

## **Chapter 11. Trial Court Performance Standards for Attorneys Representing Parents in Child in Need of Care Cases**

### **§1101. Purpose**

A. The standards for parent representation in child in need of care cases are intended to serve several purposes. First and foremost, the standards are intended to encourage district public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of parents in child in need of care and termination of parental rights cases.

B. The standards are also intended to alert defense counsel to courses of action which may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions to be taken in each case to ensure that the client receives the best representation possible. The standards are further intended to provide a measure by which the performance of district public defenders, assistant public defenders and appointed counsel may be evaluated, including guidelines for proper documentation of files to demonstrate adherence to the Standards, 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. In those instances where a particular action is absolutely essential to providing quality representation, the standards use the word "shall." In those instances where a particular action is usually necessary to providing quality representation, the standards use the word "should." Even where the standards use the word "shall," in certain situations, the lawyer's 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.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:321 (January 2011).

### **§1103. Obligations of Defense Counsel**

A. The primary and most fundamental obligation of an attorney representing a parent in a child in need of care or a termination of parental rights case is to provide zealous and effective representation for his or her client at all stages of the process. The defense attorney's duty and responsibility is to promote and protect the expressed 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, to act in accordance with the Louisiana Rules of Court, and to properly document case files to reflect adherence to the standards.

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### **§1105. 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 parent in a child in need of care or termination of parental rights proceeding. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

B. Counsel shall be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a parent. Counsel shall not represent both parents if their interests differ. The attorney should generally avoid representing both parents when there is even potential for conflict of interest. In situations involving allegations of domestic violence, the attorney shall not represent both parents. When appropriate, counsel may be obliged to seek an advisory opinion from the Office of Disciplinary Counsel on any potential conflicts.

C. If a conflict is discovered during the course of representation, counsel has a duty to notify the parent and the court in accordance with the Louisiana Rules of Court and in accordance with the Louisiana Rules of Professional Conduct.

D. Counsel has the obligation to take all reasonable steps to keep the parent informed of the progress of the case.

E. Counsel has the obligation to ensure that the case file is properly documented to demonstrate adherence to the standards, such as, where relevant, documentation of intake and contact information, client and witness interviews, critical deadlines, motions, and any other relevant information regarding the case. The case file should also contain,

where relevant, copies of all pleadings, orders, releases (school, medical, mental health, or other types), discovery, and correspondence associated with the case.

F. 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. 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.

G. Lawyers initially appointed should continue their representation through all stages of the proceedings. Unless otherwise ordered by the court, the attorney of record should continue to represent the client from the point of the initial court proceedings through disposition, post-disposition review hearings, and any other related proceedings until the case is closed.

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### **§1107. Training and Experience of Defense Counsel Representing a Parent in a Child in Need of Care or Termination of Parental Rights Proceeding**

A. In order to provide quality legal representation, counsel shall be familiar with the substantive juvenile law and the procedure utilized in child in need of care proceedings, including but not limited to Title VI of the Louisiana Children's Code (La. Ch.C. Articles 601 et seq.), Title X of the Louisiana Children's Code (La. Ch.C. Articles 1001 et seq.) and their applications 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 of a parent in a child in need of care or termination of parental rights proceeding, counsel shall have sufficient experience or training to provide effective representation. It is essential for the parent's attorney to read and understand all state laws, policies and procedures regarding child abuse and neglect. In addition, the parent's attorney should be familiar with the following laws to recognize when they are relevant to a case and should be prepared to research them when they are applicable:

1. Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (ASFA), 42 U.S.C. §§ 620-679 and the ASFA Regulations, 45 C.F.R. Parts 1355, 1356, 1357;
2. Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351;
3. Child Abuse Prevention Treatment Act (CAPTA), P.L.108-36;
4. Indian Child Welfare Act (ICWA) 25 U.S.C. §§ 1901-1963, the ICWA Regulations, 25 C.F.R. Part 23, and the Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979);
5. State Indian Child Welfare Act laws;
6. Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP) 42 U.S.C. § 622 (b)(9) (1998), 42 U.S.C. § 671(a)(18) (1998), 42 U.S.C. § 1996b (1998);
7. Interstate Compact on Placement of Children (ICPC);
8. Foster Care Independence Act of 1999 (FCIA), P.L. 106-169;
9. Individuals with Disabilities Education Act (IDEA), P.L. 91-230;
10. Family Education Rights Privacy Act (FERPA), 20 U.S.C. § 1232g;
11. Health Insurance Portability and Accountability Act of 1996 (HIPPA), P. L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part);
12. Public Health Act, 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2;
13. Louisiana Administrative Code, Title 28, Part XLIII (Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act) and Part CI (Bulletin 1508—Pupil Appraisal Handbook);
14. immigration laws relating to child welfare and child custody;
15. state laws and rules of evidence;

16. state laws and rules of civil procedure;
17. state laws and rules of criminal procedure;
18. state laws concerning privilege and confidentiality, public benefits, education, and disabilities;
19. state laws and rules of professional responsibility or other relevant ethics standards;
20. state laws regarding domestic violence.

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#### **§1109. Obligations of Counsel Regarding Parent's Rights**

A. Counsel should understand and protect the parent's rights to information and decision-making while the child is in the custody of the state. The parent's attorney shall explain to the parent what decision-making authority remains with the parent and what lies with the child welfare agency while the child is in custody of the state.

B. The parent's attorney should seek updates and reports from any service provider working with the child/family and help the client obtain information about the child's safety, health, education and well-being when the client desires.

C. Where decision-making rights remain, the parent's attorney should assist the parent in exercising his or her rights to continue to make decisions regarding the child's medical, mental health and educational services.

D. If necessary, the parent's attorney should intervene with the Department of Children and Family Services, provider agencies, medical providers and the school to ensure the parent has decision-making opportunities. This may include seeking court orders when the parent has been left out of important decisions about the child's life.

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#### **§1111. Obligations of Counsel Prior to Filing of Petition**

A. Counsel, upon notice of appointment, should actively represent a parent prior to the filing of the petition in a case.

1. The parent's attorney should counsel the client about the client's rights in the investigation stage as well as the realistic pros and cons of cooperating with the Department of Children and Family Services (e.g., the parent's admissions could be used against the client later, but cooperating with services could eliminate a petition filing).

2. The parent's attorney should acknowledge that the parent may be justifiably emotional that the agency is involved with the client's family, and help the client develop strategies so the client does not express that emotion toward the caseworker in ways that may undermine the client's goals.

3. The attorney should discuss available services and help the client enroll in those in which the client wishes to participate.

4. The attorney should explore conference opportunities with the agency. If it would benefit the client, the attorney should attend any conferences. The attorney should prepare the client for issues that might arise at the conference, such as services and available kinship resources, and discuss with the client the option of bringing a support person to a conference.

5. The attorney should gather and forward to the agency the names and contact information of any potential temporary placements for the children that the client would like the agency to consider.

6. The attorney should assess whether the Department of Children and Family Services made the reasonable efforts required before removing the child from the home and the attorney should be prepared to argue a lack of reasonable efforts to the court, whenever appropriate.

B. Counsel should avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.

C. Counsel should cooperate and proactively communicate regularly with other professionals in the case, including but not limited to all agency (Department of Children and Family Services) personnel.

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**§1113. 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 allegations against the client;
  - b. obtain copies of any relevant documents which are available, including copies of any reports made by law enforcement, medical personnel or Department of Children and Family Services personnel; and
  - c. determine if any criminal charges have been or are likely to be filed against the client.
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. where applicable, determine if a criminal defense attorney has been appointed regarding the related criminal charges, and develop as soon as is feasible with that attorney a joint strategy for addressing both the criminal charges and the child in need of care proceedings.

**B. Conducting the Interview**

1. The purpose of the initial interview is to acquire information from the client concerning the case and the client, and to provide the client with information concerning the case. Counsel should ensure at all 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, such as:
  - a. the facts surrounding the allegations leading to the initiation of a child in need of care proceeding, to the extent the client knows and is willing to discuss these facts;
  - b. where applicable, the client's version of the removal of the child(ren); whether client was interrogated and if so, whether a statement was given; client's physical and mental status at the time the statement was given; whether any samples were provided, such as blood, tissue, hair, DNA, handwriting, etc., and whether any scientific tests were performed on client's body or bodily fluids;
  - c. the name(s) and marital status of all parents of the subject child(ren) and the name of counsel for the other parents (if a conflict has been determined and counsel has been appointed or retained);
  - d. the names and locating information of any witnesses to the alleged abuse and/or neglect; 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 and/or Department of Children and Family Services (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 aliases 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; the client's past involvement, if any, with a child in need of care case or the Department of Children and Family Services or, more specifically, the Child Welfare Section; counsel should also determine whether the client has any pending charges or outstanding warrants from other jurisdictions or agencies, whether he or she is on probation (including the nature of the probation) 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); and

j. where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the alleged abuse and/or neglect, 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. taking care to distinguish him or herself from others in the system so the client can see that the attorney serves the client's interests, 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;

b. a general overview of the procedural progression of the case, the legal issues related to the case, including specific allegations against the client, the case plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with case plans, as well as the general expectations of the court and the agency, and potential consequences of the client failing to meet those expectations;

c. an explanation of the persons involved in a child in need of care case and in any subsequent termination of parental rights proceeding and the role and responsibility each person has;

d. contact information in writing and a message system that allows regular attorney-client contact. The attorney should explain that even when the attorney is unavailable, the parent should leave a message. The attorney shall respond to client messages in a reasonable time period; and

e. the names of any other persons who may be contacting the client on behalf of counsel.

4. For clients who are incarcerated:

a. communicate with the client on a regular and ongoing basis, including conferring with the client within 72 hours of being appointed and prior to every court appearance;

b. where appropriate, explain how the criminal proceedings will relate to the child in need of care and any subsequent termination of parental rights proceedings;

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; and

d. assist client in obtaining services such as substance abuse treatment, parenting skills, or job training while incarcerated.

5. The parent's attorney and client should discuss timelines that reflect projected deadlines and important dates and a calendar system to remember the dates. The timeline should specify what actions the attorney and parent will need to take and dates by which they will be completed. The timeline should reflect court deadlines and Department of Children and Family Services deadlines.

6. Counsel should make available to the client copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order. Counsel should continue throughout the proceedings to provide client all relevant documents. If the client has difficulty reading, the attorney should read the documents to the client. In all cases, the attorney should be available to discuss and explain the documents to the client.

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### **§1115. Counsel's Duties Regarding Client Communication**

A. Counsel shall act in accordance with the duty of loyalty owed to the client. Attorneys representing parents should show respect and professionalism towards their clients. Parents' attorneys should support their clients and be sensitive to the client's individual needs. Attorneys should remember that they may be the client's only advocate in the system and should act accordingly.

B. Counsel shall adhere to all laws and ethical obligations concerning confidentiality. Attorneys representing parents shall understand confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the client.

C. Counsel shall meet and communicate regularly with the client well before court proceedings.

D. Counsel should advocate for the client's goals and empower the client to direct the representation and make informed decisions.

E. Counsel should identify any potential barriers to the client's cooperation in the proceedings.

1. The parent's attorney should help the client access information about the child's developmental and other needs by speaking to service providers and reviewing the child's records. The parent needs to understand these issues to make appropriate decisions for the child's care.

2. The parent's attorney and the client should identify barriers to the client engaging in services, such as employment, transportation, housing and financial issues. The attorney should work with the client, caseworker and service provider to resolve the barriers.

3. The attorney should be aware of any special issues the parents may have related to participating in the proposed case plan, such as an inability to read or language differences, and advocate with the child welfare agency and court for appropriate accommodations.

F. Counsel should act with regard to the cultural background and socioeconomic position of the parent throughout all aspects of representation. The parent's attorney should learn about and understand the client's background, and consider how cultural and socioeconomic differences impact interaction with clients.

G. Counsel should be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case in accordance with Louisiana Rule of Professional Conduct 1.14 (Client with Diminished Capacity). The attorney should be familiar with any mental health diagnosis and treatment that a client has had in the past or is presently undergoing (including any medications for such conditions). The attorney should get consent from the client to review mental health records and to speak with former and current mental health providers. The attorney should explain to the client that the information is necessary to understand the client's capacity to work with the attorney. If the client's situation seems severe, the attorney should also explain that the attorney may seek the assistance of a clinical social worker or some other mental health expert to evaluate the client's ability to assist the attorney.

H. When appointed as a curator, counsel should undertake diligent efforts to locate a missing parent, including but not limited to investigation and attempts to contact persons who may have information regarding the location of the parent. If the missing parent is found, notify him or her of the pendency and nature of the proceedings. If the missing parent is not found, the defender should stay involved throughout the case, object when necessary to preserve the missing parent's rights, and make periodic attempts to find the parent.

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#### **§1117. Counsel's Duty to Investigate**

A. Counsel has a duty to conduct a prompt, reasonable and independent investigation at every stage of the proceeding of each case. Counsel should investigate whether the allegations of abuse and/or neglect and disposition are factually and legally correct and the client is aware of potential defenses to the allegations. The parent's attorney cannot rely solely on what the agency caseworker reports about the parent. The attorney could consider contacting service providers who work with the client, relatives who can discuss the parent's care of the child, and the child's teachers or other people who can clarify information relevant to the case.

B. Counsel should interview the client well before each hearing, in time to use client information for the case investigation. The parent's attorney should meet with the parent regularly throughout the case. The meetings should occur well before the hearing, not just at the courthouse before the case is called before the judge. The attorney should ask the client questions to obtain information to prepare the case and strive to create a comfortable environment so the client can ask the attorney questions. The attorney should use these meetings to prepare for court as well as to counsel the client concerning issues that arise during the course of the case.

C. Counsel should consider the necessity to interview the potential witnesses, including any 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.

D. 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 National Crime Information Center or other states' criminal history records for the client and for the prosecution witnesses.

E. 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.

F. Counsel should secure the assistance of experts where it is necessary or appropriate to:

1. the preparation of the defense;
2. adequate understanding of the agency's case; or
3. rebut the agency's case.

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### **§1119. Informal Discovery**

A. The parent's attorney should review the child welfare agency case file as early during the course of representation as possible and periodically thereafter.

B. The parent's attorney should obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.

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### **§1121. Formal Discovery**

A. The parent's attorney should use formal discovery methods to obtain information and inspect evidence as permitted by La. Ch.C. Art. 652.

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. all investigative reports by all law enforcement and other agencies involved in the case; and
9. all records of evidence collected and retained by law enforcement.

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### **§1123. Court Preparation**

A. During investigation and trial preparation, counsel should develop and continually reassess a theory of the case and strategy to follow at hearings and negotiations.

B. Counsel for parents should engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.

1. The parent's attorney should know about the social, mental health, substance abuse treatment and other services that are available to parents and families in the jurisdiction in which the attorney practices so the attorney can advocate effectively for the client to receive these services. The attorney should ask the client if the client wishes to engage in services. If so, the attorney should determine whether the client has access to the necessary services to overcome the issues that led to the case.

2. The attorney should actively engage in case planning, including attending major case meetings and family team conferences, to ensure the client asks for and receives the needed services. The attorney should also ensure the client does not agree to undesired services that are beyond the scope of the case.

3. Whenever possible, the parent's attorney should engage or involve a social worker as part of the parent's "team" to help determine an appropriate case plan, evaluate social services suggested for the client, and act as a liaison and advocate for the client with the service providers.

C. Counsel for parents should research applicable legal issues and advance legal arguments when appropriate.

D. Counsel for parents shall timely file all appropriate pleadings, motions, and briefs.

1. Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the parent is entitled to relief which the court has discretion to grant.

2. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.

3. Among the issues that counsel should consider addressing in a pretrial motion are:

- a. the constitutionality of the implicated statute or statutes;
  - b. the potential defects in the charging process;
  - c. the sufficiency of the charging documents;
  - d. the discovery obligations of the prosecution/agency and the reciprocal discovery obligations of the defense;
- and
- e. access to resources which, or experts, who may be denied to an accused because of his or her indigence.

E. Counsel for parents should aggressively advocate for regular visitation in a family-friendly setting. Factors to consider in visiting plans include:

1. frequency;
2. length;
3. location;
4. supervision;
5. types of activities; and
6. visit coaching—having someone at the visit who could model effective parenting skills.

F. With the client's permission, and when appropriate, counsel for parents should engage in settlement negotiations and mediation to resolve the case. Counsel should adhere to all laws and ethical obligations concerning confidentiality and participate in such proceedings in good faith.

1. Counsel should keep the client fully informed of any continued discussion concerning stipulating and related negotiations and promptly convey to the accused any offers made by the prosecution/agency for a negotiated settlement.

