the Office of the Governor, Public Defender Board, LR 35:663 (April 2009).

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Through its performance standards and commitment to data-driven policies, the Louisiana Public Defender Board will be accountable to the policy makers who supported the vision of fair public defense for all, to the tax payers who fund our programs, to the defenders who keep the system running, to the clients who depend on us to protect and defend their rights, and to the Louisiana community, who will be safer and stronger because we exist.

The Louisiana State Constitution guarantees that "[a]t each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents."

— Louisiana State Constitution, 1974, Article 1, §13

Printing of the Trial Court Performance Standards was supported by subgrant number B11-8-005 awarded by the Louisiana Commission on Law Enforcement and the Administration of Justice through the Bureau of Justice Assistance.

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RS 15:161

§161. District public defender; powers; duties; accounting; audit reporting; existing chief indigent defenders continued; establishment of district office

A. Except as otherwise provided for in this Section, the board shall employ or contract with a district public defender to provide for the delivery and management of public defender services in each judicial district.

B. Each district public defender shall meet the following qualifications:

(1) Meet the qualifications provided for in R.S. 15:150(B).

(2) Be an attorney licensed to practice law in Louisiana with at least five years of experience as a criminal defense attorney.

(3) Following his employment, be a domiciliary of the judicial district or a contiguous judicial district who is registered to vote in that judicial district or contiguous district.

C. A district office, or appropriate office space, shall be maintained in each judicial district for meeting with clients and rendering public defender services.

D. Vacancies for the office of district public defender shall be filled as provided for in R.S. 15:162.

E. Each district public defender shall:

(1) Manage and supervise public defender services provided within his judicial district.

(2) Prepare an operating budget for the district and submit it to the budget officer annually.

(3) Work in conjunction with the budget officer in developing a uniform method of accounting for all expenditures of the district, including but not limited to the salaries, contracts, acquisition of equipment, and supplies.

(4) Submit to the budget officer a monthly report of all revenues received and expenditures, including but not limited to salaries, contracts, acquisition of equipment, and supplies for the district.

(5) Work in conjunction with the compliance officers to ensure that public defender assignments within the judicial district comply with the standards and guidelines adopted pursuant to rule by the board and the Rules of Professional Conduct.

(6) Supervise the work of the district personnel.

(7) Employ district personnel, subject to review by the state public defender or the regional director, where applicable, for compliance with qualifications and standards and guidelines established by statute and by rules adopted by the board.

(8) Contract for services in accordance with the standards and guidelines adopted by rule by the board, and as authorized by the regional director, where applicable.

(9) Keep a record of all public defender services and expenses in the district and submit the records to the regional director, where applicable, or state public defender as requested.

(10) Implement the standards and guidelines and procedures established by the board, state public defender, and regional director, where applicable, for the district.

(11) Maintain a client workload for the district office as determined by the regional director, where applicable, the state public defender, and the board.

(12) Consult with the regional director, where applicable, and make recommendations regarding the method of delivery of public defender services for the district for submission to the board for board approval. The regional director, where applicable, or the board shall consider any delivery model in existence prior to August 15, 2007, as acceptable until that delivery model is proven to not meet the uniform standards and guidelines for the delivery of public defender services in accordance with rules adopted by the board and as required by statute.

(13) Employ or terminate district personnel, manage and supervise all district level work, including establishment of district personnel salaries, subject to review by the board for compliance with salary guidelines established by the board through the adoption of rules.

(14) Perform all other duties assigned by the regional director, where applicable, state public defender, or board.

F. Each district public defender may make recommendations to the regional director, where applicable, the state public defender, and the board on any matter regarding his judicial district.

G. Each district public defender shall work in conjunction with the legislative auditor in developing uniform audit reports as required by R.S. 24:515.1 which shall require the following to be included in that report:

(1) The amount of all state revenue provided by the legislature from general or special appropriations, or revenue passed through by state agencies.

(2) The amount of all revenue provided by local government from general or special appropriations, appropriations required by law, and revenue from the criminal court fund.

(3) The amount of grant funding from federal pass-through or categorical grants, grants from nonprofit organizations, and private and corporate foundations.

(4) The amount of funding received from any self-generated revenue.

H.(1) In an effort to maintain continuity of indigent defender services in each judicial district, any person employed as the chief indigent defender of a judicial district as of January 1, 2007, pursuant to the provisions of R.S. 15:145(B)(2)(a), shall continue to be employed by, or enter into a contract with, the board and serve as the district public defender of that district.

(2) The board shall establish the salaries for each district public defender; however, the salaries and benefits in place on January 1, 2007, for each chief indigent defender shall continue as the beginning salary for each district public defender and shall not be decreased. The provisions of this Paragraph shall not be construed to limit the board's ability to increase the salary of a district public defender.

I. The board shall evaluate any district where, as of January 1, 2007, there is no person employed as the chief indigent defender, pursuant to the provisions of R.S. 15:145(B)(2)(a), and do one of the following:

(1) Employ a district public defender who meets the criteria provided for in this Section, using the selection process provided for in R.S. 15:162; or

(2) Assign another district public defender from a contiguous judicial district to manage and supervise public defender services for both judicial districts; or

(3) Determine whether the board shall regionalize the operation of the district, as provided for in R.S. 15:163.

