



*New York State  
Unified Court System  
25 Beaver Street  
New York, New York 10004*

*A. Gail Prudenti  
Chief Administrative Judge*

*212-428-2120*

## MEMORANDUM

December 12, 2012

TO: County Executives and  
County Administrators

FROM: Hon. A. Gail Prudenti

SUBJECT: Office of Conflict Defender

I write to advise you of an approaching deadline that could have a significant impact on the delivery of indigent defense services in counties currently operating an office of conflict defender.

As you may be aware, the Legislature amended County Law §722 in 2010, to set forth a new approval process for any county operating an office of conflict defender (L. 2010 ch 56, pt. E, §3, eff. June 22, 2010.) Among its provisions, that legislation permitted counties temporarily to continue use of conflict defender offices in operation as of March 31, 2010 – so long as each such county submitted an assigned counsel plan to my office within 180 days following the promulgation of criteria for the provision of conflict defender services by the Office of Indigent Legal Services (“ILS”).<sup>1</sup> ILS promulgated those standards effective July 1, 2012 (see “Standards and Criteria for the Provision of Mandated

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<sup>1</sup> County Law § 722(3)(c) provides: Any county operating an office of conflict defender, as described in subparagraph (ii) of paragraph (a) of this subdivision, as of March thirty-first, two thousand ten may continue to utilize the services provided by such office provided that the county submits a plan to the state administrator within one hundred eighty days after the promulgation of criteria for the provision of conflict defender services by the office of indigent legal services. The authority to operate such an office pursuant to this paragraph shall expire when the state administrator approves or disapproves such plan. Upon approval, the county is authorized to operate such office in accordance with paragraphs (a) and (b) of this subdivision.(emphasis supplied).

**Representation in Cases Involving a Conflict of Interest" [attached]). Consequently, the deadline for submitting a plan under the grandfather provision is **December 28, 2012.****

**Once a plan has been timely submitted, the county may continue use of its conflict defender office until my office has reviewed and approved or disapproved the proposed plan. As always, counties may amend their proposals after filing, in discussion with my office, to remedy deficiencies or otherwise improve the plan. But unless a filing is timely proffered, a county conflict defender office lacks authority to operate after December 28.**

**If you have any questions about this deadline – or more generally about your conflict defender office, assigned counsel plan, or the ILS standards – please feel free to contact Paul McDonnell of OCA Counsel's Office (212-428-2150), or ILS Counsel Joseph Wierschem (518-486-5717).**



Andrew M. Cuomo  
Governor

STATE OF NEW YORK  
**OFFICE OF INDIGENT LEGAL SERVICES**  
STATE CAPITOL, ROOM 254  
ALBANY, NEW YORK 12224

William J. Leahy  
Director

Joseph F. Wierschem  
Counsel

**Standards and Criteria for the Provision of Mandated Representation<sup>1</sup>**  
**in Cases Involving a Conflict of Interest.**

These standards and criteria are promulgated by the Office of Indigent Legal Services, in consultation with the Indigent Legal Services Board, in fulfillment of its responsibility under Executive Law Article 30 Section 832 (3) (d) to establish standards and criteria for the provision of legal services mandated and provided in each county pursuant to article 18-B of the County Law. They were approved by the Board on June 8, 2012, and they will be in effect as of July 1, 2012.

In further fulfillment of its responsibilities under Executive Law Article 30 §832 (3) (d), the Office of Indigent Legal Services will assist counties in developing plans that are consistent with these standards and criteria. These guidelines will also be employed by the Office of Court Administration in its consideration of conflict defender plans submitted by counties pursuant to County Law Article 18-B, §722 (3) (b) and (c).

***Counties must ensure, through their plans for providing public defense representation and other provisions, that attorneys and programs providing mandated legal services in conflict cases:***

1. Demonstrate a commitment to quality representation of every client and are free from political and other influences that erode the ability to provide quality representation. See *New York State Bar Association Revised Standards for Providing Mandated Representation (2010)* (hereinafter NYSBA Standards) A, Independence. The selection of the chief conflict defender and his or her staff shall be made solely on the basis of merit. See *NYSBA Standard A-2*.
2. Maintain, by practices that include the ability to decline or withdraw from cases, manageable workloads that ensure the capacity to provide quality representation. See *NYSBA Standards G-1 through G-6, Workloads*.
3. Have access to and use investigative services as needed to provide quality representation, without restriction to a particular type or level of case. See *NYSBA Standard H, Support Services/Resources*.