2. Counsel shall not accept any stipulation agreement without the client's express authorization. Prior to entering any stipulation, counsel should ensure that client understands the potential consequences of certain stipulations, particularly the potential for a subsequent termination of parental rights.

3. The existence of ongoing tentative stipulation negotiations with the prosecution/agency should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing stipulation negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

4. In order to develop an overall negotiation plan, counsel should be aware of, and make sure the client is aware of:

- a. the conditions proposed by the Department of Children and Family Services;
- b. the spectrum of possible outcomes;
- c. other consequences of adjudication, including but not limited to the impact on any potential criminal investigation or subsequent termination of parental rights proceeding;
- d. concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to:
  - i. not to proceed to adjudication;
  - ii. decline from asserting or litigating any particular pretrial motions; and
  - iii. an agreement to fulfill specified, written conditions; and
- e. benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:
  - i. to enter into an informal adjustment agreement;
  - ii. reunification with particular conditions;
  - iii. to dismiss or reduce one or more charged criminal offenses either immediately, or upon completion of a deferred prosecution agreement; and
  - iv. that the respondent will not be subject to further investigation or prosecution for uncharged alleged criminal conduct.

5. In conducting stipulation negotiations, counsel should be familiar with:

- a. the advantages and disadvantages of stipulation according to the circumstances of the case; and
- b. the various types of stipulations that may be agreed to, including but not limited to a stipulation without admitting the allegations.

6. In conducting negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and Department of Children and Family Services personnel which may affect the content and likely results of negotiated agreements.

G. Counsel for parents should thoroughly prepare the client to testify at the hearing;

H. Counsel for parents should identify, locate and prepare all witnesses; and

I. Counsel for parents should identify, secure, prepare and qualify expert witness when needed. When permissible, counsel should interview opposing counsel's experts.

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### **§1125. Entering the Negotiated Stipulation before the Court**

A. Prior to the entry of a stipulation, counsel should:

1. make certain that the client understands the rights he or she will waive by entering the stipulation and that the client's 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 stipulation and the potential outcomes and collateral consequences the client will be exposed to by entering a stipulation; and

3. explain to the client the nature of the stipulation and prepare the client for the role he or she will play in the proceeding, including answering questions of the judge and, where appropriate, providing a statement concerning the allegations.

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

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#### **§1127. Counsel's Duties at Continued Custody Hearing**

A. At the continued custody hearing, counsel for a parent should take steps to see that the hearing is conducted in a timely fashion pursuant to La. Ch. C. Art. 624, unless there are strategic reasons for not doing so.

B. In preparing for the continued custody hearing, the attorney should become familiar with:

1. the alleged abuse and/or neglect;
2. the law of establishing grounds of abuse and neglect (La. Ch. C. Art. 606);
3. the requirement that the department made reasonable efforts to prevent or eliminate the need for the child(ren)'s removal before taking custody of the child(ren); and
4. the subpoena process for obtaining compulsory attendance of witnesses at the continued custody hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

C. Counsel for a parent should be prepared, in keeping with an overall case strategy, to present reasonable terms of return/reunification of children, with potential conditions, at the continued custody phase.

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#### **§1129. Counsel's Duty of Preparation for Adjudication**

A. Where appropriate, counsel should have the following materials available at the time of adjudication:

1. copies of all relevant documents filed in the case;
2. relevant documents prepared by investigators;
3. cross-examination plans for all possible prosecution witnesses;
4. direct examination plans for all prospective defense witnesses;
5. copies of defense subpoenas;
6. 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;
7. prior statements of all defense witnesses;
8. reports from defense experts;
9. a list of all defense exhibits, and the witnesses through whom they will be introduced;
10. originals and copies of all documentary exhibits; and
11. copies of all relevant statutes and cases.

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

C. Counsel should request the opportunity to make opening and closing arguments. When permitted by the judge, counsel should make opening and closing arguments to best present the theory of the case.

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 adjudication process counsel should endeavor to establish a proper record for appellate review. Counsel shall 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, if necessary, counsel should consider filing pre-trial motions to insure that the client has appropriate clothing.

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

H. Counsel should prepare proposed findings of fact, conclusions of law, and orders when they will be used in the court's decision or may otherwise benefit the client.

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:327 (January 2011).

### **§1131. Right to Closed Proceedings (or a Cleared Courtroom)**

A. In accordance with La. Ch.C. Art. 407, the parent's attorney should be aware of who is in the courtroom during a hearing and should request the courtroom be cleared of individuals not related to the case when appropriate.

B. The attorney should be attuned to the client's comfort level with people outside of the case hearing about the client's family.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:328 (January 2011).

### **§1133. Preparation for Challenging the Prosecution's/Agency's Case**

A. Counsel should attempt to anticipate weaknesses in the prosecution's case and consider researching and preparing corresponding motions to dismiss.

B. Counsel should consider the advantages and disadvantages of entering into factual 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 of the individual witnesses is likely to generate helpful information;
3. anticipate those witnesses the prosecution 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 witnesses' 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 witnesses;
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 witnesses' 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 witnesses or prior sworn testimony of the witnesses.

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, counsel should move for a finding that the child is not in need of care. 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.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:328 (January 2011).

### **§1135. Presenting the Respondent'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 burden of proving its case by a preponderance of the evidence.

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. Counsel should explain to the client the constitutional right to not testify and weigh the value of doing so with the client.

C. 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.

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

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

F. Counsel should conduct redirect examination as appropriate.

G. At the close of the defense case, counsel should renew the motion for a finding that the child is not in need of care.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

### **§1137. Obligations of Counsel at Disposition Hearing**

A. Counsel for a parent, regarding the disposition process, should:

1. where a respondent chooses not to proceed to adjudication, ensure that a stipulation agreement is negotiated with consideration of the dispositional implications;
2. ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the disposition;
3. ensure all reasonably available mitigating and favorable information, which is likely to benefit the client, is presented to the court; and
4. develop a plan which seeks to achieve the least restrictive and burdensome disposition that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the case.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

### **§1139. Preparation for Disposition**

A. In preparing for disposition, counsel should consider the need to:

1. inform the client of the dispositional alternatives, and the likely and possible consequences of those alternatives;
2. maintain regular contact with the client prior to the disposition hearing, and inform the client of the steps being taken in preparation for same;
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, financial status, family obligations, and sources through which the information provided can be corroborated;
4. inform the client of his or her right to testify at the disposition hearing and assist the client in preparing the testimony, if any, to be made to the court, considering the possible consequences that any admission of guilt may have upon an appeal;
5. inform the client of the effects that admissions and other statements may have upon an appeal, termination of parental rights proceedings, or other judicial proceedings, such as criminal proceedings; and
6. collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the disposition hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

### **§1141. The Prosecution's Position at Disposition**

A. Counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution/agency will advocate that a particular disposition be imposed.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

### **§1143. The Disposition Process**

A. Counsel should be prepared at the disposition hearing to take the steps necessary to advocate fully for the requested disposition and to protect the client's interest.

B. In the event there will be disputed facts before the court at the disposition hearing, counsel should be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

C. 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.

D. Where appropriate, counsel should prepare the client to personally address the court.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

## **§1145. Termination of Parental Rights Proceedings**

A. Counsel should be aware of and advise the client of the gravity and potential permanent effects of a termination of parental rights petition. A termination of parental rights ruling has a serious impact as the parent can lose all rights to visitation, custody, and contact with the child. Counsel should treat any termination hearings with the respect, dedication, and commitment such a serious matter deserves.

B. Counsel should meet or exceed the standards set forth below.

### 1. Preparation for termination of parental rights hearing:

a. where appropriate, counsel should have the following materials available at the time of the termination hearing:

- i. copies of all relevant documents filed in the case;
- ii. relevant documents prepared by investigators;
- iii. cross-examination plans for all possible prosecution witnesses;
- iv. direct examination plans for all prospective defense witnesses;
- v. copies of defense subpoenas;
- vi. 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;
- vii. prior statements of all defense witnesses;
- viii. reports from defense experts;
- ix. a list of all defense exhibits, and the witnesses through whom they will be introduced;
- x. originals and copies of all documentary exhibits; and
- xi. copies of all relevant statutes and cases;

b. counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the termination process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise at termination hearings;

c. counsel should request the opportunity to make opening and closing arguments. When permitted by the judge, counsel should make opening and closing arguments to best present the theory of the case;

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 termination hearing process, counsel should endeavor to establish a proper record for appellate review. Counsel shall 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, if necessary, counsel should consider filing pre-trial motions to insure that the client has appropriate clothing;

g. counsel should plan with the client the most convenient system for conferring throughout the termination hearing. Where necessary, counsel should seek a court order to have the client available for conferences;

h. counsel should prepare proposed findings of fact, conclusions of law, and orders when they will be used in the court's decision or may otherwise benefit the client;

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

### 2. Right to Closed Proceedings (or a Cleared Courtroom)

a. In accordance with La. Ch.C. Art. 407, the parent's attorney should be aware of who is in the courtroom during a hearing and should request the courtroom be cleared of individuals not related to the case when appropriate.

b. The attorney should be attuned to the client's comfort level with people outside of the case hearing about the client's family.

### 3. Preparation for Challenging the Prosecution's/Agency's Case

a. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment denying termination of parental rights.

b. Counsel should consider the advantages and disadvantages of entering into factual 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:

i. consider the need to integrate cross-examination, the theory of the defense and closing argument;

ii. consider whether cross-examination of each of the individual witnesses is likely to generate helpful information;

iii. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;

iv. consider a cross-examination plan for each of the anticipated witnesses;

v. be alert to inconsistencies in witness testimony;

vi. be alert to possible variations in witness testimony;

vii. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

viii. have prepared a transcript of all audio or video tape recorded statements made by the witnesses;

ix. 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;

x. be alert to issues relating to witness credibility, including bias and motive for testifying; and

xi. 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, counsel should move for a judgment upholding the parental rights of the client. 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.

### 4. Presenting the Respondent'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 burden of proving its case by a preponderance of the evidence.

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. Counsel should explain to the client the constitutional right to not testify and weigh the value of doing so with the client.

c. In preparing for presentation of a defense case, counsel should, where appropriate:

- i. develop a plan for direct examination of each potential defense witness;
- ii. determine the implications that the order of witnesses may have on the defense case;
- iii. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
- iv. consider the possible use of character witnesses;
- v. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
- vi. review all documentary evidence that must be presented; and
- vii. review all tangible evidence that must be presented.

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

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

f. Counsel should conduct redirect examination as appropriate.

g. At the close of the defense case, counsel should renew the motion for a judgment upholding the parental rights of the client.

C. Whenever appropriate, counsel should consider an appeal of an unfavorable verdict.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:329 (January 2011).

#### **§1147. Review Court Orders to Ensure Accuracy and Clarity and Review with Client**

A. After any hearing, the parent's attorney should review the written order to ensure it reflects the court's verbal order.

B. If the order is incorrect, the attorney should take whatever steps are necessary to correct it.

C. Once the order is final, the parent's attorney should provide the client with a copy of the order and should review the order with the client to ensure the client understands it. If the client is unhappy with the order, the attorney should counsel the client about any options to appeal or request rehearing on the order, but should explain that the order is in effect unless a stay or other relief is secured. The attorney should counsel the client on the potential consequences of failing to comply with a court order.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:331 (January 2011).

#### **§1149. Motion for Rehearing**

A. Counsel should be familiar with the procedures available to request a rehearing 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 the court has adjudicated the subject child(ren) a child in need of care or has ordered a termination of parental rights, counsel should consider whether it is appropriate to file a motion for rehearing 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 respondent's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the respondent's right to raise on appeal the issues that might be raised in the new trial motion.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:331 (January 2011).

#### **§1151. Take Reasonable Steps to Ensure the Client Complies with Court Orders**

A. The parent's attorney should answer the parent's questions about obligations under the order and periodically check with the client to determine the client's progress in implementing the order.

B. If the client is attempting to comply with the order but other parties, such as the child welfare agency, are not meeting their responsibilities, the parent's attorney should approach the other party and seek assistance on behalf of the client.

C. If necessary, the attorney should bring the case back to court to review the order and the other party's noncompliance or take other steps to ensure that appropriate social services are available to the client.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:331 (January 2011).

#### **§1153. Consider and Discuss the Possibility of Appeal with the Client**

A. The parent's attorney should consider and discuss with the client the possibility of appeal when a court's ruling is contrary to the client's position or interests.

B. The attorney should counsel the client on the likelihood of success on appeal and potential consequences of an appeal.

C. The attorney shall also comply with all ethical rules and rules of courts of appeal concerning the attorney's determination that there is a reasonable basis for the appeal.

D. Depending on rules in the attorney's jurisdiction, the attorney should also consider filing an extraordinary writ or motions for other post-hearing relief.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:332 (January 2011).

#### **§1155. Appeals**

A. If the client decides to appeal, counsel should timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's rules of appellate procedure.

B. The appellate brief should be clear, concise, and comprehensive and also timely filed. The brief should reflect all relevant case law and present the best legal arguments available in state and federal law for the client's position. The brief should include novel legal arguments if there is a chance of developing favorable law in support of the parent's position.

C. If oral arguments are scheduled, the attorney should be prepared, organized, and direct. Appellate counsel should inform the client of the date, time and place scheduled for oral argument of the appeal upon receiving notice from the appellate court. Oral argument of the appeal on behalf of the client should not be waived, absent the express approval of the client, unless doing so would benefit the client.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:332 (January 2011).

#### **§1157. Expedited Appeals**

A. The attorney should request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.

B. The attorney should provide information about why the case should be expedited, such as any special characteristics about the child and why delay would harm the relationship between the parent and child.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:332 (January 2011).

**§1159. Communication with Client Pending and After Appeal**

- A. The parent's attorney should communicate the result of the appeal and its implications.
- B. The parent's attorney should provide the client with a copy of the appellate decision.
- C. If, as a result of the appeal, the attorney needs to file any motions with the trial court, the attorney should do so.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:332 (January 2011).



STATE OF LOUISIANA  
PUBLIC DEFENDER BOARD

**RESOLUTION**

On the 22nd day of February 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

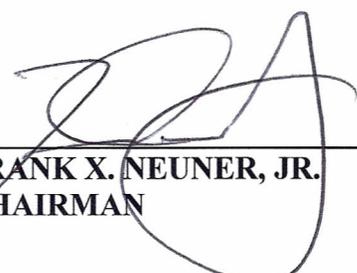
A discussion was held concerning the \$40 nonrefundable application fee required by La. R.S. 15:175(A)(1)(f).

After discussion, it was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that all District Defenders comply with the mandate of La. R.S. 15:175. Each District Defender, or his or her authorized representative, hereby is designated as the "other appropriate official" pursuant to La. R.S. 15:175(A)(1)(f). If a District Defender, or his or her authorized representative, determines that a person does not have the financial resources to pay the application fee based upon the financial information submitted, the District Defender or his or her representative may reduce and/or waive the fee, in the District Defender or his or her representative's sole discretion.

The above resolution was passed unanimously by those Board members present and voting at the meeting.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 22<sup>nd</sup> day of February 2011.

  
\_\_\_\_\_  
**FRANK X. NEUNER, JR.**  
**CHAIRMAN**



LOUISIANA PUBLIC DEFENDER BOARD

Tuesday, February 22, 2011  
LSU Law Center, Tucker Room  
Baton Rouge, Louisiana  
2:00 PM

**MINUTES**

A meeting of the Louisiana Public Defender Board, pursuant to the call of its Chairman and lawful notice, was duly convened and called to order by its Chairman at 2:15 p.m. on Tuesday, February 22, 2011, at the LSU Law Center, Tucker Room, in Baton Rouge, Louisiana.

