RULE

Office of the Governor
Licensing Board for Contractors

Home Improvement Registration and
New Home Warranty Act
(LAC 46:XXIX.1511 and 1513)

In accordance with the provisions of La. R.S. 49:950 et seq., which is the Administrative Procedure Act, and through the authority granted in R.S. 37:2150-2192, which is the Contractor Licensing Law, the Louisiana State Licensing Board for Contractors (LSLBC) adopts rules and regulations regarding contracting matters under the jurisdiction of the LSLBC.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XXIX. Contractors
Chapter 15. Residential
§1511. Home Improvement Registration

A. Home improvement contractors are required to register with the board in order to perform services in an amount of $7,500 or more, not to exceed $75,000. Contractors who hold valid commercial or residential licenses with the board are exempt from this registration requirement. Home improvement contractors are required to submit certificates evidencing workers' compensation coverage in compliance with Title 23 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:813 (March 2012).

§1513. New Home Warranty Act

A. Pursuant to R.S. 9:3145, a builder shall give the owner written notice of the requirements of the New Home Warranty Act.

B. Failure to provide such written notice shall be grounds for the residential subcommittee to suspend, modify, or revoke the license of the contractor who failed to provide the required notice, subject to the final approval of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:813 (March 2012).

Michael McDuff
Executive Director

1203#005

RULE

Office of the Governor
Public Defender Board

Service Restriction Protocol
(LAC 22:XV.Chapter 17)

The Public Defender Board, a state agency within the Office of the Governor, has adopted LAC 22:XV.Chapter 17, as authorized by R.S. 15:148. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The purpose of these rules is to establish policies and procedures to ensure that district public defenders' expenditures do not exceed their revenues and that public defense service providers meet the ethical obligations imposed upon them by the Rules of Professional Conduct.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part XV. Public Defender Board
Chapter 17. Service Restriction Protocol
§1701. Purpose, Findings and Intentions

A. On May 25, 2011, the legislative auditor issued a report entitled, "Louisiana District Public Defenders Compliance with Report Requirements." The report, prepared in accordance with R.S. 24:515.1.F, focused largely upon the fact that 28 of Louisiana's 42 district public defenders had expenditures that exceeded revenues during the 18-month period beginning January 1, 2009 and ending June 30, 2010.

> The report explains, at p. 6, that:
>
> [D]uring 2008 and 2009, the Louisiana Public Defender Board ("Board") received less money than it had requested during the budgeting/appropriations process. To preserve the state's public defender system, the Board reduced, and in some cases, eliminated state funding to local public defender districts that had positive fund balances. This allowed state funding to be directed to those districts with the greatest financial need. Twelve districts were required to use their fund balances to finance operations in 2008 and 28 districts were required to do so in 2009. It was a limited solution that allowed the continuation of the public defense system during lean economic times. At the same time, this seriously depleted most of the local districts' fund balances.

1. As a result of this spending pattern, the legislative auditor recommended that the board monitor the fiscal operations and financial position of all district defenders and, further, provide guidance to district defenders to ensure that districts do not spend more money than they collect. In order to comply with the legislative auditor's recommendation to provide guidance to public defenders to ensure that districts do not spend more funds than they receive, the board adopts this service restriction protocol.

B. The board recognizes that excessive caseloads affect the quality of representation being rendered by public

defense service providers and thereby compromise the reliability of verdicts and threaten the conviction of innocent persons.

C. The board further recognizes that excessive caseloads impair the ability of public defense service providers to meet the ethical obligations imposed upon all attorneys, public and private, by the Rules of Professional Conduct. The board finds that by breaching the ethical obligations imposed by the Rules of Professional Conduct, a public defense service provider fails to satisfy the state's obligation to provide effective assistance of counsel to indigent defendants at each critical stage of the proceeding.

1. The relevant ethical obligations imposed by the Rules of Professional Conduct include, but are not limited to rules:

a. 1.1 (requiring competent representation);

b. 1.3 (requiring "reasonable diligence and promptness" in representation);

c. 1.4 (requiring prompt and reasonable communications with the client);

d. 1.7(a)(2) (a "lawyer shall not represent a client if … there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person…");

e. 1.16(a)(1) (requiring a lawyer to "withdraw from the representation of a client if…the representation will result in violation of the Rules of Professional Conduct or law.");

f. 5.1(a) and (b) (imposing on a "firm" the obligation to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct" and that a "lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct"); and

g. 6.2(a) (a "lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as … representing the client is likely to result in violation of the Rules of Professional Conduct or other law.").

2. The board further recognizes that a district or a district defender's office may be a "firm" for the purposes of Rule of Professional Conduct 5.1(a).

