

Indigent Defense Organization
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GENERAL REQUIREMENTS FOR ALL ORGANIZED PROVIDERS
OF DEFENSE SERVICES TO INDIGENT DEFENDANTS

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PREAMBLE

The following General Requirements are promulgated by the Indigent Defense Organization Oversight Committee ("Oversight Committee") and were approved by the New York State Supreme Court Appellate Division, First Judicial Department on June 19, 1996 pursuant to §613.5 of the Rules of the Court (22 New York Codes, Rules and Regulations, Part 613). These General Requirements provide the standards and guidelines according to which the Oversight Committee plans to carry out its mandate to monitor and report on the performance and professional conduct of organizations assigned to represent indigent parties in criminal proceedings in the First Department and the lawyers in the employ of such organizations. Nothing contained herein is intended to create substantive rights or remedies in favor of any defense organization or any individual lawyer, employee or client of a defense organization or to supplant the responsibility of any disciplinary committee.

The General Requirements are divided into ten sections, each pertaining to a separate aspect of criminal defense organization performance and conduct. The sections generally consist of three parts:

A. A black-letter **Performance Standard** setting forth the basic requirement that every indigent defense organization is expected to meet.

B. A set of **Evaluation Criteria** that will be considered in order to determine whether the Performance Standard has been met. In some cases, these Evaluation Criteria are accompanied by **Specific Guidelines**, containing objective norms which, if not achieved, would create a rebuttable presumption that the defense organization has not met the Performance Standard. In such cases, the defense organization must demonstrate that it has adopted equivalent practices and procedures suitable to its particular structure and method of operation to ensure adherence to each of the Performance Standards.

C. Finally, a **Commentary** was added, where appropriate, to explain and clarify certain portions of the Performance Standards, Evaluation Criteria and Specific Guidelines. Paragraphs of the Commentary refer to the particular portion of the Performance Standards, Evaluation Criteria or Specific Guidelines to which the Commentary relates.

The principle underlying the drafting of these "General Requirements" is that defense organizations must provide quality representation to indigent criminal defendants. The standards for quality representation established by organizations such as the American Bar Association (ABA) and the National Legal Aid and Defender Association (NLADA), and similar specific guidelines adopted in other jurisdictions, were considered in the development of the "General Requirements."

I. Professional Independence

A. Performance Standard: In order to guarantee the integrity of the attorney-client relationship, defense organizations and the lawyers they employ should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as all other practicing lawyers.

B. Evaluation Criteria

1. Does the defense organization have an independent governing board which is charged, inter alia, with supporting and protecting the professional independence of the organization's lawyers?

Specific Guidelines:

(a) *The defense organization should be governed by a board comprised of members selected in a manner independent of political influence and judicial supervision.*

(b) *A majority of the governing board should be composed of lawyers admitted to practice in the State of New York.*

(c) *Membership of the governing board should not include judges, prosecutors, law-enforcement officials or representatives of city government.*

(d) *The governing board should be of sufficient size and diversity to reflect generally the racial, ethnic and gender composition of the community that the defense organization serves.*

2. Do the defense organization's contractual obligations to the City allow it to maintain independent professional judgment and to protect the attorney-client privilege?

3. Is the defense organization free to exercise its own professional judgment regarding:

(a) selection of lawyers to handle individual cases?

(b) strategic decisions and actions taken in individual cases?

(c) overall defense policy?

(d) the hiring and promoting of individual lawyers?

(e) establishing lawyer compensation levels sufficient to attract and keep qualified lawyers who can and will act independently?

C. Commentary

I.A: "Judicial supervision" refers to supervision by the judges presiding over specific cases, including administrative judges, but is not intended to circumscribe the appropriate supervision and oversight of indigent defense services by the Appellate Division.

I.B.2: To the extent that a defense organization's contractual obligations with the City of New York, such as reporting requirements and mechanisms for contract termination, may be used to control or influence the defense organization's professional judgment regarding defense policy or representation of particular clients, the contract may be considered.

I.B.3: Compensation levels sufficient to attract and keep qualified defense lawyers are an important aspect of professional independence. A Specific Guideline concerning compensation levels for defense lawyers appears in Evaluation Criteria II.B.2.g (infra, at p. 14).

II. Qualifications of Lawyers

A. Performance Standard: Lawyers employed by defense organizations should have sufficient qualifications and experience to enable them to render quality representation to their clients. Trial counsel should be able to provide quality representation throughout each case, from initial assignment through final judgment and any necessary post-judgment proceedings. Appellate counsel should be able to provide

quality representation from initial appointment through final determination on appeal.

B. Evaluation Criteria

1. Qualifications for Counsel

(a) General Criteria for Trial and Appellate Counsel

(i) Does the defense organization require all lawyers to be proficient in essential litigation skills, including:

(1) legal analysis;

(2) manual and computer-assisted legal research;

(3) persuasive writing;

(4) oral advocacy;

(5) communication with clients; and, as appropriate;

(6) the use of social service and investigative support services?