The following Board Members were present:

Frank Neuner, Chairman  
Gina Bennett  
Judge Robert Burns  
Sam Dalton  
Add Goff  
Leo Hamilton  
Frank Holthaus  
Rev. Dan Krutz  
Christine Lipsey  
Tom Lorenzi  
Lucy McGough  
Pam Metzger  
Gina Womack

The following Board Members were absent:

Cleveland Coon  
Luceia LeDoux  
Majeeda Snead

The following *ex officio* Board Members were absent:

Rebecca Hudsmith  
Judge Robert Brinkman

The following members of the Board's staff were present:

Jean M. Faria, State Public Defender  
Julie Kilborn, Deputy Public Defender – Director of Training

Clay Walker, Deputy Public Defender – Director of Juvenile Defender Services  
Kristy Boxberger, Juvenile Justice Compliance Officer  
Natashia Carter, Accountant  
John Craft, Capital Case Coordinator  
John Di Giulio, Trial-Level Compliance Officer  
Laurie Durnin, Budget Officer  
Anne Gwin, Paralegal, Executive Assistant to the State Public Defender  
Roger Harris, General Counsel  
Lynette Roberson, JIDAN Coordinator  
Dr. Erik Stilling, Information Technology and Management Officer

1. **Review and Adoption of the Agenda.** Mr. Dalton moved to adopt the agenda. The motion was seconded by Mr. Hamilton and was approved without opposition. Mr. Holthaus moved that the Board meeting agenda be amended to move executive session agenda items to the end of the meeting. The motion was seconded by Mr. Lorenzi and was approved without opposition.
2. **Review and Approval of Minutes of December 14, 2010 Board Meeting.** The Board reviewed the Minutes of its meeting on December 14, 2010. Ms. Lipsey moved to adopt the minutes. The motion was seconded by Mr. Dalton and was approved without opposition.
3. **Commendation and Acknowledgment of Board Member James Boren.** Mr. Neuner acknowledged Board Member James Boren, whose term recently ended. Mr. Holthaus made the motion to a commend James Boren for his service. The motion was seconded by Mr. Lorenzi and was unanimously approved.
4. **Welcome Board Member, Thomas L. Lorenzi.** Mr. Neuner welcomed Mr. Thomas L. Lorenzi to the Board. Mr. Lorenzi was appointed by the Louisiana State Bar Association.
5. **Budget Committee Report, Recommendations and Updates.**
  - a. **LPDB Financial Report.** Ms. Durnin presented the Budget Report to the Board. The Budget Committee approved emergency funding for five districts: the 1<sup>st</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 35<sup>th</sup>. The agency's remaining reallocation balance would total \$1,217,004 for the remainder of fiscal year 2010-2011. Ms. Durnin also reported that the Office of Planning and Budget ("OPB") recommended cuts of \$1 million from "other charges." She recommended that districts opt to receive funding through electronic fund transfer to reduce payment costs. She informed the Board of inquiries by OPB regarding staff salary amounts available for reallocation, which were attributed to staff attrition.
  - b. **Emergency Fund Requests and Budget Committee Approvals.** Rev. Krutz, on behalf of the Budget Committee, made the motion to grant the emergency funding requests of the 1<sup>st</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 35<sup>th</sup> districts. The motion was seconded by Mr. Hamilton and was approved without opposition. Mr. Dalton

moved to approve the Budget Report to the Board. The motion was seconded by Mr. Hamilton and was approved without opposition.

**c. 501(C)(3) Contract Amounts.**

**i. Resolution.** Mr. Neuner presented a list of contracts and contract amounts to be approved, based on six-month terms. The resolution had been approved by the Policy Committee. Mr. Dalton made the motion to approve the contracts at the following amounts:

- |                                   |                                |
|-----------------------------------|--------------------------------|
| 1) BRCCO - \$467,500              | 6) CPCPL/Ancillary - \$800,000 |
| 2) CAP - \$548,257.50             | 7) IPNO - \$200,000            |
| 3) CAPOLA - \$699,893.50          | 8) LCAC - \$592,146            |
| 4) CDPSL - \$831,685              | 9) LAP/Operations - \$948,125  |
| 5) CPCPL/Operations - \$1,153,000 | 10) LAP/Ancillary - \$600,000  |

The motion was seconded by Mr. Lorenzi and was approved without opposition.

**d. Summer Intern Program.** Ms. Kilborn made a request that the Board approve a \$20,000 expenditure for a summer intern program. The funds would be used to pay stipends to summer interns. The expenditure was approved by the Budget Committee. Judge Burns made the motion to approve the expenditure. The motion was seconded by Mr. Lorenzi and was approved without opposition.

**e. Updates.**

**i. Report to Joint Legislative Committee on the Budget.** Ms. Faria presented a report to the Joint Legislative Committee on the Budget on March 1, 2011, regarding revenues and expenditures for each district. Mr. Hamilton made the motion to approve the report. The motion was seconded by Prof. Metzger and was approved without opposition.

**6. Policy Committee Report, Recommendations and Updates.**

**a. Orleans Resolution.** Mr. Neuner presented a resolution to discontinue emergency funding to the 41<sup>st</sup> Judicial District Public Defenders' Office and to encourage the City of New Orleans and the Orleans Parish Criminal Judiciary to work to enhance local funding for the office. Mr. Bunton reported that local funding has increased. After discussion, members deferred action on the resolution at this time.

**b. Creation of a Legislative Committee.** Mr. Neuner informed Board members of a proposal to create a standing Legislative Committee to interact with legislators on behalf of the Board. Mr. Goff made the motion to create a Board Legislative Committee. The motion was seconded by Mr. Hamilton and was approved without opposition. Mr. Lorenzi, Prof. Metzger, Mr. Hamilton, and Mr. Holthaus volunteered to serve on this committee.

- c. **Creation of a Standards Committee.** Mr. Neuner informed Board members of a proposal to create a standing Standards Committee to establish caseload and workload standards. Mr. Dalton made the motion to create a Board Standards Committee. The motion was seconded by Rev. Krutz and was approved without opposition. Prof. Metzger, Mr. Lorenzi, Ms. Bennett, Mr. Dalton, and Mr. Goff volunteered to serve on this committee.
  - d. **LJC/LPDB Foundation.** Mr. Harris informed Board members that he had reviewed the proposed articles of incorporation for the Louisiana Justice Coalition Foundation. Staff will present the Committee with action items in this matter at a later date. Ms. Faria acknowledged and thanked Breazeale, Sachse & Wilson for providing pro bono assistance in this matter.
  - e. **\$40 Assessment Update and Developing Best Practices for Generating and Auditing Local Funding.** Mr. Neuner informed Board members that several districts do not currently collect the statutory \$40 assessment fee from clients. He also informed Board members of a need to assist districts in collecting local funding. Mr. Dalton moved that the Board adopt a resolution to require District Defenders to assess a \$40 nonrefundable application fee, and that the Board creates a Best Practices Committee for generating and auditing local funding. The motion was seconded by Mr. Holthaus and was approved without opposition. Mr. Dalton, Prof. Metzger, and Ms. Womack volunteered to serve on this committee, with Mr. Dalton serving as the chair.
7. **NLADA – Statement of Principles.** Ms. Faria presented a statement of principles for the right to counsel from the National Legal Aid & Defender Association. The Policy Committee made the motion to recommend for Board adoption a resolution permitting the State Public Defender to endorse these principles on behalf of the Board. The motion was seconded by Judge Burns and was approved without opposition.
8. **State Public Defender Report and 15<sup>th</sup> District Progress Report.** Ms. Faria presented her report to the Board. She included a progress report from Paul Marx, District Defender in the 15<sup>th</sup> district, detailing his first 120 days in office. Staff recommended the districts use this report as a prototype. Ms. Faria also informed Board members that staff still anticipates acquiring a new case management system by July 1, 2011.
9. **Executive Session to Discuss Litigation.** Prof. Metzger moved that the Board enter executive session. The motion was seconded by Mr. Holthaus and was approved without opposition.
- a. **Mandamus Order, *LPDB v. Julian Parker, et al***
  - b. **Orleans Municipal Court**
  - c. **Court Reporters – Jefferson Parish**

Mr. Dalton moved that the Board leave executive session. The motion was seconded by Rev. Krutz and was approved without opposition.

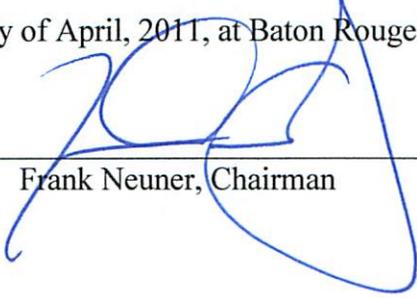
10. **Other Business.** Ms. Faria informed Board members of concerns from the 30<sup>th</sup> district regarding decreases in local revenues by 77%. Dr. Stilling informed Board members that caseloads are up by 23%, expenditures are up by 28%, and local revenues are only up by 4%.
11. **Next Meeting(s).** The Board set its next meeting for Monday, April 4, 2011 at LSU Law Center in Baton Rouge at 2:00 p.m., with a Policy Committee meeting at 12:00 p.m.
12. **Adjournment.** Rev. Krutz moved for adjournment. The motion was seconded by Mr. Hamilton and was approved without opposition.

Guests Present:

Sarah Ottinger  
Derwyn Bunton  
Gary Clements  
Jane Royle  
Michael A. Mitchell  
Richard Bourke  
Alex Calthrop  
Andrew Rapato  
Steve R. Thomas  
Ken Rodenbeck  
Herman Castete  
Alan Robert

Mike Courteau  
Tony Champagne  
G. Paul Marx  
Reggie McIntyre  
Clay Carroll  
Pam Smart  
Paul Fleming, Jr.  
Richard Tompson  
Bradley Dausat  
Kerry Cuccia  
Harold Murry

**I HEREBY CERTIFY** that the foregoing is a full, true, and correct account of the proceedings of the Louisiana Public Defender Board's meeting held on the 22<sup>nd</sup> day of February, 2011, as approved by the Board on the 4<sup>th</sup> day of April, 2011, at Baton Rouge, Louisiana.



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Frank Neuner, Chairman



STATE OF LOUISIANA  
PUBLIC DEFENDER BOARD

RESOLUTION

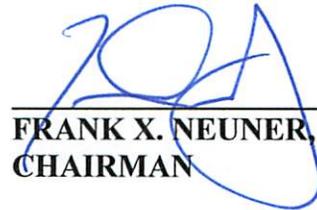
On the 4<sup>th</sup> of April 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

A discussion was had concerning the districts' annual budgets and monthly financial reports. There does not appear to be a uniform method of accounting being employed by the districts. The Board recognizes that the Governmental Accounting Standards Board prescribes the method of accounting to be used in the districts' annual audit reports. However, the Board understands that it is free to prescribe the manner of presentation of the annual budget and monthly financial reports being submitted to the Board.

After discussion, it was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that all districts' annual budgets and monthly financial reports that are due to the Board on or after June 1, 2011, shall be prepared on a cash-basis. This means that districts shall report revenue only when it is actually collected and shall report expenditures only when it is actually paid. Receivables shall not be reported as revenue until payment is received and expenditures should not be reported as expenditures until payment is made.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 4<sup>th</sup> day of April 2011.

  
\_\_\_\_\_  
**FRANK X. NEUNER, JR.**  
**CHAIRMAN**



STATE OF LOUISIANA  
PUBLIC DEFENDER BOARD

**RESOLUTION**

On the 4<sup>th</sup> of April 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

A discussion was had concerning the defense of indigents where the local District Defender and/or his or her office are victims.

After discussion, it was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that in the event the District Defender and/or his or her office is/are victim(s) of a crime allegedly committed by an indigent, the District Defender and/or his or her office shall not represent the indigent defendant in the criminal matter. Notwithstanding the foregoing, the defense costs shall be paid from the local indigent defender fund. Because the District Defender and/or his or her office is/are not providing representation in such cases, the Board staff shall oversee all aspects of the case (staff's services shall not include actual representation) and provide the District Defender with invoices which he or she shall ensure are paid promptly upon presentation.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 4<sup>th</sup> day of April 2011.

  
\_\_\_\_\_  
**FRANK X. NEUNER, JR.**  
**CHAIRMAN**



STATE OF LOUISIANA  
PUBLIC DEFENDER BOARD

**RESOLUTION**

On the 31st day of May 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

A brief discussion was held concerning a letter received from the Louisiana Legislative Auditor by the District Defender for the Fourth Judicial District.

After discussion, it was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that, in regard to the letter from the Louisiana Legislative Auditor to Michael Courteau, 4<sup>th</sup> Judicial District Defender, and others, dated May 18, 2011, Mr. Courteau is directed to communicate with the Monroe City Court to achieve resolution of this matter. Mr. Courteau also is directed to work with the 4<sup>th</sup> Judicial District Court in Bastrop to resolve a similar situation. Following resolution, Mr. Courteau is to inform the Board, in writing, of how the matters were resolved.

The above resolution was passed unanimously by those Board members present and voting at the meeting.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 31st day of May, 2011.

  
\_\_\_\_\_  
**FRANK X. NEUNER, JR.**  
**CHAIRMAN**



STATE OF LOUISIANA  
PUBLIC DEFENDER BOARD

**RESOLUTION**

On the 31st day of May 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

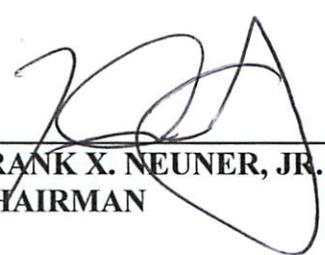
A brief discussion was held concerning the distribution of district assistance funds (DAF).

After discussion, it was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that the Chairman of the Board and the Chairwoman of the Board's Budget Committee, acting jointly, are authorized to approve any supplemental DAF distributions between June 1 and June 30, 2011, on the Board's behalf.

The above resolution was passed unanimously by those Board members present and voting at the meeting.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 31st day of May, 2011.

  
\_\_\_\_\_  
**FRANK X. NEUNER, JR.**  
**CHAIRMAN**



STATE OF LOUISIANA  
PUBLIC DEFENDER BOARD

RESOLUTION

On the 31st day of May 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

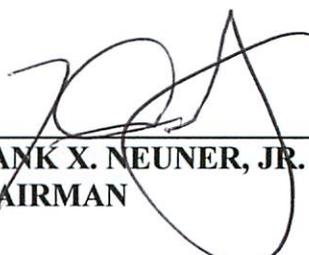
A discussion was held concerning a district court's appointment of counsel to inmates charged with capital crimes, pursuant to La. R.S. 15:868.

After discussion, it was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that it is the position of the Board that whenever a district court, pursuant to La.R.S. 15:868, appoints an attorney or attorneys to represent an inmate who is charged with a capital crime, such attorney or attorneys must be capital attorneys certified by the Board.

The above resolution was passed unanimously by those Board members present and voting at the meeting.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 31st day of May, 2011.

  
\_\_\_\_\_  
**FRANK X. NEUNER, JR.**  
**CHAIRMAN**



## Restriction of Services Protocol<sup>1</sup>

### NOTICE

When either a District Defender or the staff of the Louisiana Public Defender Board projects a funding shortfall with the next twelve months in a particular district, the Defender or the staff, as the case shall be, shall give formal notice to the other.

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<sup>1</sup> On May 25, 2011, the Louisiana Legislative Auditor issued a report entitled, "Louisiana District Public Defenders Compliance with Report Requirements." The report, prepared in accordance with La. R.S. 24:515.1.F, focused largely upon the fact that twenty-eight (28) of Louisiana's forty-two (42) district public defenders had spent more money than they collected during the 18-month period beginning January 1, 2009 and ending June 30, 2010.

The report correctly 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.

As a result of this spending, the Legislative Auditor recommends, also at p. 6, that the Board "monitor the fiscal operations and financial position of all public defenders" and, further, provide guidance to public defenders to ensure that programs do not spend more money than they collect. The Board has, and will, continue to monitor the fiscal operations and financial position of all public defenders. Moreover, in order to comply with the Legislative Auditor's recommendation to provide guidance to public defenders to ensure that districts do not expend more funds than they receive, the Board adopts this Restriction of Services Protocol.

## **INITIAL DISTRICT PLAN**

Within thirty days after either providing or receiving such notice, the District Defender shall develop a proposal for restricting services in his/her district, including staff and overhead reductions where necessary, and submit the proposal to the Board staff.

## **SITE VISIT**

Upon receipt by Board staff of the District Defender's service restriction proposal, the Board staff shall facilitate a comprehensive site visit in order to determine how best to continue providing services while reducing those services as necessary. Documents from the Caseload Assessment Documents List may be requested, examination of database information will be performed, and interviews with staff and contract workers, both attorney and support, will be conducted, in order to assist the local office in minimizing the adverse effects on the local criminal justice system, while avoiding assuming caseload and workload levels that threaten quality representation of clients. Other stakeholders in the local system shall also be contacted pursuant to the Caseload Assessment Procedure. The comprehensive site visit should be conducted within ninety days of receipt by Board staff of the District Defender's proposal for restricting services. At the completion of the comprehensive site visit, if the Board staff determines that services should be restricted in the district, the District Defender shall work with the Chief Judge, District Attorney and Board staff in preparing the final service restriction plan.