D. When this protocol uses "shall" or "shall not," it is intended to impose binding obligations. When "should" or "should not" is used, the text is intended as a statement of what is or is not appropriate conduct, but not as a binding rule. When "may" is used, it denotes permissible discretion or, depending on the context, refers to action that is not prohibited specifically.

E. This protocol is intended to be read consistently with constitutional requirements, statutes, the Rules of Professional Conduct, other court rules and decisional law and in the context of all relevant circumstances.

F. This protocol is neither designed nor intended as a basis for civil liability, criminal prosecution or the judicial evaluation of any public defense service provider's alleged misconduct.

G. If any phrase, clause, sentence or provision of this protocol is declared invalid for any reason, such invalidity does not affect the other provisions of this protocol that can be given effect without the invalid provision, and to this end, the provisions of this protocol are severable. The provisions of this protocol shall be liberally construed to effectuate the protocol's purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:813 (March 2012).

§1703. Definitions

A. As used in this protocol, unless the context clearly indicates otherwise, the following terms shall have the following meanings.

Board—the Louisiana Public Defender Board.

Board Staff—one or more members of the executive staff of the Board as set forth in R.S. 15:150 assigned by the board or the state public defender to perform the duties set forth herein.

Case—*case* as defined in R.S. 15:174.C.

Caseload—the number of cases handled by a public defender service provider. The *caseload* of a district is the sum of all public defender service providers' caseloads in that district.

District—the judicial district in which a district defender supervises service providers and enforces standards and guidelines.

District Defender—an attorney under contract with the board to supervise public defense service providers and enforce standards and guidelines within a judicial district or multiple judicial districts. Also known as a district public defender or chief indigent defender.

District Indigent Defender Fund—the fund provided for in R.S. 15:168.

Fiscal Crisis—that a district indigent defender fund is unable to support its expenditures with revenues received from all sources and any accrued fund balance. Because a district indigent defender fund may not expend amounts in excess of revenues and accrued fund balance, a district facing a fiscal crisis must restrict public defense services to cut back on or slow the growth of expenditures. Services should be restricted in the manner that the board and the affected district defender determine to be the least harmful to the continuation of public defense services within the district.

Notice—written notice given as provided for herein.:

a. between the district defender and the board or board staff. Notice between a district defender and the board or board staff, as required in this protocol, may be given by mail, facsimile transmission or electronic mail. If notice is given by certified or registered mail, notice shall be effective upon receipt by the addressee. If notice is given by mail that is not sent certified or registered, by facsimile transmission, or by electronic mail, notice shall be effective only after the sending party confirms telephonically with the receiving party that all pages, including attachments, were received by the receiving party;

b. from the district defender to the court. Notice from a district defender to the court, as required in this protocol, shall be given by filing notice with the affected district's clerks(s) of court and hand-delivering copies to the offices of the chief judge and the district attorney of the affected district.;

c. from the district defender to others. Notice from a district defender to persons not otherwise specified may be given by hand-delivery or by certified or registered mail; notice of shall be effective upon hand-delivery or deposit into the U.S. mail.

Public Defender Service Provider—an attorney who provides legal services to indigent persons in criminal proceedings in which the right to counsel attaches under the United States and Louisiana constitutions as a district employee or as an independent contractor. Unless the context or surrounding circumstances clearly indicate otherwise, a public defender service provider includes a district defender.

Rules of Professional Conduct—the Louisiana Rules of Professional Conduct.

State Public Defender—the person employed by the board pursuant to R.S. 15:152.

Workload—a public defender service provider's caseload, including appointed and other work, adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties. Non-caseload factors also include the experience level of the public defense service provider, waits in courtrooms for judicial priority afforded private-lawyer cases, training functions required of senior lawyers to junior lawyers, travel time to and from jails and prisons where clients are incarcerated, timeliness and ease of access to incarcerated clients, and the number of non-English speaking clients. A workload is excessive when it impairs the ability of a public defense service provider to meet the ethical obligations imposed by the Rules of Professional Conduct. The workload of a district is the sum of all public defender service providers' workloads in that district. The workload of a district is excessive when all non-supervisory public defense service providers within that district have excessive workloads.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:814 (March 2012).

§1705. Applicability of Sections

A. Sections 1707 through 1717 shall apply when a district is facing a fiscal crisis or excessive workload, or both. Section 1719 applies when one or more individual public defender service providers are facing excessive workloads, but the district itself is not.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1707. Notice of Impending Fiscal Crisis, Excessive Caseload, or Both

A. When a district defender or board staff projects that a district will experience a fiscal crisis or an excessive workload, or both, during the next 12 months, the district defender or board staff, as the case may be, shall give notice to the other within 7 days of making such projection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1709. Discussion of Alternatives; Proposed Service Restriction Plan

A. If the fiscal crisis or excessive workload, or both, is/are expected to occur six or more months from giving or receiving of the notice specified in §1707, the following steps shall be taken.