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<sup>1</sup>Mandated representation is defined as "Legal representation of any person financially unable to obtain counsel without substantial hardship who is (1) accused of an offense punishable by incarceration; (2) entitled to or is afforded representation under §249, §-262 or §1120 of the Family Court Act, Judiciary Law §35 including child custody and habeas corpus cases, Article 6-C of the Correction Law, §-407 of the Surrogate's Court Procedure Act, §-259-I of the Executive Law or §-717 of the County Law; or (3) otherwise entitled to counsel pursuant to constitutional, statutory or other authority. See *NYSBA Standards* at pp. 3-4.

4. Have access to and use as needed the assistance of experts in a variety of fields including mental health, medicine, science, forensics, social work, sentencing advocacy, interpretation/translation, and others. See *NYSBA Standard H, Support Services/Resources*.
5. Provide representation for every eligible person at the earliest possible time and begin advocating for every client without delay, including while client eligibility is being determined or verified. Provide continuous representation by the same attorney, unless the needs of the client require otherwise, in all relevant proceedings. Lawyers should have the time and resources needed to ensure that they:
  - a. Are present at arraignment or first appearance, or earlier when an individual has invoked a constitutional or statutory right to counsel in an investigatory stage of a case, and at every stage thereafter, and in all other proceedings for which a right to counsel exists;
  - b. Interview the client as soon as possible, and in a setting in which client confidentiality can be maintained and a client/attorney relationship can be established;
  - c. Review initial charging documents or petitions as soon as possible, and challenge inadequacies in documents and proceedings unless doing so would harm the client;
  - d. Zealously advocate for pretrial release and/or diversion and for dismissal of proceedings whenever warranted;
  - e. Aggressively pursue discovery in individual cases and seek to secure improved policies for the timely disclosure of information to which their clients are entitled; and
  - f. Immediately begin preparations for trial and sentencing/disposition.

See *NYSBA Standards B, Early Entry of Representation and I, Performance*.

6. Have the ability to spend sufficient time with clients to establish a meaningful client/attorney relationship; to communicate with family or friends of the client and with professionals and service providers; to inform the client regularly as to the progress of the case; to provide copies of documents prepared or received by the attorney; and to provide the client with the opportunity to make an intelligent and informed decision where a decision is to be made by the client.

See *NYSBA Standard I-3, General Performance Standards*.

7. Operate under quality control procedures that:

- a. require meaningful attorney qualifications for representing public defense clients and match attorneys' ability, training, and experience to the complexity of clients' cases;
- b. provide for meaningful, periodic and ongoing evaluation of the work of attorneys and others according to objective criteria;
- c. include mechanisms for obtaining, evaluating, and responding to comments and complaints from clients and the client community to improve the quality of services; and
- d. require entry-level and continuing training relevant to the types of cases in which mandated representation is offered.

See *NYSBA Standards* E, Qualification of Counsel; F, Training; J, Quality Assurance.

8. Investigate potential consequences that can arise from cases, advise each client about those consequences, and advocate for case dispositions that limit negative consequences as much as possible. See *NYSBA Standards* I, General Performance Standards at I-7 (e) (iv) and (v) (Criminal Matters), I-9 (e) (Abuse and Neglect Matters).

9. Provide well-prepared sentencing advocacy in criminal cases, including cases in which a plea bargain exists, and well-prepared dispositional advocacy in parent representation cases. See *NYSBA Standards* I, General Performance Standards at I-7 (h) (Criminal Matters) and I-9 (a) (Abuse and Neglect Matters).

10. Have and use adequate resources and procedures to:

- a. maintain appropriate law office facilities, including research capability, data collection and evaluation, means by which incarcerated clients may have confidential communication with counsel, and systems for quality control and other management responsibilities, including case management systems;
- b. receive or provide compensation commensurate with that of opposing counsel and opposing counsel's office; and
- c. seek additional resources whenever client needs require.

See *NYSBA Standards* H, Support Services/Resources and K, Compensation.

Note: These standards and criteria apply to representation at the trial court level. Standards for appellate and post-conviction representation will be published at a later date.