## **FACTORS TO BE CONSIDERED IN DEVELOPMENT OF THE PLAN**

### **Recognition Of Diversity Of Districts**

Because there are no two districts which have identical issues of funding or caseload/workload, it is necessary that a plan for restricting services be tailored to each individual district. It may be that in some districts restricting misdemeanor representation is the appropriate step while in others it may be that the office can no longer handle capital cases. While districts may have diverse problems in a fiscal crisis, emphasis should be primarily on the more serious cases and the indigent defendants who are detained.

### **Support Staff Reductions To Be Minimized**

In creating the final service restriction plan for a district, the District Defender and Board staff should attempt to preserve the district's support staff as much as possible.

### **Office and Lawyer Specific Considerations**

The obligations of competence, diligence, and communication under the Rules of Professional Conduct apply equally to every lawyer. All lawyers, including public

defenders, have an ethical obligation to control their workloads so that every matter they undertake will be handled competently and diligently.

Should the District Defender determine that the office or an individual lawyer's workload will become, or already is, excessive the District Defender shall take appropriate action. Taking into consideration case complexity, the availability of support services, the lawyer's experience and ability and the lawyer's nonrepresentational duties the District Defender's actions may include the following: transferring non-representational responsibilities within the office, including managerial and/or supervisory responsibilities to others; transferring current case(s) to another lawyer or other lawyers whose workload will allow for the transfer of the case(s); and, refusing new case(s). If there are no other lawyers within the office who can take over the cases from which the lawyer needs to withdraw, the District Defender shall support the lawyer's efforts to withdraw from the representation of the client(s). If the court will not allow the lawyer to withdraw from representation, the District Defender shall support the lawyer with whatever additional resources can be made available to assist him in continuing to represent the client(s) in a manner consistent with the Rules of Professional Conduct.

Where the District Defender has followed the Restriction of Services Protocol cited above and cannot bring the workload to reasonable levels and/or cannot reach consensus with the Chief Judge and District Attorney, then the District Defender is to decline new appointments. The declination is based the belief that the representation of the new client(s) is likely to result in violation of the Rules of Professional Conduct or other laws.

If the court appoints the Public Defender Office, despite the District Defender's declination as provided herein, the District Defender is to authorize his attorneys to seek continuances in those cases in which the defendant has bonded. Defendants in custody are to receive such services as can be rendered in compliance with the Rules of Professional Conduct and which are in the best interest of the client 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.2<sup>nd</sup> 780 (La. 1993); *State v. Citizen*, 04-KA-1841 (La. 4/1/05), 898 So.2<sup>nd</sup> 325 or other related motion is necessary, the District Defender is authorized to take appropriate action after written notice to the Board and State Public Defender.

## **PROMULGATION OF PLAN**

Upon adoption of the final service restriction plan for a district, approved by the Board staff, the District Defender shall file a written motion in the district court, notifying the district court of the plan. Copies of the motion shall be sent to the Chief Justice of the Louisiana Supreme Court, the Chief Judge and District Attorney of the district, the State Public Defender, and the Louisiana State Bar Association. The motion shall include the effective date of the service restriction plan and the details of the plan. The motion may also seek assistance from the court, where appropriate, in recruiting members of the local private bar to assist in the provision of indigent representation. Copies of the motion detailing the service restriction plan should also be given by the District Defender to the

district's District Attorney, the Parish President or equivalent head of local government, each Sheriff in the district, and to the extent possible members of the local bar. The District Defender may provide the Court with a list of attorneys to handle the overflow caseload.

Notice under this provision, by filing of the written motion in the appropriate district court, should be provided no later than sixty days prior to the effective date of the service restriction plan.

## APPENDIX

### **Constitutional Considerations:**

U.S. Constitution, Amend. VI  
Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, *and to have the Assistance of Counsel for his defence.*

La. Constitution Art I § 13

When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, *if indigent, his right to court appointed counsel.* In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. *At 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.

### **Statutory Authority:**

La.R.S. 15:142 Legislative Findings

B. In recognition of its mandates under both the United States and Louisiana constitutions, the legislature enacts the Louisiana Public Defender Act of 2007 to provide for all of the following:

- (1) Ensuring that adequate public funding of the right to counsel is provided and managed in a cost effective and fiscally responsible manner

(2) Ensuring that the public defender system is free from undue political and judicial interference and free of conflicts of interests.

(4) Providing that the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state.

(5) Providing for statewide oversight with the objective that all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical state of the proceeding.

§La.R.S. 15:148 Rulemaking; considerations in developing rules:

A. The board shall adopt all rules necessary to implement the provisions of this Part.

B. The rules shall include but not be limited to:

(1) Creating mandatory statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state. Those standards and guidelines shall take into consideration all of the following:

(a) Manageable public defender workloads that permit the rendering of competent representation through an empirically based case weighting system that does not count all cases of similar case type equally but rather denotes the actual amount of attorney effort needed to bring a specific case to an appropriate disposition. In determining an appropriate workload monitoring system, the board shall take into consideration all of the following:

(i) The variations in public defense practices and procedures in rural, urban, and suburban jurisdictions.

(ii) Factors such as prosecutorial and judicial processing practices, trial rates, sentencing practices, attorney experience, extent and quality of supervision, and availability of investigative, social worker, and support staff.

(iii) Client enhancers specific to each client such as the presence of mental illness

(7) Establishing policies and procedures for ensuring that cases are handled according to the Rules of Professional Conduct.

(8) Establishing policies and procedures for handling conflict of interest cases and overflow cases when workload standards which are established by rules of the board are breached.

**Other Authorities:**

ABA Ten Principles of Public Defense Delivery System, February 2002.

ABA Eight Guidelines of Public Defense Related to Excessive Workload, August 2009.

Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel, 2009, The Constitution Project's National Right to Counsel Committee.

ABA Formal Opinion Op. 06-441 (Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation) (May 31, 2006).



State of Louisiana  
Public Defender Board

Bobby Jindal  
Governor

Frank X. Neuner, Jr.  
Chairman

Jean M. Faria  
State Public Defender

**Caseload Assessment Procedure**

LAST UPDATED 03/23/2011

**Purpose:** Caseload Assessments are conducted when LPDB determines or is notified that a District Defender Office or program office is in danger of exceeding ethical caseload limits. The *Caseload Assessment – Documents List* is incorporated herein by reference.

**I. Internal Information**

1. Review annual survey, isolating problem areas or questionable data, including
  - a. salaries and supervisory structure
  - b. reported caseloads for each attorney, including conflict counsel
  - c. reported number of hours worked per week on public defense for each attorney
2. Run reports from state database and compare with survey data
  - a. All capital cases—who's handling, their caseloads/workloads
  - b. Check lists of incarcerated defendants for length of stay and last action
3. Draft supplemental request to District Defender or E.D. for missing data or other information
  - a. Ask for documents not previously provided, such as contracts with employee lawyers and contract lawyers, and other staff
  - b. Request most recent financial reports
  - c. Request additional relevant documents from *Caseload Assessment – Documents List*

**II. District Information**

1. District Defender / E.D.
  - a. all financial data including revenue and expenditures for previous 12 months
  - b. caseload numbers for each attorney, broken down by case type
  - c. DD/E.D.'s previous and proposed future solution(s) to caseload and funding problem
  - d. projected budget for upcoming 12 months

- e. local practices re: discovery, appointment of counsel, pleas, motions, trial, sentencing
  - f. supervisory structure
  - g. attorney and investigator timesheets for previous 12 months
  - h. local court schedules
  - i. any other follow-up
2. District Judges
    - a. local practices re: determinations of indigency
    - b. local practices re: pleas, motions, discovery, trials
    - c. local practices re: motions filings, litigation
    - d. observed beliefs re: parity of resources (DA & PD)
    - e. local DA practices re: charging (routine overcharges, etc.)
    - f. local law enforcement practices re: arrests
    - g. average length of time, arrest to sentence/trial/plea/dismissal
    - h. any other follow-up
  3. District Attorney (optional)
    - a. Observation of PD preparedness, court performance, etc.
    - b. any other follow-up
  4. Clerk of Court or appropriate deputy
    - a. local practices re: determinations of indigency
    - b. local practices re: pleas, motions, discovery, trials
    - c. local practices re: motions filings, litigation
    - d. observed beliefs re: parity of resources (DA & PD)
    - e. average length of time, arrest to sentence/trial/plea/dismissal
    - f. any other follow-up
  5. Assistant defenders
    - a. local practices re: discovery (open file? Informal?)
    - b. local practices re: appointment of counsel (timing, procedure, etc.)
    - c. local practices re: pleas, motions, trials
    - d. local practices at the jail re: entry limitations, atty-client interview access, confidentiality issues, etc.
    - e. any other follow-up
  6. Other staff, including investigators, secretaries, office manager
    - a. office procedures for performing, completing assignments
    - b. for investigators, local practices re: getting into jails to see clients
    - c. any other follow-up
  7. Random clients/inmates (with authorization)
    - a. meetings with counsel
    - b. time between arrest and counsel appointment
    - c. time between arrest/appointment and initial meeting w/ counsel
    - d. frequency of attorney or investigator meetings
    - e. court appearances
    - d. perception of counsel's level of preparation
    - e. perception of parity of resources (PD & DA)
    - f. level of explanations, advice by counsel to client of court events, rulings, etc.
    - g. contact with investigators, social workers, etc. (frequency, purpose, etc.)
    - h. perception of ease of access to defense team members



## State of Louisiana Public Defender Board

Bobby Jindal  
Governor

Frank X. Neuner, Jr.  
Chairman

Jean M. Faria  
State Public Defender

### Caseload Assessment Documents

LAST UPDATED 03/18/2011

The following documents may be requested by LPDB from the District Defender in the event of a Caseload Assessment. Not all documents listed are necessarily relevant to every district or every assessment.

- Current number of attorneys and number/type of cases each
- Written contracts with assistant defenders, if any
- Employee Timesheets for previous 12 months
- Written policies on (a) identifying conflicts and (b) conflict appointments
- Written policies on private/public practice policies
- Any client complaints received in previous 12 months
- Any documents which describe supervisory structure
- Policy and procedure for counsel appointments
- Policy and procedure for use of investigators
- Policy and procedure for use of social workers or other specialized staff
- Copy of policies and procedures governing the assignment and handling of transfer cases involving juveniles who are arrested and transferred to adult proceedings
- Copy of intake forms used for new clients, both for indigency determination and for case handling
- Copy of policies and procedures governing intake, including, *e.g.*, indigency affidavits, interview forms, assignment of counsel forms
- Copy of any in-house standards for caseload/workload supervision and performance
- Policy and procedure for tracking, monitoring, and supervising caseload/workload of each attorney, investigator, other staff
- Client contact logs (either copied from prison or in-house) for previous 12 months
- Local Court Practices, including:
  - 1) Criminal court schedules
  - 2) Motions practice
  - 3) Sentencing, plea, diversion practices

- Financial documents, including:
  - 1) Local, state, and other revenues for previous 12 months
  - 2) Monthly bank statements for previous 12 months
  - 3) Expenditures for previous 12 months
  - 4) Most recent Legislative Auditor's report
  - 5) Anticipated revenues and expenditures for upcoming 12 months

DRAFT



## STATE OF LOUISIANA PUBLIC DEFENDER BOARD

### RESOLUTION

On the 17th day of August 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

The Board received information from the State Public Defender concerning five Angola inmates (the "Angola 5") being tried for first-degree murder in the alleged beating death of a Louisiana State Penitentiary security captain on December 28, 1999. The first defendant tried was found guilty and sentenced to death; the state intends to seek the death penalty against the remaining four defendants. As required by La. R.S. 15:868, the Louisiana Department of Public Safety and Corrections (DPS&C) has been paying the costs of defense at the trial level, but no one has yet agreed to pay the costs of appeal. Concerns have arisen that the Board may be asked to bear the costs of appeal.

The State Public Defender explained that, pursuant to La. C.Cr.P. art. 912.1, a "defendant may appeal to the supreme court from a judgment in a capital case in which a sentence of death actually has been imposed." As a result, any Angola 5 defendant that is sentenced to death has a "right" to appeal.

The State Public Defender further explained that La. R.S. 15:868, referenced above, suggests that DPS&C is responsible for capital appeal defense costs and provides that:

**Whenever it is necessary for a district court to appoint an attorney at law to represent any inmate who is charged with a crime alleged to have been committed while the inmate was in the actual physical custody and control of the Department of Public Safety and Corrections or when an inmate escapes from the actual physical custody and control of the department and during the period of escape is charged with committing a crime in the parish where the correctional institution from which he escaped is located, such attorney at law shall be paid a reasonable fee, fixed by the court, from funds appropriated to the department. (Emphasis added.)**

La. R.S. 15:874(4)(g), on the other hand, suggests that the responsibility for costs of appeal may rest upon the parish. That provision requires DPS&C to:

...withdraw funds from an inmate's drawing or savings account for the payment of the fees **to the parish which has paid the cost of appeal**. All funds so collected shall be forwarded **to the parish which has paid the cost of appeal**. The department shall deduct the amount of the fee from the inmate's drawing or savings account. Except as otherwise authorized by law, the department shall prohibit withdrawals from the account until the costs have been paid in full **to the parish which has paid the cost of appeal**. (Emphasis added.)

La. R.S. 15:178 reads:

In a capital case in which the trial counsel was provided to an indigent defendant and in which the jury imposed the death penalty, **the court**, after imposition of the sentence of death, **shall appoint the Louisiana Public Defender Board**, which shall promptly cause to have enrolled counsel to represent the defendant on direct appeal and in any state post-conviction proceedings, if appropriate. (Emphasis supplied.)

A reading of La. C.Cr.P. art. 912.1, La. R.S. 15:868, La. R.S. 15:874(4)(g), and La. R.S. 15:178 provides that:

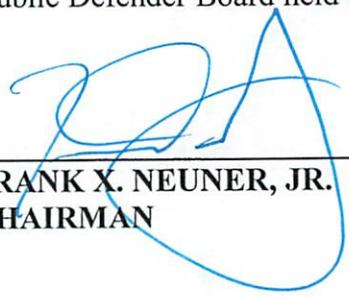
- Each Angola 5 defendant that is sentenced to death has a right to appeal;
- The district court must appoint the Board for the capital appeal; and
- Either DPS&C or the parish must pay the costs of any appointed attorney handling such capital appeals.

After discussion, it was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that the Board concludes that it is not responsible for paying the defense costs of a capital appeal on behalf of any inmate who is charged with a crime alleged to have been committed while such inmate was in the actual physical custody and control of the Department of Public Safety and Corrections, including, but not limited to, members of the Angola 5. Rather, it is the Board's position that the costs of such capital appeal(s) are the responsibility of DPS&C as set forth in La. R.S. 15:868 or the parish as set forth in La. R.S. 15:874(4)(g).

The above resolution was passed unanimously by those Board members present and voting at the meeting.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 17th day of August 2011.



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**FRANK X. NEUNER, JR.**  
**CHAIRMAN**



STATE OF LOUISIANA  
PUBLIC DEFENDER BOARD

**RESOLUTION**

On the 17<sup>th</sup> of August 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

A discussion was had concerning the manifold duties placed upon the Board and its staff by statute and the need to increase the size of the Board's staff in order to fulfill those duties.

After discussion, it was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that Jean M. Faria, State Public Defender, is authorized to request additional Table of Organization (T. O.) positions, WAE and Temporary Employees on the Board's behalf in such manner and in such number as she deems appropriate.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 17<sup>th</sup> of August 2011.

  
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**FRANK X. NEUNER, JR.**  
**CHAIRMAN**



## STATE OF LOUISIANA PUBLIC DEFENDER BOARD

### RESOLUTION

On the 17th day of August 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

The Board received information from the State Public Defender concerning the expert witness contract that the Board has with the Capital Post-Conviction Project of Louisiana (CPCPL). Under the terms of the contract, the Board agreed to provide \$800,000 to CPCPL in FY 2011-12 to fund expert services to be used by contract and pro bono attorneys handling post-conviction cases through CPCPL. Recently, pro bono attorneys have been handling fewer cases. CPCPL has been able to staff the cases and fill the pro-bono void somewhat, but finds that the extraordinary costs associated with expert witness fees are having a deleterious effect on CPCPL's operating budget. In view of the foregoing, CPCPL would like to be able to access funds in the expert witness fund when handling cases that were not taken by pro bono attorneys.