(ii) Does the defense organization require that its lawyers keep up-to-date on developments in criminal practice and procedure?

(b) Specific Criteria for Assignment of Trial Counsel to Particular Categories of Cases

(i) Misdemeanor Cases

(1) Does the defense organization require that all lawyers assigned to handle misdemeanor cases as lead or sole counsel have a minimum level of previous trial experience in the field of criminal law?

(2) Alternatively, does the defense organization require that all lawyers who do not have previous criminal litigation experience be trained in accordance with the Evaluation Criteria of Section III and supervised by experienced counsel at their initial court appearances and at their first misdemeanor trial?

Specific Guideline:

Each staff lawyer assigned by the defense organization to handle misdemeanor cases as lead or sole counsel must have appeared in court, either as lead or sole counsel or as co-counsel to an experienced criminal law practitioner, on at least five criminal cases within the previous three years, involving at least:

(ii) three negotiated pleas or other non-trial dispositions; and

(iii) one litigated motion in which oral testimony was taken and a decision was rendered; and

(iv) one trial that proceeded to verdict.

(ii) Felony Cases

(1) Does the defense organization require that all lawyers have a minimum level of previous trial experience, and evaluate the degree of seriousness and complexity of that prior experience, before certifying lawyers as qualified to handle felony cases?

(2) Alternatively, does the defense organization require that, in addition to being qualified to handle misdemeanor cases, lawyers have participated in a specified number of actual felony trials, where other counsel was lead counsel, during which they handled a significant portion of the trial responsibilities, before certifying them as qualified to handle felony cases?

(3) Does the defense organization require that lawyers conducting their first felony trial be supervised by more experienced counsel?

Specific Guidelines:

(a) *Each staff lawyer assigned by the defense organization to handle felony cases without supervision must have had court experience in at least thirty criminal cases during the previous five years, involving at least:*

(i) *fifteen negotiated pleas, dismissals, or other non-trial dispositions, at least five of which occurred post-indictment;*

(ii) *five hearings in which oral testimony was taken and a decision was rendered; and*

(iii) two post-indictment jury trials that proceeded to verdict in which the lawyer was lead counsel.

(b) Alternatively, each staff lawyer assigned by the defense organization to handle felony cases without supervision must have had court experience in at least ten criminal cases as lead or sole counsel and twenty non-criminal cases including at least five jury trials as lead or sole counsel. (a) In addition, any lawyer assigned to handle a felony case who has not previously handled a felony case must be supervised by a lawyer who has previously handled felony cases.

(iii) **Homicide Cases**

(1) If the defense organization is assigned homicide cases, in addition to requiring that lawyers meet all the requirements for handling felony cases, does it require additional experience, including prior experience examining expert witnesses, before certifying lawyers as qualified to handle homicide cases?

(2) Does the defense organization require that lawyers conducting their first homicide trial be supervised by a lawyer who has previously tried homicide cases as lead or sole counsel?

Specific Guideline:

Each staff lawyer assigned by the defense organization to handle homicide cases without supervision must have had actual court experience in at least sixty criminal cases during the previous five years, involving at least:

(i) thirty negotiated pleas, dismissals, or other non-trial dispositions, at least ten of which occurred post-indictment;

(ii) fifteen hearings in which oral testimony was taken and a decision was rendered;

(iii) five post-indictment jury trials that proceeded to verdict in which the lawyer was lead or sole counsel; and

(iv) cross-examination during trial of at least four of the following types of expert witnesses:

- police officers*
- undercover agents*
- medical experts*
- ballistic experts*
- laboratory technicians*
- psychiatrists or psychologists*
- fingerprint experts*
- serological experts.*

(c) Criteria for Appellate Counsel

(i) Does the defense organization require recent criminal appellate experience or a combination of criminal trial and appellate experience prior to certifying a lawyer as qualified to handle an appeal?

(ii) Alternatively, does the defense organization require that lawyers who possess no recent criminal law experience are sufficiently trained and closely supervised?

(iii) Does the defense organization ensure that appellate lawyers are able to identify appellate issues, pursue post-judgment relief, research the law, write persuasive briefs and motions and deliver persuasive oral arguments?

Specific Guidelines:

(a) *Lawyers briefing and arguing their own appellate cases should have experience in at least ten criminal cases, including writing at least five criminal appellate briefs and arguing at least five criminal appeals, the majority of which involved substantive, non-sentencing issues, within the previous three years.*

(b) *Before assigning an appellate case to a lawyer who does not have the requisite experience set forth in Specific Guideline (a), the defense organization should require the lawyer:*

(i) *to complete a comprehensive training program on substantive and procedural criminal law, as well as written and oral advocacy, provided by the defense organization itself or a recognized provider of continuing legal education;*

(ii) *to be supervised by an experienced lawyer who is familiar with the facts and issues in the case and who shall perform a detailed review of, and approve all substantive work performed by, that lawyer, until the lawyer satisfies the minimum experience requirements of Specific Guideline (a); and*

(iii) *to moot the arguments prior to appearing before the court.*

(d) Criteria for Supervising Lawyers

(i) Does the defense organization require that trial supervising lawyers meet all qualifications for trial lawyers who handle felony cases and have sufficient experience, temperament and capability to discharge supervisory responsibilities?