1. Within 45 days after giving or receiving the notice, the district defender shall discuss with board staff any viable alternatives to restricting public defense services within the district.

2. If the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the district defender shall, within 60 days after either giving or receiving the notice, develop a proposed written plan for restricting services in the district, including staff and overhead reductions where necessary, and submit the proposed plan to board staff.

B. If the fiscal crisis or excessive workload, or both, is/are expected to occur less than six months from giving or receiving of the notice specified in §1707, the following steps shall be taken.

1. Within 15 days after giving or receiving the notice, the district defender shall discuss with board staff any viable alternatives to restricting public defense services within the district.

2. If the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the district defender shall, within 30 days after either giving or receiving the notice, develop a proposed written plan for restricting services in the district, including staff and overhead reductions where necessary, and submit the proposed plan to board staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1711. Comprehensive and Expedited Site Visits

A. If the fiscal crisis or excessive workload, or both, is/are expected to occur six or more months from the giving or receiving of the notice specified in §1707 and the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the following steps shall be taken.

1. Within 90 days of receiving the district defender's proposed service restriction plan, board staff shall conduct a comprehensive site visit. the purpose of the comprehensive site visit is to confirm that a restriction of services is necessary and to ensure that the restriction of services is handled in a manner that minimizes the adverse effects on the local criminal justice system, while avoiding assuming caseload and/or workload levels that threaten quality representation of clients or run counter to the Rules of Professional Conduct. In conducting comprehensive site visits, board staff should perform any and all such actions that board staff deems necessary, including, but not limited to, requesting and reviewing documents, examining computers and computerized information, interviewing district employees and independent contractors, and contacting other stakeholders in the local criminal justice system. If the board staff determines that services should be

restricted in the district following completion of the comprehensive site visit, the district defender and board staff should consult with the chief judge and district attorney before finalizing the service restriction plan.

B. If the fiscal crisis or excessive workload, or both, is/are expected to occur less than six months from the giving or receiving of the notice specified in §1707 and the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the following steps should be taken.

1. Within 45 days of receipt of the district defender's proposed service restriction plan, board staff should conduct an expedited site visit. The purpose of the expedited site visit is to confirm that a restriction of services is necessary and to ensure that the restriction of services is handled in a manner that minimizes the adverse effects on the local criminal justice system, while avoiding assuming caseload and/or workload levels that threaten quality representation of clients or run counter to the Rules of Professional Conduct. In conducting expedited site visits, board staff may perform any and all such actions the board staff deems necessary, including, but not limited to, requesting and reviewing documents, examining computers and computerized information, interviewing district employees and independent contractors, and contacting other stakeholders in the local criminal justice system. If the board staff determines that services should be restricted in the district following completion of the expedited site visit, the district defender and board staff should consult with the chief judge and district attorney prior to finalizing the service restriction plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1713. Factors to be Considered in Development of a Service Restriction Plan

A. Recognition of Diversity of Districts

1. Individual districts have different public defender service delivery methods, funding levels, caseloads, workloads and staff. As a result, service restriction plans should be tailored to each district. In some districts, restricting misdemeanor representation may be the appropriate step, while in others; districts may no longer be able to handle capital cases. However, to the extent possible, all service restriction plans should reflect that the district will continue representation of existing clients.

B. Non-Attorney Support Staff

1. In preparing the final service restriction plan for a district, the district defender and board staff should attempt to preserve the district's support staff to the extent possible.

C. Public Defender Service Provider Considerations

1. Public defender service providers' workloads must be controlled so that all matters can be handled competently. If workloads prevent public defender service providers' from providing competent representation to existing clients, public defender service providers must neither be allowed nor required to accept new clients.

2. Reasonable communications between public defender service providers and their clients are necessary for clients to participate effectively in their representation.

3. Loyalty and independent judgment are essential elements in public defender service providers' client relationships. Conflicts of interest can arise from the public defender service providers' responsibilities to other clients, former clients, third persons or from the public defender service providers' own interest. Loyalty to clients is impaired when a public defender service provider cannot consider, recommend, or carry out appropriate courses of action for clients because of the public defender service providers' other responsibilities or interests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:816 (March 2012).

§1715. Declination of New Appointments; Other Relief

A. If the district defender and board staff agree that the fiscal crisis or excessive workload, or both, is imminent, the district defender and public defense service providers shall begin declining new appointments at an agreed upon time prior to breaching the Rules of Professional Conduct.