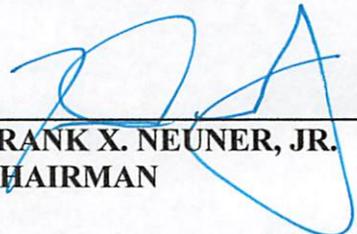
Considering the foregoing, it was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that the Board authorizes the State Public Defender to amend the expert witness contract to allow CPCPL to access expert witness funds. Provided, however, such funds may be disbursed to CPCPL only if CPCPL:

- Complies with the same procedure as contract and pro bono attorneys using the expert funds in trial cases;
- Applies for and receives pre-approval to use expert funds from the LPDB's Capital Case Coordinator, Trial-level Compliance Officer or the State Public Defender; and
- After expert witness services are rendered, submits a voucher to the LPDB's Capital Case Coordinator, Trial Level Compliance Office, or State Public Defender, and receives the LPDB's Capital Case Coordinator, Trial-level Compliance Officer or the State Public Defender approval to disburse such funds.

The above resolution was passed unanimously by those Board members present and voting at the meeting.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 17th day of August 2011.



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**FRANK X. NEUNER, JR.**  
**CHAIRMAN**



STATE OF LOUISIANA  
PUBLIC DEFENDER BOARD

**RESOLUTION**

On the 17th day of August 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

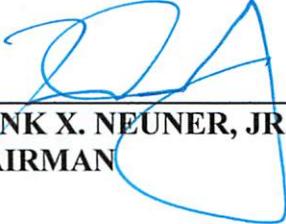
A discussion was had concerning the unavailability of the Collateral Consequences' brochure referenced in Paragraph 1.1 of the FY 2011-12 District Defender contract.

After discussion, it was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that District Defenders are not required to comply with the new language in Paragraph 1.1 of the District Defender contract concerning provision of the Collateral Consequences' brochure until further notice from the Board.

The above resolution was passed unanimously by those Board members present and voting at the meeting.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 17th day of August 2011.

  
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**FRANK X. NEUNER, JR.**  
**CHAIRMAN**

## **Chapter 13. Trial Court Performance Standards for Attorneys Representing Children in Delinquency—Detention through Adjudication**

### **§1301. Purpose**

A. The standards for attorneys representing children in delinquency proceedings are intended to serve several purposes. First and foremost, the standards are intended to encourage district public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of children in delinquency proceedings.

B. The standards are also 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 to be taken in each case to ensure that the client receives the best representation possible. The standards are further intended to provide a measure by which the performance of district public defenders, assistant public defenders and appointed counsel may be evaluated, including guidelines for proper documentation of files to demonstrate adherence to the standards, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action that is appropriate to the situation. In those instances where a particular action is absolutely essential to providing quality representation, the standards use the word "shall." In those instances where a particular action is usually necessary to providing quality representation, the standards use the word "should." Even where the standards use the word "shall," in certain situations the lawyer's 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.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2599 (September 2011).

### **§1303. Obligations of Defense Counsel**

A. The primary and most fundamental obligation of the attorney representing a child in a delinquency case is to provide zealous and effective representation for his or her client at all stages of the process. The defense attorney's duty and responsibility is to promote and protect the expressed interests of the child. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct, to act in accordance with the Louisiana Rules of the Court, and to properly document case files to reflect adherence to these standards.

B. The attorney who provides legal services for a juvenile client owes the same duties of undivided loyalty, confidentiality and zealous representation to the child client as is due to an adult client. The attorney's personal opinion of the child's guilt is not relevant to the defense of the case.

C. The attorney should communicate with the child in a manner that will be effective, considering the child's maturity, intellectual ability, language, educational level, special education needs, cultural background, gender, and physical, mental and emotional health. If appropriate, the attorney should file a motion to have a foreign language or sign language interpreter appointed by the court and present at the initial interview and at all stages of the proceedings.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2599 (September 2011).

### **§1305. Child's Expressed Preferences**

A. The attorney should represent the child's expressed preferences and follow the juvenile client's direction throughout the course of litigation. In addition, the attorney has a responsibility to counsel the child and advise the client as to potential outcomes of various courses of action. The attorney should refrain from the waiving of substantial rights or the substitution of his or her own view or the parents' wishes for the position of the juvenile client. The use of the word *parent* hereafter refers to the parent, guardian, custodial adult or person assuming legal responsibility for the juvenile.

B. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2599 (September 2011).

### **§1307. Scope of Representation**

A. Certain decisions relating to the conduct of the case are ultimately for the child and other decisions are ultimately for the attorney. The child, after full consultation with counsel, is ordinarily responsible for determining:

1. the plea to be entered at adjudication;
2. whether to accept a plea agreement;
3. whether to participate in a diversionary program;
4. whether to testify on his or her own behalf; and
5. whether to appeal.

B. The attorney should explain that final decisions concerning trial strategy, after full consultation with the child and after investigation of the applicable facts and law, are ultimately to be made by the attorney. The client should be made aware that the attorney is primarily responsible for deciding what motions to file, which witnesses to call, whether and how to conduct cross-examination, and what other evidence to present. Implicit in the exercise of the attorney's decision-making role in this regard is consideration of the child's input and full disclosure by the attorney to the client of the factors considered by the attorney in making the decisions.

C. If a disagreement on significant matters of tactics or strategy arises between the lawyer and the child, the lawyer should make a record of the circumstances, his or her advice and reasons, and the conclusion reached. This record should be made in a manner that protects the confidentiality of the attorney-client relationship.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2600 (September 2011).

### **§1309. Basic Competency in Juvenile Proceedings**

A. Before agreeing to defend a juvenile client, an attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge and experience to offer quality representation to the child. Before an attorney defends a juvenile client, the attorney should observe juvenile court, including every stage of a delinquency proceeding, and have a working knowledge of juvenile law and practice.

B. Prior to representing a juvenile client, at a minimum, the attorney should receive training or be knowledgeable in the following areas:

1. relevant federal and state statutes, court decisions and the Louisiana court rules, including but not limited to:
  - a. Louisiana Children's Code and Code of Criminal Procedure;
  - b. Louisiana statutory chapters defining criminal offenses;
  - c. Louisiana Rules of Evidence;
  - d. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.;
  - e. Family Education Rights Privacy Act (FERPA), 20 U.S.C. §1232g;
  - f. Health Insurance Portability and Accountability Act of 1996 (HIPPA), P.L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part);
  - g. Louisiana Administrative Code, Title 28, Part XLIII (*Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act*) and Part CI (*Bulletin 1508—Pupil Appraisal Handbook*);
  - h. state laws concerning privilege and confidentiality, public benefits, education and disabilities; and
  - i. state laws and rules of professional responsibility or other relevant ethics standards.
2. overview of the court process and key personnel in the delinquency process, including the practices of the specific judge before whom a case is pending;
3. placement options for detention and disposition;
4. trial and appellate advocacy;

5. ethical obligations for juvenile representation including these guidelines for representation and the special role played in juvenile courts; and

6. child development, including the needs and abilities of juveniles.

C. An attorney representing juveniles shall annually complete six hours of training relevant to the representation of juveniles. Additional training may include, but is not limited to:

1. adolescent mental health diagnoses and treatment, including the use of psychotropic medications;

2. how to read a psychological or psychiatric evaluation and how to use these in motions, including but not limited to those involving issues of consent and competency relating to Miranda warnings, searches and waivers;

3. normal childhood development (including brain development), developmental delays and mental retardation;

4. information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony;

5. information on educational rights, including special educational rights and services and how to access and interpret school records and how to use them in motions, including but not limited to those related to consent and competency issues;

6. school suspension and expulsion procedures;

7. skills for communicating with children;

8. information gathering and investigative techniques;

9. use and application of the current assessment tool(s) used in the applicable jurisdiction and possible challenges that can be used to protect juvenile clients;

10. immigration issues regarding children;

11. gang involvement and activity;

12. factors leading children to delinquent behavior, signs of abuse and/or neglect, and issues pertaining to status offenses; and

13. information on religious background and racial and ethnic heritage, and sensitivity to issues of cultural and socio-economic diversity, sexual orientation, and gender identity.

D. Individual lawyers who are new to juvenile representation should take the opportunity to practice under the guidance of a senior lawyer mentor. Correspondingly, experienced attorneys are encouraged to provide mentoring to new attorneys, assist new attorneys in preparing cases, debrief following court hearings, and answer questions as they arise.

E. 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. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2600 (September 2011).

### **§1311. Basic Obligations**

A. The attorney should obtain copies of all pleadings and relevant notices.

B. The attorney should participate in all negotiations, discovery, pre-adjudication conferences, and hearings.

C. The attorney should confer with the juvenile within 48 hours of being appointed and prior to every court appearance to counsel the child concerning the subject matter of the litigation, the client's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process.

D. Lawyers should promptly inform the child of his or her rights and pursue any investigatory or procedural steps necessary to protect the child's interests throughout the process.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011).

### **§1313. Conflicts of Interest**

A. The attorney shall be alert to all potential and actual conflicts of interest that would impair his or her ability to represent a juvenile client. Loyalty and independent judgment are essential elements in the lawyer's relationship to a juvenile client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. Each potential conflict shall be evaluated with the particular facts and circumstances of the case and the juvenile client in mind. Where appropriate, attorneys may be obligated to contact the Office of Disciplinary Counsel to seek an advisory opinion on any potential conflicts.

B. Joint representation of co-defendants is not a per se violation of the constitutional guarantee of effective assistance of counsel. However, if the attorney must forbear from doing something on behalf of a juvenile client because of responsibilities or obligations to another client, there is a conflict. Similarly, if by doing something for one client, another client is harmed, there is a conflict.

C. The attorney's obligation is to the juvenile client. An attorney should not permit a parent or custodian to direct the representation. The attorney should not share information unless disclosure of such information has been approved by the child. With the child's permission, the attorney should maintain rapport with the child's parent or guardian, but should not allow that rapport to interfere with the attorney's duties to the child or the expressed interests of the child. Where there are conflicts of interests or opinions between the client and the client's parent or custodian, the attorney need not discuss the case with parents and shall not represent the views of a parent that are contrary to the client's wishes.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011).

### **§1315. Client Communications**

A. The attorney shall keep the child informed of the developments in the case and the progress of preparing the defense and should promptly comply with all reasonable requests for information.

B. Where the attorney is unable to communicate with the child or his or her guardian because of language differences, the attorney shall take whatever steps are necessary to ensure that he or she is able to communicate with the client and that the client is able to communicate his or her understanding of the proceedings. Such steps could include obtaining funds for an interpreter to assist with pre-adjudication preparation, interviews, and investigation, as well as in-court proceedings.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011).

### **§1317. Client Confidentiality**

A. Juvenile defense counsel is bound by attorney-client confidentiality and privilege. The duty of confidentiality that the attorney owes the child is coextensive with the duty of confidentiality that attorneys owe their adult clients.

B. The attorney should seek from the outset to establish a relationship of trust and confidence with the child. The attorney should explain that full disclosure to counsel of all facts known to the child is necessary for effective representation and, at the same time, explain that the attorney's obligation of confidentiality makes privileged the client's disclosures relating to the case.

C. There is no exception to attorney-client confidentiality in juvenile cases for parents or guardians. Juvenile defense counsel has an affirmative obligation to safeguard a child's information or secrets from parents or guardians. Absent the child's informed consent, the attorney's interviews with the client shall take place outside the presence of the parents or guardians. Parents or guardians do not have any right to inspect juvenile defense counsel's file, notes, discovery, or any other case-related documents without the client's express consent. While it may often be a helpful or even necessary strategy to enlist the parents or guardians as allies in the case, juvenile defense counsel's primary obligation is to keep the child's secrets. Information relating to the representation of the child includes all information relating to the representation, whatever its source. Even if revealing the information might allow the client to receive sorely-needed services, defense counsel is bound to protect the child's confidences, unless the client gives the attorney explicit permission to reveal the information to get the particular services or disclosure is impliedly authorized to carry out the client's case objectives.

D. In accordance with Louisiana Rule of Professional Conduct 1.6(b), a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

1. to prevent reasonably certain death or substantial bodily harm;
2. to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
3. to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
4. to secure legal advice about the lawyer's compliance with the rules of professional conduct;
5. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
6. to comply with other law or a court order.

E. To observe the attorney's ethical duty to safeguard the child's confidentiality, attorney-client interviews shall take place in a private environment. This limitation requires that, at the courthouse, juvenile defense counsel should arrange for access to private interview rooms, instead of discussing case specifics with the child in the hallways; in detention facilities, juvenile defense counsel should have means to talk with the child out of the earshot of other inmates and guards; and in the courtroom, juvenile defense counsel should ask for a private space in which to consult with the child and speak with the child out of range of any microphones or recording devices.

F. An attorney shall exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the juvenile client's history or condition. In general, the lawyer should not disclose data or conclusions contained in such reports to the extent that, in the lawyer's judgment based on knowledge of the child and the child's family, the revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.

G. An attorney should ensure that communications with a client in an institution, including a detention center, are confidential. One way to ensure confidentiality is to stamp all mail as legal and confidential.

H. In cases where delinquency proceedings are public, to protect the confidential and sometimes embarrassing information involved, the attorney, in consultation with the child, should move to close the proceedings or request the case to be called last on the docket when the courtroom is empty.

I. The media may report on certain delinquency cases. If a decision is made to speak to the media, the attorney should be cautious due to confidentiality, other rules of professional conduct, the potential for inaccurate reporting and strategic considerations. The attorney representing a child before the juvenile court should avoid personal publicity connected with the case, both during adjudication and thereafter.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011).

### **§1319. Case File**

A. The attorney has the obligation to ensure that the case file is properly documented to demonstrate adherence to these standards, such as, where relevant, documentation of intake and contact information, client and witness interviews, critical deadlines, motions, and any other relevant information regarding the case. The case file should also contain, where relevant, copies of all pleadings, orders, releases (school, medical, mental health, or other types), discovery, and correspondence associated with the case.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2602 (September 2011).

### **§1321. Continuity of Representation**

A. The attorney initially appointed should continue his or her representation through all stages of the proceedings. Unless otherwise ordered by the court, the attorney of record should continue to represent the child from the point of detention through disposition, post-disposition review hearings, and any other related proceedings, until the case is closed.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2602 (September 2011).

### **§1323. Stand-In Counsel**

A. Any attorney appointed to stand in for another at any delinquency proceeding shall:

1. represent the child zealously as if the child is his or her own client;
2. ensure that the child knows how to contact stand-in counsel in case the child does not hear from the attorney of record;
3. immediately communicate with the attorney of record regarding upcoming dates/hearings, how to contact the child, placement of the child, nature of charges, and other timely issues that the attorney of record may need to know or address; and
4. immediately or within a reasonable time thereafter provide to the child's attorney of record all notes, documents, and any discovery received.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2602 (September 2011).

### **§1325. Caseloads**

A. The attorney should not have such a large number of cases that he or she is unable to comply with these guidelines and the rules of professional conduct. Before agreeing to act as the attorney or accepting appointment by a court, the attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge, and experience to offer quality legal services in a particular matter. If, after accepting an appointment, it later appears that the attorney is unable to offer effective representation, the attorney should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2602 (September 2011).

### **§1327. Social Work and Probation Personnel**

A. Attorneys should cooperate with social workers and probation personnel and should instruct the client to do so, except to the extent such cooperation is or will likely become inconsistent with protection of the client's legitimate interests in the proceeding or of any other rights of the client under the law.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2603 (September 2011).

### **§1329. Detention**

A. For purposes of appointment of counsel, children are presumed to be indigent. The attorney shall meet with a detained child within 48 hours of notice of appointment or before the continued custody hearing, whichever is earlier, and shall take other prompt action necessary to provide quality representation, including:

1. personally reviewing the well-being of the child and the conditions of the facility, and ascertaining the need for any medical or mental health treatment;
2. ascertaining whether the child was arrested pursuant to a warrant or a timely determination of probable cause by a judicial officer;
3. making a motion for the release of the child where no determination of probable cause has been made by a judicial officer within 48 hours of arrest; and
4. invoking the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of the child, and revoking any waivers of these protections purportedly given by the child, as soon as practicable via a notice of appearance or other pleading filed with the state and court.

B. Where the child is detained, the attorney shall:

1. be familiar with the legal criteria for determining pre-adjudication release and conditions of release, and the procedures that will be followed in setting those conditions, including but not limited to the use and accuracy of any risk assessment instruments;

2. be familiar with the different types of pre-adjudication release conditions the court may set and whether private or public agencies are available to act as a custodian for the child's release; and

3. be familiar with any procedures available for reviewing the judge's setting of bail.

C. The attorney shall attempt to secure the pre-adjudication release of the child under the conditions most favorable and acceptable to the client unless contrary to the expressed wishes of the child.