(ii) Does the defense organization require that appellate supervising lawyers meet all qualifications for appellate staff lawyers, that they have briefed and argued complex appeals, and that they have sufficient experience, temperament and capability to discharge supervisory responsibilities?

2. Recruitment and Hiring

(a) Does the defense organization maintain and publish hiring criteria designed to attract qualified applicants?

(b) Does the defense organization conduct a fair and active recruiting program, in conformity with the published hiring criteria, that endeavors to attract qualified lawyers and law graduates?

(c) Does the defense organization value commitment to public interest work and defense of indigents accused of crime in addition to standards of excellence, such as experience, law school grades, clerkships, writing samples and references?

(d) Does the defense organization's evaluation of applicants include assessment of interpersonal and management skills, including but not limited to:

(i) the ability to work with others;

(ii) the ability to be supervised; and

(iii) the ability to manage time so as to maintain professional standards?

(e) Does the recruitment and hiring process seek to achieve racial, ethnic and gender diversity?

(f) Does the recruitment and hiring process seek to attract sufficient numbers of lawyers who are capable of communicating with non-English speaking clients?

(g) Are lawyer compensation levels sufficient to attract and retain both supervising lawyers and staff lawyers who can and will discharge the responsibilities set forth above?

Specific Guideline:

Defense lawyers should receive total compensation packages, including fringe benefits, comparable to compensation packages paid to Assistant District Attorneys in the First Department who are of equal seniority, experience and level of responsibility.

C. Commentary

II.B.1.a: In determining whether a lawyer has the requisite qualifications to handle a specific case or category of cases, the defense organization should consider the lawyer's prior experience, training and qualitative proficiency. Proficiency should be measured by observation in court and by review of written submissions. The organization should determine the extent to which training and supervision complements or substitutes for experience. A defense organization may assign cases to lawyers who do not satisfy the experience requirements enumerated in the Evaluation Criteria so long as it ensures that the lawyers have been provided with sufficient training and are being given sufficient supervision to compensate for their lack of experience. Training can be provided by the defense organization itself, by a law school clinical program, or by a recognized provider of continuing legal education.

II.B.1.b: As a minimum requirement for conducting evidentiary hearings and trials, lawyers should have participated in advocacy programs in which participants simulate hearing and trial experiences and their performance is critiqued by experienced trial counsel. Such programs may be provided by a law school, a professional training institute, or the defense organization itself.

II.B.1.d: In determining whether an individual is qualified to supervise other lawyers, the defense organization should consider any prior teaching and/or training experience, either within the defense organization or elsewhere. It should also consider those intangible traits that mark a lawyer who is qualified to supervise others, such as judgment, patience, sensitivity to diversity and gender issues, and recognition of the importance of civility in relationships with courts, opposing counsel, clients and witnesses.

II.B.2: Effective recruitment and hiring standards and procedures are essential for attracting and retaining qualified lawyers. To emphasize this relationship, standards and criteria

governing the method and manner of recruiting and hiring lawyers have been placed in the section of these General Requirements regarding qualifications of lawyers.

II.B.2.g: The guideline that compensation packages of defense lawyers should be comparable to those of Assistant District Attorneys, does not require that the salaries and fringe benefits be exactly the same for each, but defense lawyers should not receive less total compensation than their peers in prosecutors' offices. Nor is the guideline intended to inhibit the ability of a defense organization to compensate its lawyers or any individual lawyer at higher levels.

III. Training

A. Performance Standard: All lawyers employed by defense organizations should receive initial training and continuing legal education sufficient to ensure that their skills and knowledge of criminal law and procedure enable them to provide quality representation.

B. Evaluation Criteria

1. Does the defense organization require all inexperienced lawyers to attend its own or outside training programs to acquaint them with all relevant aspects of criminal defense work, including substantive law, criminal procedure, collateral consequences of criminal convictions, ethics and professionalism?

2. Does the defense organization conduct internal seminars and workshops covering recent developments in criminal law and procedure and collateral consequences such as deportation and forfeiture?

3. Does the defense organization require trial lawyers to attend a trial advocacy course provided by the defense organization itself or a recognized provider of continuing legal education?

4. Does the defense organization require lawyers to attend an annual continuing legal education course regarding substantive and procedural issues provided by the defense organization itself or a recognized provider of continuing legal education?