J. Notwithstanding any other provision of law to the contrary, any attorney employed by or under contract with the board, the district public defender, regional director, where applicable, or nonprofit organization contracting with the board, district public defender, regional director, where applicable, or the board to provide legal counsel to an indigent person in a criminal proceeding shall be licensed to practice law in the state of Louisiana. The provisions of this Subsection shall not be construed to prohibit the use of an attorney licensed to practice law in another state to provide legal counsel to an indigent person in a criminal proceeding on a pro-bono basis or who is receiving compensation from a grant administered by the board or from a grant administered by any nonprofit organization contracting with the board, provided that the out-of-state attorney is authorized to perform those services by the Louisiana Supreme Court. The legislature hereby specifically states that the provisions of this Subsection are in no way intended to, nor shall they be, construed in any manner which will impair any contractual obligations heretofore existing on June 1, 2007, of any out-of-state attorney authorized by the Louisiana Supreme Court to practice law in this state to provide legal counsel to an indigent person in a criminal proceeding.

Acts 2007, No. 307, §1; Acts 2008, No. 220, §6, eff. June 14, 2008.

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§170. Disciplinary action; sanctions of regional directors and district public defenders; just cause; hearing

A.(1) The board shall have the authority to take corrective or disciplinary action against any regional director, or district public defender, for failure to adhere to the standards and guidelines for rendering indigent defender services as provided by rules adopted pursuant to R.S. 15:148 and in accordance with the Administrative Procedure Act.

(2) "Corrective or disciplinary action" shall include but not be limited to any of the following:

(a) Issuance of a warning or reprimand.

(b) Issuance of a sanction.

(c) Suspension from rendering public defender services with or without compensation.

(d) Demotion.

(e) Termination.

(3) A regional director or district public defender may be demoted or terminated for just cause.

B. The actions which constitute just cause are as follows:

(1) The willful refusal to comply with mandatory training and education requirements.

(2) The willful refusal to comply with mandatory performance standards and guidelines as required by rule adopted by the board.

(3) The conviction or nolo contendere plea to any felony, participation in a pretrial diversion program pursuant to a felony charge, or conviction of any misdemeanor involving moral turpitude or public corruption.

(4) The willful failure to correct consistently ineffective practices to the detriment of clients.

(5) The willful failure to document communications with clients as required by the board.

(6) The willful failure to cooperate with the state public defender, a regional director, where applicable, or the board in any matter.

(7) The willful failure to submit to periodic review of their work against the performance standards and guidelines.

(8) The willful failure to submit requested documentation on any matter as requested by the regional director or the board.

(9) Knowingly making any false statement to the regional director, state public defender, or board.

(10) Using fraudulent, coercive, or dishonest practices or misrepresentation or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business such as might endanger the public.

C. A regional director or district public defender who feels that he has been demoted or terminated without just cause as defined in this Section may, within fifteen days after the action, demand in writing a hearing, and investigation by the board to determine the reasonableness of the action.

D.(1) Upon receipt of a request for a hearing, the board shall appoint a five- member hearing committee made up of five board members.

(2) The board shall designate the chairman of the hearing committee, who shall function as the presiding officer of the hearing.

(3) The chairman of the hearing committee shall designate an attorney to present evidence in support of the proposed job action. The attorney may be the supervisor requesting the job action or his designee or another attorney currently providing indigent defender services appointed by the board for that purpose.

(4) The hearing committee shall conduct a hearing on the matter within thirty days after receipt of the written request.

(5) The hearing shall be conducted by the hearing committee and shall, at a minimum, provide for:

(a) The receipt of sworn testimony, including by deposition.

(b) An opportunity for any interested party to be heard.

(c) An orderly, predictable, and timely docketing system.

(d) Submission of the report required by this Section within thirty days after receipt of the record of the hearing conducted as provided for in this Section.

(6) The hearing shall be public and the testimony shall be recorded.

(7) All parties shall be afforded an opportunity to appear before the hearing committee, either in person or with counsel, and present evidence to show that the action was or was not taken in good faith for cause as set forth in the provisions of this Section.

(8) The burden of proof for any job action short of termination of employment shall be by a preponderance of the evidence. The burden of proof for termination of employment shall be by clear and convincing evidence.

E. The hearing committee may:

(1) Issue subpoenas and compel the attendance of witnesses or the production of documents.

(2) Administer oaths.

(3) Require testimony under oath before the hearing committee in the course of a hearing being held for any reason.

(4) Issue written interrogatories.

F. As to every matter on which a hearing is held, the hearing committee shall submit a report to the board within thirty days of conducting the hearing, which shall contain, at a minimum, the record of the hearing, including all submissions, the finding of the facts that are pertinent to the decision, the conclusions of applicable law related to the decision, and the decision. The submission shall be in writing, shall be provided to all involved parties, and shall be a public record, except for any submitted materials which are confidential pursuant to law.

G.(1) Within thirty days of receipt of the report from the hearing committee, the board shall take action in a public meeting conducted by the board.

(2) At that time the board may affirm the recommendation of the hearing committee, modify or disapprove the recommendations of the hearing committee, or direct that the matter be investigated further.

(3) If the board affirms the demotion or termination action, then the termination or demotion of the regional director or district public defender shall remain in effect and shall be permanent.

(4) If the board finds that the termination or demotion was not taken in good faith for just cause under the provisions of this Section, the board shall order the immediate reinstatement or reemployment of such person in the office, place, position, or employment from which he was terminated or demoted, which reinstatement shall, if the board so provides, be retroactive and entitle him to his regular pay from the time of termination or demotion.

(5) The board may modify the order of termination or demotion by directing a suspension without pay for a given period.

H. The decision of the board, together with its written findings of fact, shall be certified in writing and shall be enforced by the board.

I. All decisions of the board are final and may not be appealed.

J. Prior to terminating or demoting a district public defender, the board shall send written notice of the public hearing as required by this Section, to the chief judge, and the district advisory board, if applicable, of the judicial district of the board's intention to terminate or demote the district public defender of that judicial district.

Acts 2007, No. 307, §1; Acts 2008, No. 220, §6, eff. June 14, 2008.