D. If the child is detained, the attorney should try to ensure, prior to any initial court hearing, that the child does not appear before the judge in inappropriate clothing, shackles or handcuffs.

E. The attorney should determine whether a parent or other adult is able and willing to assume custody of the juvenile client. Every effort should be made to locate and contact such a responsible adult if none is present at the continued custody hearing.

F. The attorney should arrange to have witnesses to support release. This may include a minister or spiritual advisor, teacher, relative, other mentor or other persons who are willing to provide guidance, supervision and positive activities for the youth during release.

G. If the juvenile is released, the attorney should fully explain the conditions of release to the child and advise him or her of the potential consequences of a violation of those conditions. 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.

H. The attorney should know the detention facilities, community placements and other services available for placement.

I. Where the child is detained and unable to obtain pre-adjudication release, the attorney should be aware of any special medical, mental health, education and security needs of the child and, in consultation with the child, request that the appropriate officials, including the court, take steps to meet those special needs.

J. Following the continued custody hearing, the attorney should continue to advocate for release or expeditious placement of the child. If the child is not released, he or she should be advised of the right to have the placement decision reviewed or appealed.

K. Whenever the child is held in some form of detention, the attorney should visit the child no less often than once a month and personally review his or her well-being, the conditions of the facility, and the opportunities to obtain release.

L. Whenever the child is held in some form of detention, the attorney should be prepared for an expedited adjudicatory hearing.

M. Where the child 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.

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

O. The lawyer should not personally guarantee the attendance or behavior of the child or any other person, whether as surety on a bail bond or otherwise.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2603 (September 2011).

### **§1331. Initial Interview with Child**

A. The attorney should conduct a client interview as soon as practicable in order to obtain the information necessary to provide quality representation at the early stages of the case and to provide the child with information concerning the representation and the case proceedings. Establishing and maintaining a relationship with the child is the foundation of quality representation. Irrespective of the child's age, the attorney should consult with the child well before each court hearing. The attorney shall explain to the client how to contact the attorney and should promptly comply with child's requests for contact and assistance.

B. A meeting or conversation conducted in a hallway or holding cell at the courthouse is not a substitute for a thorough interview conducted in private and may waive confidentiality.

C. Prior to conducting the initial interview, the attorney should, where possible:

1. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known;

2. obtain copies of any relevant documents that are available, including copies of any charging documents, recommendations and reports concerning pre-adjudication release, and law enforcement reports that might be available;

3. request mental health, juvenile assessment center, detention center or educational records, including any screenings or assessments, that may help in the initial interview with the client;

D. The purposes of the initial interview are to provide the child with information concerning the case and to acquire information from the child concerning the facts of the case.

1. To provide information to the client, the attorney should specifically:

a. explain the nature of the attorney-client relationship to the child, including the requirements of confidentiality;

b. explain the attorney-client privilege and instruct the child not to talk to anyone about the facts of the case without first consulting with the attorney;

c. ensure the child understands that he or she has the right to speak with his or her attorney;

d. explain the nature of the allegations, what the government must prove, and the likely and maximum potential consequences;

e. explain a general procedural overview of the progression of the case;

f. explain the role of each player in the system;

g. explain the consequences of non-compliance with court orders;

h. explain how and when to contact the attorney;

i. provide the names of any other persons who may be contacting the child on behalf of the attorney;

j. obtain a signed release authorizing the attorney and/or his or her agent to obtain official records related to the client, including medical and mental health records, school records, employment records, etc.;

k. discuss arrangements to address the child's most critical needs (e.g., medical or mental health attention, request for separation during detention, or contact with family or employers); and

l. assess whether the child is competent to proceed or has a disability that would impact a possible defense or mitigation.

2. For a child who is detained, the attorney should also:

a. explain the procedures that will be followed in setting the conditions of pre-adjudication release;

b. explain the type of information that will be requested in any interview that may be conducted by a pre-adjudication release agency, explain that the child should not make statements concerning the offense, and explain that the right to not testify against oneself extends to all situations, including mental health evaluations; and

c. warn the child 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 detention officials.

3. The attorney or a representative of the attorney should collect information from the child including, but not limited to:

a. the facts surrounding the charges leading to the child's detention, to the extent the child knows and is willing to discuss these facts;

b. the child's version of the arrest, with or without a warrant; whether the child was searched and if anything was seized, with or without warrant or consent; whether the child was interrogated and if so, whether a statement was given; the child's physical and mental status at the time any statement was given; whether any samples were provided, such as blood, tissue, hair, DNA, handwriting, etc., and whether any scientific tests were performed on the child's body or bodily fluids;

c. the existence of any tangible evidence in the possession of the state (when appropriate, the attorney shall take steps to ensure that this evidence is preserved);

d. the names and custodial status of all co-defendants and the names of the attorneys for the co-defendants (if counsel has been appointed or retained);

e. 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;

f. the child's current living arrangements, family relationships, and ties to the community, including the length of time his or her family has lived at the current and former addresses, as well as the child's supervision when at home;

g. any prior names or aliases used, employment record and history, and social security number;

h. the immigration status of the child and his or her family members, if applicable;

i. the child's educational history, including current grade level, attendance and any disciplinary history;

j. the child's physical and mental health, including any impairing conditions such as substance abuse or learning disabilities, and any prescribed medications and other immediate needs;

k. the child's delinquency history, if any, including arrests, detentions, diversions, adjudications, and failures to appear in court;

l. whether there are any other pending charges against the child and the identity of any other appointed or retained counsel;

m. whether the child is on probation (and the nature of the probation) or post-release supervision and, if so, the name of his or her probation officer or counselor and the child's past or present performance under supervision;

n. the options available to the child for release if the child is in secure custody;

o. the names of individuals or other sources that the attorney can contact to verify the information provided by the child and the permission of the child to contact those sources;

p. the ability of the child's family to meet any financial conditions of release (for clients in detention); and

q. where appropriate, evidence of the child's competence to participate in delinquency proceedings 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.

E. Throughout the delinquency process, the attorney should take the time to:

1. keep the child informed of the nature and status of the proceedings on an ongoing basis;

2. maintain regular contact with the child during the course of the case and especially before court hearings;

3. review all discovery with the child as part of the case theory development;

4. promptly respond to telephone calls and other types of contact from the child, where possible, within one business day or a reasonable time thereafter;

5. counsel the child on options and related consequences and decisions to be made; and

6. seek the lawful objectives of the child and not substitute the attorney's judgment for that of the child in those case decisions that are the responsibility of the child. Where an attorney believes that the child's desires are not in his or her best interest, the attorney should discuss the consequences of the child's position. If the child maintains his or her position, the attorney should defend the child's expressed interests vigorously within the bounds of the law.

F. In interviewing a child, it is proper for the lawyer to question the credibility of the child's statements or those of any other witness. The lawyer shall not, however, suggest expressly or by implication that the child or any other witness prepare or give, on oath or to the lawyer, a version of the facts which is in any respect untruthful, nor shall the lawyer intimate that the child should be less than candid in revealing material facts to the attorney.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2603 (September 2011).

### **§1333. Transfer to Adult Proceedings**

A. The attorney should be familiar with laws subjecting a child to the exclusive jurisdiction of a court exercising criminal jurisdiction, including the offenses subjecting the client to such jurisdiction. Counsel should seek to discover at the earliest opportunity whether transfer will be sought and, if so, the procedure and criteria according to which that determination will be made.

B. Upon learning that transfer will be sought or may be elected, the attorney should fully explain the nature of the proceeding and the consequences of transfer to the child and the child's parents. In so doing, counsel may further advise the child concerning participation in diagnostic and treatment programs that may provide information material to the transfer decision.

C. The attorney should be aware when an indictment may be filed directly in adult court by a district attorney and take actions to prevent such a filing including:

1. promptly investigating all circumstances of the case bearing on the appropriateness of filing the case in adult court and seeking disclosure of any reports or other evidence that the district attorney is using in his or her consideration of a direct filing;

2. moving promptly for appointment of an investigator or expert witness to aid in the preparation of the defense when circumstances warrant; and

3. where appropriate, moving promptly for the appointment of a competency or sanity commission prior to the transfer.

D. Where a district attorney may transfer the case either through indictment filed directly in adult court or by a finding of probable cause at a continued custody hearing in juvenile court, the attorney should present all facts and mitigating evidence to the district attorney to keep the child in juvenile court.

E. Where the district attorney makes a motion to conduct a hearing to consider whether to transfer the child, the attorney should prepare in the same way and with as much care as for an adjudication. The attorney should:

1. conduct an in-person interview with the child;
2. identify, locate and interview exculpatory or mitigating witnesses;
3. consider obtaining an expert witness to testify to the amenability of the child to rehabilitation; and
4. present all facts and mitigating evidence to the court to keep the juvenile client in juvenile court.

F. In preparing for a transfer hearing, the attorney should be familiar with all the procedural protections available to the child including but not limited to discovery, cross-examination, compelling witnesses.

G. If the attorney who represented the child in the delinquency court will not represent the child in the adult proceeding, the delinquency attorney should ensure the new attorney has all the information acquired to help in the adult proceedings.

H. If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2605 (September 2011).

### **§1335. Mental Health Examinations**

A. Throughout a delinquency proceeding, either party may request or the judge may order a mental health examination of the child. Admissions made during such examinations may not be protected from disclosure. The attorney

should ensure the child understands the consequences of admissions during such examinations and advise the client that personal information about the child or the child's family may be revealed to the court or other personnel.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2605 (September 2011).

### **§1337. Mental Incapacity to Proceed**

A. The attorney should be familiar with procedures for a determination of mental incapacity to proceed under the Louisiana Children's Code and other provisions of Louisiana law.

B. Although the client's expressed interests ordinarily control, the attorney should question capacity to proceed without the child's approval or over the child's objection, if necessary.

C. If, at any time, the child's behavior or mental ability indicates that he or she may be incompetent, the attorney should consider filing a motion for a competency commission.

D. The attorney should prepare for and participate fully in the competency hearing.

E. Prior to the evaluation by the commission, the attorney should request from the child and provide to the commission all relevant documents including but not limited to the arrest report, prior psychological/psychiatric evaluations, school records and any other important medical records.

F. Where appropriate, the attorney should advise the client of the potential consequences of a finding of incompetence. Prior to any proceeding, the attorney should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate. If the competency commission's finding is that the child is competent, where appropriate, the attorney should consider calling an independent mental health expert to testify at the competency hearing.

G. The attorney should be aware that the burden of proof is on the child to prove incompetency and that the standard of proof is a preponderance of the evidence.

H. If the child is found incompetent, the attorney should participate, to the extent possible, in the development of the mental competency plan and in any subsequent meetings or hearings regarding the child's mental capacity.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2605 (September 2011).

### **§1339. Insanity**

A. The attorney should be familiar with the procedures for determination of sanity at the time of the offense and notice requirements under the Louisiana Children's Code and other provisions of Louisiana law when proceeding with an insanity defense.

B. If the attorney believes that the child did not appreciate the consequences of his or her actions at the time of the offense, the attorney should consider filing for a sanity commission.

C. The attorney should advise the child that if he or she is found not delinquent by reason of insanity, the court may involuntarily commit the child to the Department of Health and Hospitals for treatment. The attorney should be prepared to advocate on behalf of the child against involuntary commitment and provide other treatment options such as outpatient counseling or services.

D. The attorney should be prepared to raise the issue of sanity during all phases of the proceedings, if the attorney's relationship with the child reveals that such a plea is appropriate.

E. The attorney should be aware that the child has the burden of establishing the defense of insanity at the time of the offense by a preponderance of the evidence.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011).

### **§1341. Manifestation of a Disability**

A. Where the child's actions that are the subject of the delinquency charge suggest a manifestation of a disability, the attorney should argue that the disability prevented the client from having the mental capacity or specific intent to commit the crime. Where appropriate, for school-based offenses, the attorney should argue that the school did not follow the child's individual education program, which could have prevented the client's behavior. The attorney should

seek a judgment of dismissal or a finding that the juvenile is not delinquent. This information may also be used for mitigation at the time of disposition following a plea or a finding of delinquency.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011).

### **§1343. Ensure Official Recording of Court Proceedings**

A. The attorney should take all necessary steps to ensure a full official recording of all aspects of the court proceedings.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011).

### **§1345. Investigation**

A. The child's attorney shall conduct a prompt and diligent independent case investigation. The child's admissions of responsibility or other statements to counsel do not necessarily obviate the need for investigation.

B. The attorney should ensure that the charges and disposition are factually and legally correct and the child is aware of potential defenses to the charges.

C. The attorney should examine all charging documents to determine the specific charges that have been brought against the child, including the arrest warrant, accusation and/or indictment documents, and copies of all charging documents in the case. The relevant statutes and precedents should be examined to identify the elements of the offense(s) with which the child is charged, both the ordinary and affirmative defenses that may be available, any lesser included offenses that may be available, and any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.

D. The attorney should seek investigators and experts, as needed, to assist the attorney in the preparation of a defense, in the understanding of the prosecution's case, or in the rebuttal of the prosecution's case.

E. Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend them to the child and child's family.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011).

### **§1347. Diversion/Alternatives**

A. The attorney should be familiar with diversionary programs and alternative solutions available in the community. Such programs may include diversion, mediation, or other alternatives that could result in a child's case being dismissed or handled informally. When appropriate and available, the attorney shall advocate for the use of informal mechanisms that could divert the client's case from the formal court process.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011).

### **§1349. Continued Custody Hearing**

A. The attorney should take steps to see that the continued custody hearing is conducted in a timely fashion unless there are strategic reasons for not doing so.

B. In preparing for the continued custody hearing, the attorney should become familiar with:

1. the elements of each of the offenses alleged;
2. the law for establishing probable cause;
3. factual information that is available concerning probable cause;
4. the subpoena process for obtaining compulsory attendance of witnesses at continued custody hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings;
5. the child's custodial situation, including all persons living in the home;
6. alternative living arrangements for the client where the current custodial situation is an obstacle to release from detention; and

7. potential conditions for release from detention and local options to fulfill those conditions, including the criteria for setting bail and options for the family to meet bail requirements.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

### **§1351. Appearance to Answer**

A. The attorney should preserve the child's rights at the appearance to answer on the charges by requesting a speedy trial, preserving the right to file motions, demanding discovery, and entering a plea of denial in most circumstances, unless there is a sound tactical reason for not doing so or the child expresses an informed decision to resolve the matter quickly.

B. Where appropriate, the attorney should arrange for the court to address any immediate needs of the child, such as educational/vocational needs, emotional/mental/physical health needs, and safety needs.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

### **§1353. Child's Right to Speedy Trial**

A. The attorney should be aware of and protect the child's right to a speedy trial, unless strategic considerations warrant otherwise. Requests or agreements to continue a contested hearing date should not be made without consultation with the child. The attorney shall diligently work to complete the investigation and preparation in order to be fully prepared for all court proceedings. In the event an attorney finds it necessary to seek additional time to adequately prepare for a proceeding, the attorney should consult with the child and discuss seeking a continuance of the upcoming proceeding. Whenever possible, written motions for continuance made in advance of the proceeding are preferable to oral requests for continuance. All requests for a continuance should be supported by well-articulated reasons on the record in the event it becomes an appealable issue.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

### **§1355. Discovery**

A. The attorney should pursue discovery, including filing a motion for discovery and conducting appropriate interviews. The attorney 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.

B. In considering discovery requests, the attorney should take into account that such requests may trigger reciprocal discovery obligations. The attorney shall be familiar with the rules regarding reciprocal discovery. The attorney shall be aware of any potential obligations and time limits regarding reciprocal discovery. Where the attorney intends to offer an alibi defense, he or she shall provide notice to the district attorney as required by law.

C. The attorney 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/delinquency records, if any;
4. all oral and/or written statements by the child, and the details of the circumstances under which the statements were made;
5. the prior delinquency record of the child 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.

D. The attorney shall monitor the dates to ensure the state complies with its discovery obligations. If discovery violations occur, the attorney should seek prompt compliance and/or sanctions for failure to comply.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

### **§1357. Theory of the Case**

A. During the investigation and adjudication hearing preparation, the attorney should develop and continually reassess a theory of the case.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

### **§1359. Motions**

A. The attorney should file motions, responses or objections as necessary to zealously represent the client. The attorney should consider filing an appropriate motion whenever there exists a good faith reason to believe that the child is entitled to relief that the court has discretion to grant. The attorney should file motions as soon as possible due to the time constraints of juvenile court.