5. Does the defense organization conduct moot courts for trial proceedings and appellate arguments?

6. Does the defense organization require supervising lawyers to attend training programs that teach supervisory skills?

7. Does the defense organization provide training or orientation programs for professionals providing support services?

8. Does the defense organization encourage its lawyers to participate in the criminal justice activities and programs of bar and defender associations and to share the benefits of such participation with the entire staff?

C. Commentary

III.B.1: Inexperienced lawyers should receive training in substantive and procedural criminal law, legal ethics, professionalism and specific skills such as efficient case management, oral advocacy, motion and brief writing, and client and community relations. Annual continuing legal education courses for all lawyers, including supervising lawyers, should focus on recent developments and current issues in all of these areas.

III.B.7 and 8: Non-lawyer professionals, such as paralegals, investigators and social workers, may not have experience in criminal defense work prior to being hired by the defense organization. For this reason, the defense organization should be sensitive to the need for orientation and training to familiarize such professionals with the nature of criminal defense work and the defense organization's obligations to its clients. For the same reason, non-lawyer professionals also should be given opportunities to attend continuing education programs and should be included in the defense organization's participation in professional activities.

IV. Supervision

A. **Performance Standard:** Quality representation requires that defense organizations provide adequate supervision on a continuing basis for lawyers and professionals providing support services, with the amount of supervision varying inversely to the experience of the persons supervised. Even a defense organization composed entirely of experienced professionals should provide supervision to monitor compliance with client needs and the requirements of the courts.

B. **Evaluation Criteria**

1. Does the defense organization maintain a satisfactory ratio of supervising lawyers to staff lawyers?

Specific Guideline:

The defense organization should provide at least one supervising lawyer for every ten staff lawyers.

2. Do supervising lawyers have both the time and authority to assume responsibility for:

- (a) assuring discharge of all duties to clients and the courts;
- (b) quality control;
- (c) troubleshooting;
- (d) on-the-job training; and
- (e) meaningful critique and evaluation of staff lawyers' performance?

Specific Guidelines:

- (a) *At a minimum, supervising lawyers should be available to:*
 - (i) *discuss cases, strategy and ethical considerations;*
 - (ii) *help prepare witnesses;*
 - (iii) *review written work prior to submission;*
 - (iv) *conduct simulated moot court oral advocacy sessions;*
 - (v) *accompany staff lawyers to court when necessary; and*
 - (vi) *provide critique, feedback and evaluation of staff lawyers' performance.*

(b) *Supervising lawyers should supervise staff lawyers' compliance with the case management and quality control requirements of Section VIII.*

1. Does the defense organization require that all lawyers with supervisory responsibility have their own caseloads that ensure maintenance of skills and knowledge, but are light enough to allow time for supervisory responsibilities?

2. Are law graduates and lawyers inexperienced in criminal defense work given intensive supervision?

3. Does the defense organization comply with the additional supervisory requirements of any applicable court-approved student practice order under which law students and recent law graduates provide legal services?

4. If the defense organization employs teams of lawyers with shared responsibility:

(a) is there an adequate mix of more and less experienced lawyers on each team?

(b) do the more experienced lawyers on the team have both the time and authority to discharge their supervisory responsibilities set forth in Evaluation Criterion IV.B.2 (supra, at p. 20).

5. Do trial defense organizations maintain a system for early, frequent and meaningful supervisory review of case files concerning at least the following:

(a) pre-indictment issues, including decisions pertaining to whether evidence should be presented to the grand jury;

(b) pre- or post-indictment plea bargaining opportunities;

(c) adequacy of factual investigation;

(d) timely filing of all indicated motions and notices;

(e) preparation of witnesses and the client;

(f) quality of legal arguments;

(g) trial strategy;

(h) preparation of direct and cross-examination, voir dire, opening statement and summation;

- (i) trial performance; and
- (j) post-conviction issues and sentencing?

6. Do appellate defender organizations maintain a system for early, frequent and meaningful supervisory review of case files concerning at least the following:

- (a) gathering and reviewing entire trial court record;
- (b) communication with trial counsel and the client;
- (c) identifying all potential appellate issues, including those raised by trial counsel or the client or that otherwise may not appear in the record;
- (d) conducting appropriate legal research;
- (e) filing post-judgment or appellate motions;
- (f) writing and editing motions and briefs;
- (g) preparing and presenting oral argument;
- (h) seeking further appeals in the event of an adverse decision by the Appellate Division;
- (i) briefing and arguing any further appeals?

Specific Guideline:

All appellate briefs, including those prepared by experienced lawyers, should be edited by an experienced colleague or a supervising lawyer.

7. Is there adequate supervision of professionals providing support services?

A. Commentary

IV.B.1: No single numerical formula can be valid for measuring the proper level of supervision for all times and for all places; less experienced lawyers necessarily require more intensive supervision than do more experienced lawyers. The minimum ratio of at least one supervising lawyer for every ten staff lawyers has been adopted, as an initial standard, recognizing that more supervision may be appropriate where the lawyers being supervised are primarily inexperienced.