B. If the court appoints the district defender or one of the district's public defense service providers following declination of appointments as set forth in §1715.A, the district defender and the district's public defense service providers shall seek continuances in those cases where the defendant is not incarcerated. The district defender and the district's public defense service providers shall continue to provide legal services for incarcerated clients provided they may do so without breaching the Rules of Professional Conduct and after considering the severity of the offense and the length of time the defendant has been in custody. If the district defender determines that litigation pursuant to State v. Peart, 621 So.2d 780 (La. 1993); State v. Citizen, 04-KA-1841 (La. 4/1/05), 898 So.2d 325 or other related litigation is necessary at this time, the district defender is authorized to take such action after giving notice to the board and board staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:816 (March 2012).

§1717. Finalization of Plan; Dissemination

A. If the fiscal crisis or excessive workload, or both, remains imminent at conclusion of the board staff's site visit, the district defender shall, within 30 days of conclusion of the site visit, submit his or her proposed written final service restriction plan to board staff.

B. Board staff shall have seven days after receipt of the proposed final service restriction plan to review and approve the plan as submitted or approve the plan as modified by board staff. The plan becomes final upon the district defender's receipt of the board staff's approval. If board staff takes no action on the proposed final services restriction plan, the plan is deemed to be approved as submitted on the first business day following the expiration of the seventh day.

C. After the plan has been approved by board staff, the district defender shall give notice of the plan, together with a copy of the plan, to the court in accordance with §1703.A.9.b. and to the state public defender in accordance with §1703.A.9.a.

D. Copies of the notice and the final service restriction plan also shall be sent by the district defender to the chief justice of the Louisiana Supreme Court, the president of the Louisiana State Bar Association, the chief and/or

administrative judge of each court in the district in which public defender service providers deliver legal services to indigent persons in criminal proceedings, and the sheriff and parish president or equivalent head of parish government for each parish in the district in accordance with §1703.A.9.c.

E. The district defender may seek assistance from the court, where appropriate, in recruiting members of the local private bar to assist in the provision of indigent representation.

F. Notices under this §1717 shall include the effective date of the service restriction and should be provided as soon as practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:816 (March 2012).

§1719. Excessive Workloads of Individual Public Defender Service Providers

A. A public defender service provider's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or result in the breach of ethical obligations, and public defense service providers are obligated to decline appointments above such levels.

B. If the district defender becomes aware that one or more of the district's public defender service providers' workloads are, or will become, excessive, the district defender shall take appropriate action. Appropriate action includes, but is not limited to, transferring non-representational responsibilities within the district, including managerial or supervisory responsibilities to others; transferring cases from one public defender service providers to another; or authorizing the public defender service providers to refuse new cases.

C. If a public defense service provider believes that he or she has an excessive workload, the public defense service provider shall consult with his or her supervisor and seek a solution by transferring cases to a public defense service provider whose workload is not excessive or by transferring non-representational responsibilities. Should the supervisor disagree with the public defense service provider's position or refuse to acknowledge the problem, the public defense service provider should continue to advance up the chain of command within the district until either relief is obtained or the public defense service provider has reached and requested assistance or relief from the district defender. If after appealing to his or her supervisor and district defender without relief, the public defense service provider should appeal to the regional director, if applicable, and the state public defender for assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:817 (March 2012).

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RULE

Department of Health and Hospitals
Board of Dentistry

Continuing Education Requirements
(LAC 46:XXXIII.1611 and 1615)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.1611 and 1615. No preamble has been prepared.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XXXIII. Dental Health Profession
Chapter 16. Continuing Education Requirements

§1611. Continuing Education Requirements for Relicensure of Dentists

A. - I. …

J. In order to renew permits for the administration of deep sedation, parenteral sedation, and enteral sedation, each licensee shall complete a board approved course pertinent to the level of their sedation permit no less than once every six years.

J.1. - L. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997), LR 24:1117 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:244 (February 2006), LR 35:1237 (July 2009), LR 36:2038 (September 2010), LR 37:2151 (July 2011), LR 38:817 (March 2012).

§1615. Approved Courses

A. Courses sponsored or approved by the following organizations shall be accepted by the board:

1. - 8. …

9. the American Red Cross as a provider of the cardiopulmonary resuscitation course "Red Cross Professional Rescue Course;"

10. the Accreditation Council for Continuing Medical Education (ACCME).

B. - C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8), and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:662 (June 1994), amended LR 22:24 (January 1996), LR 24:1118 (June 1998), LR 35:1238 (July 2009), LR 38:817 (March 2012).

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