B. The decision to file 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 motion include, but are not limited to:

1. the pre-adjudication custody of the child;
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 state and the reciprocal discovery obligations of the defense;
7. the suppression of evidence gathered as the result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, state constitutional provisions or statutes, including:
  - a. the fruits of illegal searches or seizures;
  - b. involuntary statements or confessions;
  - c. statements or confessions obtained in violation of the child's right to an attorney, or privilege against self-incrimination; or
  - d. unreliable identification evidence that would give rise to a substantial likelihood of irreparable misidentification.
8. the suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
9. in consultation with the child, a mental or physical examination of the child;
10. relief due to mental incapacity, incompetency, mental retardation or mental illness;
11. access to resources that or experts who may be denied to the child because of his or her indigence;
12. the child's right to a speedy trial;
13. the child's right to a continuance in order to adequately prepare his or her case;
14. matters of evidence which may be appropriately litigated by means of a pre-adjudication motion in limine;
15. motion for judgment of dismissal; or

16. matters of adjudication or courtroom procedures, including inappropriate clothing or restraints of the client.

D. The attorney should withdraw a motion 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 child's rights, including later claims of waiver or procedural default. The attorney has a continuing duty to file motions as new issues arise or new evidence is discovered.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

### **§1361. Plea Negotiations**

A. The attorney should explore with the child the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to an adjudication, 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 adjudication. After the attorney is fully informed on the facts and the law, he or she should, with complete candor, advise the child concerning all aspects of the case, including counsel's frank estimate of the probable outcome. Counsel should not understate or overstate the risks, hazards or prospects of the case in order unduly or improperly to influence the child's determination of his or her posture in the matter.

B. The attorney shall not accept any plea agreement without the child's express authorization.

C. The existence of ongoing tentative plea negotiations with the prosecution should not prevent the attorney from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay the attorney's investigation into the facts of the case and preparation of the case for further proceedings, including adjudication.

D. The attorney should participate in plea negotiations to seek the best result possible for the child consistent with the child's interests and directions to the attorney. The attorney should consider narrowing contested issues or reaching global resolution of multiple pending cases. Prior to entering into any negotiations, the attorney shall have sufficient knowledge of the strengths and weaknesses of the child's case, or of the issue under negotiation, enabling the attorney to advise the child of the risks and benefits of settlement.

E. In conducting plea negotiations, the attorney should be familiar with:

1. the various types of pleas that may be agreed to, including an admission, a plea of nolo contendere, and a plea in which the child is not required to personally acknowledge his or her guilt (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 the Office of Juvenile Justice.

F. In conducting plea negotiations, the attorney should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department that may affect the content and likely results of negotiated pleas.

G. In preparing to enter a plea before the court, the attorney should explain to the child the nature of the plea hearing and prepare the child 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 the appropriate disposition. Specifically, the attorney should:

1. be satisfied there is a factual or strategic basis for the plea or admission or Alford plea;
2. make certain that the child understands the rights he or she will waive by entering the plea and that the child's decision to waive those rights is knowing, voluntary and intelligent; and
3. be satisfied that the plea is voluntary and that the child understands the nature of the charges.

H. When the plea is against the advice of the attorney or without adequate time to investigate, the attorney should indicate this on the record.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2608 (September 2011).

### **§1363. Court Appearances**

A. The attorney shall attend all hearings.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

### **§1365. Preparing the Child for Hearings**

A. The attorney should explain to the juvenile, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

B. The attorney should advise the client as to suitable courtroom dress and demeanor. If the client is detained, the attorney should consider requesting the client's appearance unshackled and unchained. The attorney should also be alert to the possible prejudicial effects of the client appearing before the court in jail or other inappropriate clothing.

C. The attorney should plan with the client the most convenient system for conferring throughout the delinquency proceedings.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

### **§1367. Adjudication Preparation**

A. Where appropriate, the attorney 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. outline or draft of opening statement;
4. cross-examination plans for all possible prosecution witnesses;
5. direct examination plans for all prospective defense witnesses;
6. copies of defense subpoenas;
7. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and prepared transcripts of any audio or video taped witness statements;
8. prior statements of all defense witnesses;
9. reports from all experts;
10. a list of all defense exhibits, and the witnesses through whom they will be introduced;
11. originals and copies of all documentary exhibits;
12. copies of all relevant statutes and cases; and
13. outline or draft of closing argument.

B. The attorney should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the delinquency proceedings, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the adjudication.

C. The attorney should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior adjudications to impeach the child) and, where appropriate, the attorney should prepare motions and memoranda for such advance rulings.

D. Throughout the adjudication process, the attorney should endeavor to establish a proper record for appellate review. The attorney shall be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should ensure 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.

E. Where necessary, the attorney should seek a court order to have the child available for conferences.

F. Throughout preparation and adjudication, the attorney should consider the potential effects that particular actions may have upon sentencing if there is a finding of delinquency.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

### **§1369. Objections**

A. The attorney should make appropriate motions, including motions in limine and evidentiary and other objections, to advance the child's position at adjudication or during other hearings. The attorney should be aware of the burdens of proof, evidentiary principles and court procedures applying to the motion hearing. If necessary, the attorney should file briefs in support of evidentiary issues. Further, during all hearings, the attorney should preserve legal issues for appeal, as appropriate.

B. Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders, and decisions of the judge. Counsel has the right to make respectful requests for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct that the attorney considers prejudicial to the child's legitimate interests.

C. The attorney should be prepared to object to the introduction of any evidence damaging to the child's interests if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

### **§1371. Sequestration of Witnesses**

A. Prior to delivering an opening statement, the attorney should ask for the rule of sequestration of witnesses to be invoked, unless a strategic reason exists for not doing so.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

### **§1373. Opening Statements**

A. The attorney should be familiar with the law and the individual trial judge's rules regarding the permissibility and permissible content of an opening statement. The attorney should consider the strategic advantages and disadvantages of disclosure of particular information during the opening statement and of deferring the opening statement until the beginning of the defense case.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

### **§1375. Confronting the Prosecutor's Case**

A. The attorney should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of dismissal. The attorney should systematically analyze all potential prosecution evidence, including physical evidence, for evidentiary problems.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

### **§1377. Stipulations**

A. The attorney should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

### **§1379. Cross-Examination**

A. In preparing for cross-examination, the attorney 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, the attorney should be prepared to question witnesses as to the existence of prior statements that they may have made or adopted.

B. In preparing for cross-examination, the attorney should:

1. obtain the prior records of all state and defense witnesses;
2. be prepared to examine any witness;
3. consider the need to integrate cross-examination, the theory of the defense, and closing argument;

4. consider whether cross-examination of each individual witness is likely to generate helpful information;
5. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
6. consider a cross-examination plan for each of the anticipated witnesses;
7. be alert to inconsistencies in witnesses' testimony;
8. be alert to possible variations in witnesses' testimony;
9. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
10. 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;
11. have prepared, for introduction into evidence, all documents that counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witnesses or prior sworn testimony of the witnesses; and
12. be alert to issues relating to witness credibility, including bias and motive for testifying.

C. The lawyer should be prepared to examine fully any witness whose testimony is damaging to the child's interests.

D. The lawyer's knowledge that a witness is telling the truth does not preclude cross-examination in all circumstances but may affect the method and scope of cross-examination.

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

### **§1381. Conclusion of Prosecution's Evidence**

A. Where appropriate, at the close of the prosecution's case, the attorney should move for a dismissal of petition on each count charged. The attorney should request, when necessary, that the court immediately rule on the motion, in order that the attorney may make an informed decision about whether to present a defense case.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

### **§1383. Defense Strategy**

A. The attorney should develop, in consultation with the child, an overall defense strategy. In deciding on a defense strategy, the attorney should consider whether the child's legal 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. In developing and presenting the defense case, the attorney should consider the implications it may have for a rebuttal by the prosecutor.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

### **§1385. Affirmative Defenses**

A. The attorney should be aware of the elements and burdens of proof of any affirmative defense.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

### **§1387. Direct Examination**

- A. In preparing for presentation of a defense case, the attorney 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, to the extent that use of character witnesses does not allow the prosecution to introduce potentially harmful evidence against the child;
  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;
  7. review all tangible evidence that must be presented; and
  8. after the state's presentation of evidence and a discussion with the child, make the decision whether to call any witnesses.
- B. The attorney should conduct redirect examination as appropriate.
- C. The attorney should prepare all witnesses for direct and possible cross-examination. Where appropriate, the attorney should also advise witnesses of suitable courtroom dress and demeanor.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

### **§1389. Child's Right to Testify**

- A. The attorney shall respect the child's right to decide whether to testify.
- B. The attorney should discuss with the child all of the considerations relevant to the child's decision to testify. This advice should include consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions that may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and withstand possible cross-examination.
- C. The attorney should be familiar with his or her ethical responsibilities that may be applicable if the child insists on testifying untruthfully. If the child indicates an intent to commit perjury, the attorney shall advise the child against taking the stand to testify falsely and, if necessary, take appropriate steps to avoid lending aid to perjury. If the child persists in a course of action involving the attorney's services that the attorney reasonably believes is criminal or fraudulent, the attorney should seek the leave of the court to withdraw from the case. If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during adjudication without notice, the attorney shall not lend aid to perjury or use the perjured testimony. The attorney should maintain a record of the advice provided to the child and the child's decision concerning whether to testify.
- D. The attorney should protect the child's privilege against self-incrimination in juvenile court proceedings. When the child has elected not to testify, the lawyer should be alert to invoke the privilege and should insist on its recognition unless the client competently decides that invocation should not be continued.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

### **§1391. Preparing the Child to Testify**

- A. If the child decides to testify, the attorney should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination. Often the decision whether to testify may change at trial. Thus, the attorney should prepare the case for either contingency.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

### **§1393. Questioning the Child**

A. The attorney should seek to ensure that questions to the child are phrased in a developmentally appropriate manner. The attorney should object to any inappropriate questions by the court or an opposing attorney.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

### **§1395. Closing Arguments**

A. The attorney 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. The attorney should consider the strategic advantages and disadvantages of a closing statement.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

### **§1397. Motion for a New Trial**

A. The attorney 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 delinquency has been entered against the client after trial, the attorney 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 the attorney should consider include:

1. the likelihood of success of the motion, given the nature of the error(s) that can be raised; and
2. the effect that such a motion might have upon the client's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the child's right to raise on appeal the issues that might be raised in the new trial motion.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

### **§1399. Expungement**

A. The attorney should inform the child of any procedures available for requesting that the record of conviction be expunged or sealed. The attorney should explain that some contents of juvenile court records may be made public (e.g., when a violent crime has been committed) and that there are limitations on the expungement of records.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

## **Chapter 15. Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings—Post-Adjudication**

### **§1501. Post-adjudication Placement Pending Disposition**

A. Following the entry of an adjudication, the attorney should be prepared to argue for the least restrictive environment for the child pending disposition.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

### **§1503. Defense's Active Participation in Designing the Disposition**

A. The active participation of the child's attorney at disposition is essential. In many cases, the attorney's most valuable service to the child will be rendered at this stage of the proceeding. Counsel should have the disposition hearing held on a subsequent date after the adjudication, unless there is a strategic reason for waiving the delay between adjudication and disposition.

B. Prior to disposition there may be non-court meetings and staffings that can affect the juvenile's placement or liberty interest. The attorney should attend or participate in these, where possible.

C. The attorney should not make or agree to a specific dispositional recommendation without the child's consent.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2612 (September 2011).

### **§1505. Obligations of Counsel Regarding Disposition**

A. The child's attorney should prepare for a disposition hearing as the attorney would for any other evidentiary hearing, including the consideration of calling appropriate witnesses and the preparation of evidence in mitigation of or support of the recommended disposition. Among the attorney's obligations regarding the disposition hearing are:

1. to ensure all information presented to the court which may harm the child and which is not accurate and truthful or is otherwise improper is stricken from the text of the predisposition investigation report;

2. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the child, and which can reasonably be obtained based on the facts and circumstances of the offense, the child's background, the applicable sentencing provisions, and other information pertinent to the disposition;

3. to ensure all reasonably available mitigating and favorable information, which is likely to benefit the child, is presented to the court;

4. to consider preparing a letter or memorandum to the judge or juvenile probation officer that highlights the child's strengths and the appropriateness of the disposition plan proposed by the defense; and

5. where a defendant chooses not to proceed to disposition, to ensure that a plea agreement is negotiated with consideration of the disposition hearing, correctional, financial and collateral implications.

B. The attorney should be familiar with disposition provisions and options applicable to the case, including but not limited to:

1. any disposition assessment tools;
2. detention including any mandatory minimum requirements;
3. deferred disposition and diversionary programs;
4. probation or suspension of disposition and permissible conditions of probation;
5. credit for pre-adjudication detention;
6. restitution;
7. commitment to the Office of Juvenile Justice at a residential or non-residential program;
8. place of confinement and level of security and classification criteria used by Office of Juvenile Justice;
9. eligibility for correctional and educational programs; and

10. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs.

C. The attorney should be familiar with the direct and collateral consequences of adjudication and the disposition, including:

1. the impact of a fine or restitution and any resulting civil liability;
2. possible revocation of probation or parole if client is serving a prior sentence on a parole status;
3. future enhancement on dispositions;
4. loss of participation in extra-curricular activities;
5. loss of college scholarships;
6. suspension or expulsion from school;
7. the inability to be employed in certain occupations including the military;
8. suspension of a motor vehicle operator's permit or license;
9. ineligibility for various government programs (e.g., student loans) or the loss of public housing or other benefits;
10. the requirement to register as a sex offender;
11. the requirement to submit a DNA sample;
12. deportation/removal and other immigration consequences;
13. the loss of other rights (e.g., loss of the right to vote, to carry a firearm or to hold public office);
14. the availability of juvenile arrest or court records to the public, in certain cases; or
15. the transmission of juvenile arrest records, court records, or identifying information to federal law enforcement agencies.

D. The attorney should be familiar with disposition hearing procedures, including:

1. the effect that plea negotiations may have upon the disposition discretion of the court and/or the Office of Juvenile Justice;
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 disposition hearing;
4. the right of the child to speak prior to receiving the disposition;
5. any discovery rules and reciprocal discovery rules that apply to disposition hearings; and
6. the use of any sentencing guidelines.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2612 (September 2011).

### **§1507. Preparing the Child for the Disposition Hearing**

A. In preparing for the disposition hearing, counsel should consider the need to:

1. explain to the child the nature of the disposition hearing, the issues involved, the applicable sentencing requirements, disposition options and alternatives available to the court, and the likely and possible consequences of the disposition alternatives;
2. explain fully and candidly to the child the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation or conditional release, the characteristics of any institution to which commitment is possible, and the probable duration of the child's responsibilities under the proposed dispositional plan;

3. obtain from the child relevant information concerning such subjects as his or her background and personal history, prior criminal or delinquency record, employment history and skills, education, and medical history and condition, and obtain from the child sources through which the information provided can be corroborated;

4. prepare the child to be interviewed by the official preparing the predisposition report, including informing the child of the effects that admissions and other statements may have upon an appeal, retrial or other judicial proceedings, such as forfeiture or restitution proceedings;

5. inform the client of his or her right to speak at the disposition hearing and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission to committing delinquent acts may have upon an appeal, subsequent retrial or trial on other offenses;

6. when psychological or psychiatric evaluations are ordered by the court or arranged by the attorney prior to disposition, the attorney should explain the nature of the procedure to the child and the potential lack of confidentiality of disclosures to the evaluator;

7. ensure the child has adequate time to examine the predisposition report, if one is utilized by the court; and

8. maintain regular contact with the child prior to the disposition hearing and inform the client of the steps being taken in preparation for disposition.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2612 (September 2011).

#### **§1509. Predisposition Report**

A. Where the court uses a predisposition report, counsel should be familiar with the procedures concerning the preparation, submission, and verification of the predisposition report. Counsel should be prepared to use the predisposition report in defense of the child.

B. Counsel should be familiar with the practices of the officials who prepare the predisposition report and the defendant's rights in that process, including access to the predisposition report by the attorney and the child, and ability to waive such a report, if it is in the child's interest to do so.

C. Counsel should provide to the official preparing the report relevant information favorable to the client, including, where appropriate, the child's version of the alleged act. Counsel should also take appropriate steps to ensure that erroneous or misleading information which may harm the child is deleted from the report and to preserve and protect the child's interests, including requesting that a new report be prepared with the challenged or unproven information deleted before the report or memorandum is distributed to the Office of Juvenile Justice or treatment officials.

D. In preparation for a disposition hearing, the attorney should ensure receipt of the disposition report no later than 72 hours prior to the disposition hearing. Upon receipt of this report, the attorney should review the report with the client, ensure its accuracy and prepare a response to the report.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011).