IV.B.3: Supervisors can provide more sensitive and meaningful oversight and evaluation of staff lawyers if they also handle their own cases, so long as supervisors' caseloads are not so burdensome as to interfere with their supervisory duties. Permissible caseload maximums for supervising lawyers are addressed in Specific Guideline (c) to Evaluation Criterion V.B.2 (infra, at p. 25).

V. Workloads

A. **Performance Standard:** Lawyers and other professionals employed by defense organizations should maintain manageable workloads in order to permit them to render quality representation to each individual client.

B. **Evaluation Criteria**

1. Is there a system for weighting and assigning cases in order to apportion workload equitably among lawyers?

2. Are there established limits on the number of cases in each category assigned to each lawyer?

Specific Guidelines:

(a) *Individual trial lawyers should not be required to accept assignment in any one-year period of more than 150 felony cases or more than 400 misdemeanor cases, with the maximum number of misdemeanors proportionately reduced by the number of felonies assigned.*

(b) *Individual appellate lawyers should not be required to handle a caseload which exceeds 25 appeals in any one-year period.*

(c) *Individual supervising lawyers' personal caseloads should not exceed 10% of the maximum caseload, unless the ratio of staff lawyers to supervising lawyers is less than 10:1, in which case supervising lawyers' caseloads may be proportionally higher (e.g., 20% of the maximum caseload if the staff lawyer to supervising lawyer ratio is 5:1).*

3. Has the defense organization established objective limits on the number of cases that an individual trial lawyer has pending at any given time?

4. Are there procedures for reassigning cases to alleviate unanticipated increases in workloads that would exceed the workload limits set forth in Evaluation Criterion V.B.2?

5. Are there systems, limits and procedures to regulate the workloads of paralegals, investigators, social workers and other professionals?

6. Is there a contingency plan to alleviate an unanticipated increase in the defense organization's workload that would exceed its available resources?

C. Commentary

V.A: Neither defense organizations nor the individual lawyers and other professionals they employ should be assigned to carry workloads that, by reason of their excessive size, compromise the rendering of quality representation. Defense organizations should adopt effective mechanisms for weighting cases, *i.e.*, estimating the amount of attorney effort needed to bring a case to disposition considering the type of offense involved, the dispositional route followed and other factors that may affect the amount of attorney effort required in a particular case. Such weighting mechanisms should be used in apportioning workloads among lawyers and other professionals and managing unanticipated increases in workloads of individual lawyers, professionals and the defense organization as a whole.

V.B.1: The NLADA has developed and published systems for automated and manual information management and for calculating weighted caseloads. Defense organizations should adopt these, or comparable, systems in order to ensure that caseloads are fairly and rationally apportioned among lawyers.

V.B.2: No single numerical formula can be valid for measuring workloads for all times and for all places. Nevertheless, there must exist some measure by which it may be objectively, promptly and credibly demonstrated that a work peak or a work overload has been reached. The presumptive norm caseload maximums of 400 misdemeanors/150 felonies for trial lawyers and 25 appeals for appellate lawyers were adopted as an initial measure after careful consideration of alternative formulas. Defense organizations are not precluded from demonstrating, based on changes and differences in their practice or their operating methods, that different measurements are appropriate.

The formulas should be used as a measure of each lawyer's maximum workload. The formulas are not a measure of the workload each lawyer is expected to carry; nor are they a measure of the average per-lawyer workload the defense organization should be equipped to handle. Indeed, lawyers assigned to handle complex or protracted cases should carry significantly less than the maximum -- which also underscores the need for an effective case-weighting system.

Caseloads will be measured at intake to conform with the method of measuring the defense organizations' total caseloads under the October 1995 Request for Proposals (RFP). At the trial level, this formula would embrace cases assigned at arraignment, cases assigned by judges subsequent to arraignment and representations undertaken pursuant to Evaluation Criterion VIII.B.1.a (*infra*, at p. 37). Cases later transferred to other defenders or denied indigent representation after initial assignment due to the client's ability to pay also will be counted, while representation in separate trials on counts severed after assignment will count as only one case. At the appellate level, caseloads will be measured by the number of appeals assigned at any stage.

V.B.3: In addition to the annual maximums, defense organizations doing trial work also should establish formulas for determining the maximum number of cases each lawyer may have pending at one time. This formula should take into account the weighted differences among assigned cases, whether they are active or trial-ready, and variances in the skill and experience levels of individual lawyers.

V.B.5: Although there do not appear to be any existing caseload norms for professionals who provide support services - such as paralegals, investigators and social workers - quality representation requires defense organizations to establish specific workload maximums for such professionals.