#### **§1511. Prosecution's Disposition Position**

A. The attorney 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 disposition be imposed and attempt to persuade the district attorney to support the child's requested disposition.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011).

#### **§1513. Disposition Hearing**

A. The attorney should be prepared at the disposition hearing to take the steps necessary to advocate fully for the requested disposition and to protect the child's interest.

B. Where the dispositional hearing is not separate from adjudication or where the court does not have before it all evidence required by statute, rules of court or the circumstances of the case, the lawyer should seek a continuance until such evidence can be presented if to do so would serve the child's interests.

C. The lawyer at disposition should examine fully and, where possible, impeach any witness whose evidence is damaging to the child's interests and to challenge the accuracy, credibility, and weight of any reports, written statements, or other evidence before the court. The lawyer should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the child's interests. Counsel should seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

D. Where information favorable to the child will be disputed or challenged, the attorney should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the child.

E. Where the court has the authority to do so, counsel should request specific recommendations from the court concerning the place of detention, probation or suspension of part or all of the sentence, psychiatric treatment or drug rehabilitation.

F. During the hearing if the court is indicating a commitment is likely, the attorney should attempt to ensure that the child is placed in the most appropriate, least restrictive placement available.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011).

#### **§1515. Post-Disposition Counseling**

A. When a disposition order has been entered, it is the attorney's duty to explain the nature, obligations and consequences of the disposition to the child and to urge upon the child the need for accepting and cooperating with the dispositional order. The child should also understand the consequences of a violation of the order.

B. Where the court places the child in the custody of the Office of Juvenile Justice, with the child's permission and a parent's written release, the attorney should provide the Office of Juvenile Justice with a copy of the child's education records.

C. If appeal from either the adjudicative or dispositional decree is contemplated, the child should be advised of that possibility, but the attorney shall counsel compliance with the court's decision during the interim.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011).

#### **§1517. Reviewing or Drafting Court Orders**

A. Counsel's attorney should review all written orders or when necessary draft orders to ensure that the child's interests are protected, to ensure the orders are clear and specific, and to ensure the order accurately reflects the court's oral pronouncement and complies with the applicable law.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011).

#### **§1519. Monitoring the Child's Post-disposition Detention**

A. The attorney should monitor the child's post-disposition detention status and ensure that the child is placed in a commitment program in a timely manner as provided by law.

B. When a child is committed to a program, the attorney shall provide the child information on how to contact the attorney to discuss concerns.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011).

#### **§1521. Post-Disposition Representation**

A. The lawyer's responsibility to the child does not end with the entry of a final dispositional order. Louisiana law entitles juveniles to representation at every stage of the proceeding, including post-disposition matters. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the child in matters arising from the original proceeding.

B. The lawyer engaged in post-dispositional representation should conduct those proceedings according to the principles generally governing representation in juvenile court matters. The attorney should be prepared to actively participate in hearings regarding probation status. When a child is committed to a program and the attorney receives

notice of an Office of Juvenile Justice transfer staffing or decision, the attorney should review and challenge the decision and, if appropriate, bring the matter to the trial court.

C. Where the lawyer is aware that the child or the child's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she may render assistance in arranging for such services.

D. The lawyer should contact both the child and the agency or institution involved in the disposition plan at regular intervals in order to ensure that the child's rights are respected and, where necessary, to counsel the child and the child's family concerning the dispositional plan.

E. Even after an attorney's representation in a case is complete, the attorney should comply with a child's reasonable requests for information and materials.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011).

### **§1523. Child's Right to Appeal**

A. Following a delinquency adjudication, the attorney should inform the child of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. This discussion should include the details of the appellate process including the time frames of decisions, the child's obligations pending appeal, and the possibility of success on appeal.

B. Counsel representing the child following a delinquency adjudication should promptly undertake any factual or legal investigation in order to determine whether grounds exist for relief from juvenile court or administrative action. If there is reasonable prospect of a favorable result, the lawyer should advise the child of the nature, consequences, probable outcome, and advantages or disadvantages associated with such proceedings.

C. After disposition, the attorney should consider filing a motion to reconsider the disposition. The attorney should consider an appeal of the disposition where appropriate.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011).

### **§1525. Counsel's Participation in Appeal**

A. A lawyer who has represented a client through adjudication shall be prepared to continue representation in appellate actions, whether affirmative or defensive, unless new counsel is appointed at the request of the client or, in the case of a felony-grade delinquency matter, the trial attorney appropriately utilizes the services of the Louisiana Appellate Project, to the extent those appellate services are available.

B. Whether or not trial counsel expects to conduct the appeal, he or she shall promptly inform the child of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the child decides not to exercise this privilege.

C. If after such consultation and if the child wishes to appeal the order, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the client during the pendency of the appeal.

D. In circumstances where the child wants to file an appeal, 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.

E. Where the child indicates a desire to appeal the judgment and/or disposition of the court, counsel should consider requesting a stay of execution of any disposition, particularly one involving out-of-home placement or secure care. If the stay is denied, the attorney should consider appealing the stay. The attorney should also inform the child of any right that may exist to be released on bail pending the disposition of the appeal. Where an appeal is taken and the child requests bail pending appeal, trial counsel should cooperate with appellate counsel in providing information to pursue the request for bail.

F. Where the child 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.

G. Where there exists an adequate pool of competent counsel available for assignment to appeals from juvenile court orders and substitution will not work substantial disadvantage to the child's interests, new counsel may be appointed in place of trial counsel.

H. When the appellate decision is received, the attorney or substitute appellate counsel should explain the outcome of the case to the client.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011).

#### **§1527. Probation Revocation Representation**

A. Trial counsel should be prepared to continue representation if revocation of the child's probation or parole is sought, unless new counsel is appointed.

B. The attorney appointed to represent the child charged with a violation of probation should prepare in the same way and with as much care as for an adjudication. The attorney should:

1. conduct an in-person interview with the child;
2. review the probation department file;
3. identify, locate and interview exculpatory or mitigating witnesses;
4. consider reviewing the child's participation in mandated programs; and
5. consider obtaining expert assistance to test the validity of relevant scientific evidence (e.g., urinalysis results).

C. In preparing for a probation revocation, the attorney should be familiar with all the procedural protections available to the child including but not limited to discovery, cross-examination, compelling witnesses and timely filing of violations.

D. When representing a child in a revocation of probation hearing who was not a client of the attorney at the initial adjudication, the attorney should find out if the child was represented by an attorney in the underlying offense for which the child was placed on probation. The attorney may have an argument if the child entered an admission without counsel and did not give a valid waiver of counsel.

E. The attorney should prepare the child for the probation revocation hearing including the possibility of the child or parent being called as witnesses by the State. The attorney should also prepare the child for all possible consequences of a decision to enter a plea or the consequences of a probation revocation.

F. In preparing for the probation revocation, the attorney should prepare alternative dispositions including the possibility of negotiated alternatives such as a pre-hearing contempt proceeding or an additional disposition short of revocation.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2615 (September 2011).

#### **§1529. Challenges to the Effectiveness of Counsel**

A. Where a lawyer appointed or retained to represent a child previously represented by other counsel has a good faith belief that prior counsel did not provide effective assistance, the child should be so advised and any appropriate relief for the child on that ground should be pursued.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2615 (September 2011).



STATE OF LOUISIANA  
PUBLIC DEFENDER BOARD

**RESOLUTION**

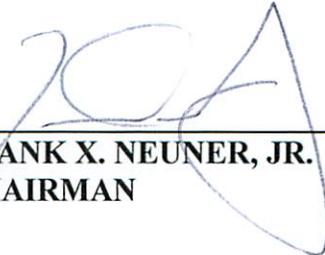
On the 27th day of September 2011, at a meeting of the Louisiana Public Defender Board, held in Port Allen, Louisiana, with a quorum of members present, the following business was conducted:

It was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that the State Public Defender is authorized to request emergency funding through the Joint Legislative Committee on the Budget on the Board's behalf.

The above resolution was passed unanimously by those Board members present and voting at the meeting.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 27th day of September 2011.

  
**FRANK X. NEUNER, JR.**  
**CHAIRMAN**



STATE OF LOUISIANA  
PUBLIC DEFENDER BOARD

**RESOLUTION**

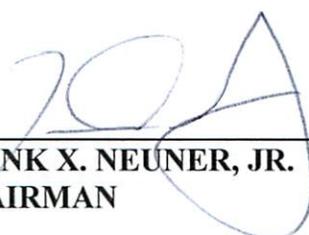
On the 27th day of September 2011, at a meeting of the Louisiana Public Defender Board, held in Port Allen, Louisiana, with a quorum of members present, the following business was conducted:

It was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that when a district public defender is facing a deficit that is expected to result in a restriction of services, the district public defender is to notify the district's chief judge and district attorney of the district public defender's financial situation and the impending restriction of services as soon as practicable.

The above resolution was passed unanimously by those Board members present and voting at the meeting.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 27th day of September, 2011.

  
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**FRANK X. NEUNER, JR.**  
**CHAIRMAN**



STATE OF LOUISIANA  
PUBLIC DEFENDER BOARD

**RESOLUTION**

On the 1st day of November 2011, at a meeting of the Louisiana Public Defender Board, held in Port Allen, Louisiana, with a quorum of members present, the following business was conducted:

It was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that Service Restriction Protocol be submitted for promulgation in accordance with the Administrative Procedures Act.

The above resolution was passed unanimously by those Board members present and voting at the meeting.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 1st day of November 2011.

  
\_\_\_\_\_  
**FRANK X. NEUNER, JR.**  
**CHAIRMAN**

NOTICE OF INTENT

**Office of the Governor  
Louisiana Public Defender Board**

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

The Public Defender Board, a state agency within the Office of the Governor, proposes to adopt LAC 22:XV.Chapter 17, as authorized by R.S. 15:148. These proposed Rules are 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 twenty-eight of Louisiana's forty-two 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.

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. The relevant ethical obligations imposed by the Rules of Professional Conduct include, but are not limited to, Rules 1.1 (requiring competent representation), 1.3 (requiring "reasonable diligence and promptness" in representation), 1.4 (requiring prompt and reasonable communications with the client), 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..."), 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."), 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 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."). 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:

### **§1703. Definitions**

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

1. Board. The Board means the Louisiana Public Defender Board.

2. Board staff. Board staff means 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.

3. Case. Case means case as defined in R.S. 15:174.C.

4. Caseload. Caseload means 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.

5. District. District means the judicial district in which a District Defender supervises service providers and enforces standards and guidelines.

6. District Defender. District Defender means 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.

7. District indigent defender fund. District indigent defender fund means the fund provided for in R.S. 15:168.

8. Fiscal crisis. A fiscal crisis means 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.

9. Notice. Notice means 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.

10. Public defender service provider. Public defender service provider means 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.

11. Rules of Professional Conduct. Rules of Professional Conduct mean the Louisiana Rules of Professional Conduct.

12. State Public Defender. State Public Defender means the person employed by the Board pursuant to R.S. 15:152.

13. Workload. Workload means 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:

### **§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:

### **§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 twelve months, the District Defender or Board staff, as the case may be, shall give notice to the other within seven 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:

**§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 forty-five 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 sixty 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 fifteen 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 thirty 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:

**§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 ninety 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 forty-five 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:

**§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.

**§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:

**§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 thirty 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 Section 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:

**§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 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:



## RESOLUTION

On the 14<sup>th</sup> day December 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

It was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that Board Staff work with the volunteer members of the Board to ensure that LPDB and the districts are utilizing all available means to capture all revenue streams intended to support public defense.

**BE IT FURTHER RESOLVED** that Board staff is authorized to engage legal counsel and take other steps necessary to seek the return of any funds deemed due from New Orleans Municipal Court or New Orleans Traffic Court to the Orleans Public Defenders Office and any other jurisdiction where such shortages occur.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 14<sup>th</sup> day of December 2011, at Baton Rouge, Louisiana.

  
\_\_\_\_\_  
FRANK X. NEUNER, JR.  
CHAIRMAN



## RESOLUTION

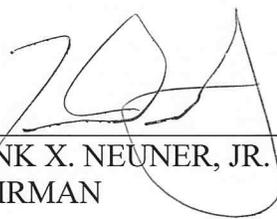
On the 14<sup>th</sup> day December 2011, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

It was duly moved and seconded that the following resolution be adopted:

**BE IT RESOLVED** that Board Staff is directed to initiate discussions with New Orleans Inspector General Edouard Quatrevaux' office concerning OIG's 2012 update to the 2009 report on the Orleans Municipal Court. Specifically, the Board urges and requests Inspector General Quatrevaux, in making his 2012 report on the New Orleans Municipal Court, to ensure that the Court is following the policies and procedures required by Act 339 of 2011 and that the monies collected by the Court pursuant to La. R.S. 15:168 are being properly identified, reported and remitted.

**IT IS FURTHER RESOLVED** that Board Staff is directed to request from the New Orleans Municipal Court, on the Board's behalf, copies of the Court's current fiscal policies and procedures.

**I CERTIFY THAT** the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 14<sup>th</sup> day of December 2011, at Baton Rouge, Louisiana.

  
\_\_\_\_\_  
FRANK X. NEUNER, JR.  
CHAIRMAN

Michael McDuff  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Home Improvement  
Registration and New Home Warranty Act**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will have no impact on state or local governmental expenditures. Implementation of the proposed rule will be carried out using existing staff and funding level. The revisions make technical changes and clarify existing practice. Section 1511 codifies existing interpretations of the Home Improvement Registration requirements of the Contractor Licensing Law. Section 1513 reflects changes made to the New Home Warranty Act by Act 387 of 2008.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of the proposed rule change will not impact revenue collections of state or local governmental units. The proposed rule change does not include any fee increases by the Louisiana State Licensing Board for Contractors.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Contractors will benefit from clarification of Board procedures and requirements, thus resulting in increased efficiency, faster licensing approval and renewal, and satisfactory resolution of issues regarding regulatory requirements.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change will have no impact on competition or employment in the public or private sectors.

Judy Dupuy  
Board Administrator  
1112#027

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**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, proposes to adopt LAC 22:XV.Chapter 17, as authorized by R.S. 15:148. This proposed 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:

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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.

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*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*—district defender means 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*—a fiscal crisis means 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:

#### **§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:

#### **§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 seven 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:

#### **§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:

#### **§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:

### **§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:

### **§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:

### **§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:

### **§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:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, and autonomy as described in R.S. 49:972.

#### **Small Business Statement**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. The proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Public Comments**

Interested persons who wish to submit data, views, comments, or arguments may do so by writing to Jean M. Faria, State Public Defender, 500 Laurel St., Ste. 300, Baton Rouge, LA 70801. Written submissions will be accepted through 4:30 p.m. on Friday, January 20, 2012.

Jean M. Faria  
State Public Defender

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Service Restriction Protocol**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There is no anticipated direct material impact on state or local governmental units as a result of the proposed administrative rule. Implementation of the proposed rule will be carried out using existing staff and funding level. 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 twenty-eight of Louisiana's forty-two district public defenders had expenditures that exceeded revenues during the 18-month period beginning January 1, 2009, and ending June 30, 2010. The proposed rule establishes policies and procedures to ensure that a district public defender's office facing an imminent fiscal crisis takes necessary and appropriate steps to comply with the Legislative Auditor's recommendation that expenditures not exceed revenues.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no anticipated impact on revenue collections of state or local governmental units as a result of the proposed administrative rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There is no anticipated impact to directly affected persons or non-governmental groups as a result of the proposed administrative rule. The proposed administrative rule provides guidelines to a public defender office that projects that the district will experience a fiscal crisis.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated impact on competition and employment as a result of the proposed administrative rule.

Roger W. Harris  
General Counsel  
1112#057

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Office of the Governor Division of Administration Tax Commission**

Ad Valorem Taxation  
(LAC 61:V.101, 303, 304, 703, 907, 1101, 1103, 1307,  
1503, 2503, 2713, 2717, 3101, 3013, 3105, 3106 and 3107)

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, notice is hereby given that the Tax Commission intends to adopt, amend and/or repeal sections of the Louisiana Tax Commission Real/Personal Property Rules and Regulations for use in the 2012 (2013 Orleans Parish) tax year.

The full text of this proposed Rule may be viewed in the Emergency Rule Section of this issue of the *Louisiana Register*.

#### **Family Impact Statement**

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the Louisiana Tax Commission hereby submits the following Family Impact Statement.

1. The Effect on the Stability of the Family. Implementation of these proposed Rules will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parent Regarding the Education and Supervision of Their Children. Implementation of these proposed Rules will have no effect