VI. Evaluation, Promotion and Discipline

A. Performance Standard: Quality representation requires that defense organizations provide lawyers and other professionals with meaningful ongoing evaluation of their work according to objective criteria and maintain and fairly administer objective criteria for promotion and discipline or discharge.

B. Evaluation Criteria

1. Do lawyers receive regular evaluations of their work according to objective standards?

Specific Guideline:

Defense organizations should require lawyers to comply with, and should evaluate lawyers' work according to, published criteria that conform to objective standards, such as the NLADA's Performance Guidelines for Criminal Defense Representation (trial lawyers) or the ABA's Standards for Appellate Counsel (appellate lawyers).

2. Do lawyers receive evaluations frequently during their first year and at least annually thereafter?

Specific Guideline:

Supervising lawyers should evaluate the performance of staff lawyers for the purposes of training, promotion and/or discipline on at least a monthly basis, and conduct a formal evaluation session with each staff lawyer at least twice during the lawyer's first year and at least annually thereafter.

3. Does the defense organization make known any available opportunities, and have an established procedure governed by objective criteria, for promoting lawyers?

4. Does the defense organization take effective action with respect to lawyers who do not perform according to established standards?

5. Does the defense organization have procedures for rewarding individual lawyers for performing meritorious work or handling extraordinarily complex cases?

6. Does the defense organization have procedures for evaluating the quality of work performed by professionals providing support services and for communicating such evaluations within the defense organization?

C. Commentary

VI.B.1-5: Each defense organization's evaluation and promotion processes should be fair and rational. The evaluation of each employee's work should be expressly guided by reference to a set of detailed performance standards such as the NLADA or ABA guidelines.

VI.B.6: Even with fairly-administered systems of case-weighting and apportionment of workloads, there will nevertheless be extraordinary cases of such length and/or complexity that quality representation demands extraordinary time and effort. Such extraordinary effort should be rewarded by way of compensation or by alternative means.

VII. Support Services

A. Performance Standard: Quality criminal defense representation requires that lawyers be supported by adequate clerical and word-processing services and equipment, have access to an adequate and up-to-date library, and be able to call upon other professional services when necessary in individual cases.

B. Evaluation Criteria

1. Clerical

- (a) Are lawyers supported by a full-time clerical staff with adequate word-processing equipment?
- (b) Does the defense organization employ sufficient staff capable of communicating with non-English speaking clients?
- (c) Does the defense organization have adequate filing and information-retrieval services and equipment?
- (d) Does the defense organization employ competent information services management?
- (e) Does the defense organization provide adequate working space to each lawyer, including private offices for interviewing clients?
- (f) Does each lawyer have adequate access to a personal computer?

Specific Guideline:

Each defense organization's office should, at a minimum, contain telephones, computer equipment, facsimile facilities, adequate copying and mailing facilities and adequate working space for each lawyer, including private offices for interviewing clients.

1. Library

(a) Do lawyers have access to an up-to-date library, including computer-assisted legal research facilities?

(b) If the defense organization does not have its own on-site library, does it make available to its lawyers at their offices annotated statutes, practice treatises, manuals and periodicals covering substantive issues of criminal law and procedure that are updated on at least an annual basis?

(c) Does the defense organization maintain useful and easily accessible precedent files to avoid having to recreate recurring forms and motions?

(d) Does the defense organization circulate relevant appellate decisions on criminal law and procedure to its lawyers on a timely basis?

(e) Does each lawyer have ready access to the New York Law Journal?

2. Support Services

(a) Do lawyers have sufficient access, when client needs require, to the services of professionals necessary to provide quality representation at all stages of the case?

Specific Guideline:

Lawyers should have access, as client needs require, to paralegals, experienced investigators, psychiatrists, forensic pathologists, social and mental health providers, interpreters and other professionals.

(b) If supervisory approval is necessary for staff lawyers to obtain professional services, do adequate procedures exist to ensure a timely decision?

(c) Do lawyers and investigators have use of up-to-date audio and videotape recording, photographic and other investigative equipment to permit preservation of all needed evidence?

(d) Do appellate defense organizations employ sufficient paralegal staff to do the work of preparing records so that lawyers may devote their time to developing legal issues, writing briefs and arguing appeals?

(e) Does the defense organization have an effective procedure for recommending eligible clients for diversionary programs and alternatives to incarceration?

A. Commentary

VII.A: Quality representation requires that defense lawyers have access to not only those services and facilities needed for an effective defense at trial, but also those that are required for effective defense participation in every phase of the criminal process. VII.B.1.c and d: "Information-retrieval" refers to the methods and means by which the defense organization stores data and records and accesses information from its own records and from public sources. "Competent information services management" refers to the skilled personnel who design, implement and oversee the defense organizations' case management, filing and information storage and retrieval systems.

VII.B.2.a: Quality representation requires that lawyers have quick and easy access to the relevant laws, cases and rules applicable to criminal practice in the State of New York. For this reason, defense organizations should maintain adequate law libraries at each office. If the defense organization does not have a library, it should ensure that its lawyers can obtain all necessary legal materials from a fully-equipped law library near the defense organization's office.

VII.B.3.a: Lawyers should have access to the professional services of psychiatrists, forensic pathologists and other experts at all stages of the case, and should be able to rely upon such experts not only to serve as trial witnesses, but also to provide pre-trial analysis and advice. Quality representation requires that defense lawyers have the services of interpreters to assist in communicating with their non-English speaking clients and witnesses at all stages of the case.

VIII. Case Management and Quality Control

A. Performance Standard: Quality representation requires that defense organizations maintain adequate procedures for assuming responsibility for client matters when requested and for tracking and managing individual cases to ensure that quality is maintained at all stages and that all obligations to clients and the courts, including the obligation to identify, assess and counsel clients regarding the practical consequences of potential dispositions are met.

B. Evaluation Criteria

1. Case Management and Quality Control Criteria for Trial Organizations

(a) Does the defense organization provide representation, when requested, to clients who have been arrested but not charged, or who have been asked to participate in a criminal investigation that has focused on the client as a likely suspect, including but not limited to:

- (i) persons being questioned by the police;
- (ii) persons wishing to surrender to police;
- (iii) witnesses before the grand jury;
- (iv) persons asked to participate in a line-up or physical examination;
- (v) persons subject to a material witness order or contempt citation?

(b) Does the defense organization have an adequate procedure for coordinating with the courts regarding assignment of cases?

(c) Does the defense organization monitor cases to ensure that each client is represented at every court appearance?

(d) Is there an adequate system to ensure continuity of representation of each client by the same lawyer or team of lawyers, and alternative coverage in the event that an assigned lawyer is unable to appear, and are clients advised of that system at the outset?

(e) Does the defense organization meet each individual client's needs by ensuring that:

(i) each client is interviewed as soon as practicable, the nature of the representation is explained, and confidentiality is discussed?

(ii) each client is consulted on all major developments and tactical decisions?

(iii) a prompt and thorough factual investigation is conducted in each case and the client is thereafter kept informed of all developments in the case and given a candid estimate of the probable outcome, including identifiable practical consequences of potential dispositions?

(iv) any decision to plead guilty is fully informed and voluntary?

(v) a post-disposition strategy is designed to achieve the most favorable sentence, including non-incarcerative alternatives, that can reasonably be obtained under the facts and circumstances of the case?

(vi) the client is informed of the right to appeal from the judgment and from the sentence imposed?

(f) Does the defense organization have an adequate system to ensure that all speedy-trial and release dates and all motion, notice, discovery and post-conviction deadlines are met?

(g) Does the defense organization ensure that organized and accessible case files are kept on each case from inception, and that such files contain all court papers and other documents necessary for supervising lawyers to review for quality of representation and for assignment of alternative coverage as necessary?

(h) Does the defense organization ensure that its lawyers provide representation in accordance with objective performance standards for criminal defense representation?

Specific Guideline:

Defense organizations through their evaluation and promotion processes should require lawyers to comply with published criteria that conform to objective standards. (See Evaluation Criteria VI.B.1. (supra, at p. 30).

2. Case Management and Quality Control Criteria for Appellate Organizations

(a) Does the defense organization have adequate procedures for identifying and categorizing cases to ensure that more experienced lawyers are assigned to more complex cases and that lawyers with particular expertise, such as immigration law, are assigned or made available in cases presenting a need for such expertise?

(b) Does the defense organization have adequate procedures and sufficient data-processing capacity to ensure that it has the complete record, including periodic letters sent to responsible persons/entities requesting any necessary documents?

(c) Do appellate lawyers conduct informed consultation with each client regarding the issues to be raised on appeal or through post-judgment motions, including the practical consequence of appellate outcomes, as well as the viability of further appeals in the event of an adverse decision by the Appellate Court?

(d) Do appellate lawyers consult with trial counsel regarding potential appellate or post-judgment issues that may not appear in the record?

(e) Does the defense organization have adequate procedures to ensure that all appellate motion and briefing schedules are met and that appeals are prosecuted as expeditiously as possible, particularly when the client is incarcerated?

(f) Does the defense organization have adequate procedures to ensure that full consideration is given to filing reply briefs in appropriate cases?

(g) In addition to the documents required for trial defense organizations, does the appellate defense organization require that active case files contain the following:

(i) entire trial record;

(ii) factual summaries of interviews with trial counsel; and

(iii) appellate filings and orders?

(h) Does the defense organization adequately prepare lawyers for each oral argument?

3. Transition to Other Defenders

(a) Does the defense organization maintain adequate procedures for transferring cases, delivering case materials and shifting responsibility to other defense counsel when substitution is required.

(b) Does the defense organization maintain adequate procedures for transferring cases that have been removed to Family Court to the appropriate juvenile defender, including procedures for delivering case materials and shifting responsibility to the juvenile defender?

(c) Does each trial defense organization maintain adequate procedures for delivering case materials and shifting responsibility to the appellate defender?

(d) Does each appellate defense organization maintain adequate procedures for delivering case materials and shifting responsibility to the trial defender in the event of a reversal on appeal?

C. Commentary

VIII.B.1 and 2: Quality representation requires that defense organizations implement and adhere to a comprehensive case management and quality control system, which includes specific criminal defense performance guidelines. See Evaluation Criteria VI.B.1. (*supra*, at p. 30) Some aspects of case management are so central to quality representation that they have been incorporated into particular Evaluation Criteria. However, other, non-specified standards of case management and quality control are also important and should not be disregarded by defense organizations. The specific requirement that lawyers “identify, assess and counsel clients regarding the practical consequences of potential dispositions and communicate those to clients” was added in recognition of an enormous increase in the practical consequences of criminal dispositions aside from the possibility of incarceration. These include, but are not limited to, immigration consequences for clients who are not U.S. citizens, limitations on eligibility for housing and other governmental programs, limitations on employability, and others.

VIII.B.2.e: Quality representation requires that appeals be perfected on a timely basis. Appellate defense organizations should ensure that appeals are perfected within the time established by the courts, and that requests for expansions of time, particularly where the client is incarcerated, are made only in exceptional cases. Appellate defense organizations should also ensure that their lawyers take all possible measures to ensure that the record on appeal is compiled and filed on a timely basis, and that they do not delay filing the record on appeal in order to expand the time within which the appeal must be perfected.

IX. Compliance With Standards of Professional Responsibility

A. **Performance Standard:** Quality representation requires that defense organizations and the lawyers they employ adhere to all standards of professional responsibility.

B. **Evaluation Criteria**

1. Does the defense organization maintain adequate procedures and sufficient data-processing capacity for identifying and avoiding conflicts of interest?

Specific Guideline:

No defense organization should permit its lawyers to represent co-defendants in the same case or otherwise accept appointment to any case which potentially places the organization or any of its lawyers in danger of violating standards of professional responsibility.

2. Does the defense organization maintain adequate procedures for protecting attorney-client confidences and work product?

3. If the defense organization permits its lawyers to engage in legal work outside the scope of its contract with the City, does it maintain adequate procedures to ensure that:

(a) each lawyer's workload remains within the limitations established in Section V of these General Requirements, adjusted in proportion to the amount of legal work unrelated to the contract a particular lawyer accepts?

(b) legal work performed outside the contract does not adversely affect the quality of representation provided to indigent defendants under the aegis of the defense organization?

(c) no conflicts of interest exist between each lawyer's legal work unrelated to the contract and the interests of any client assigned to the defense organization?

Specific Guidelines:

(a) *The defense organization must ensure that its lawyers devote at least 80% of their time to work assigned under the defense organization's contract with the City.*

(b) *No lawyer employed by a defense organization may accept a non-contract representation which the defense organization, or any of its other lawyers, would be barred from accepting under these General Requirements, or the Code of Professional Responsibility.*

(c) *The defense organization must obtain and maintain sufficient information -- including at least the case caption, the names of parties, interested parties and relevant witnesses, the general nature of the case, its procedural history and the names of other participating counsel -- with respect to each case in which any of the defense organization's lawyers proposes to perform any legal work outside the contract to enable it to assess compliance with these General Requirements.*

1. Does the defense organization prohibit its lawyers from undertaking fee-generating representation of the defense organizations' clients or accepting any fee-generating matters arising from cases initially assigned under its contract with the City?

2. Does the defense organization prohibit referrals of present or former assigned clients to private lawyers?

3. Does the defense organization have adequate procedures to ensure that its lawyers do not otherwise abuse the attorney-client relationship to create fee-generating opportunities?

4. Does the defense organization have adequate procedures for receiving and responding to client complaints?

5. Does the defense organization maintain adequate procedures for identifying and resolving ethical issues?

6. Does the defense organization maintain adequate malpractice insurance coverage?

A. Commentary

IX.B.3-6: The October 1995 RFP contemplates that certain contracts between the City and particular defense organizations may permit lawyers employed by the defense organization to spend up to 20% of their professional time on legal work unrelated to the contract. Permitting legal practice beyond the scope of the

contract raises concerns for both quality of indigent representation and adherence to ethical requirements that the defense organization must address.

X. Reporting Obligations

A. **Performance Standard:** Without interfering with the provision of quality representation and without violating client confidences, defense organizations are required to report periodically to the City and to the Oversight Committee in order to permit each to discharge its responsibilities.

C. **Commentary**
Defense organizations must record and retain data sufficient to demonstrate its compliance with these General Requirements. In addition, defense organizations must submit to the Oversight Committee periodic reports to facilitate the evaluation of the organization's performance.