LACK OF ENFORCEABLE STANDARDS

The concept of using standards to address quality concerns is not unique to the field of indigent defense. In fact, the strong pressures of favoritism, partisanship, and/or profits on public officials underscore the need for standards to assure the fundamental quality in all facets of government. Realizing that standards are necessary to compare bids equitably and to assure quality products, policy-makers long ago standardized bid procedures, ceased taking the lowest offer to build a hospital, school or a bridge, and required winning contractors to meet minimum quality standards of safety.

With proper evaluation procedures, standards help to ensure professionals' compliance with national norms of quality in areas where the government policy-makers themselves may lack expertise. In the field of indigent defense, standards-based assessments have become the recognized norm for guaranteeing the adequacy of criminal defense services provided to the poor.

In February 2002, the American Bar Association adopted a set of 10 principles, which “constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.” The purpose of the Ten Principles of a Public Defense Delivery System is to distill the existing voluminous national standards for indigent defense systems down to their most basic elements into a succinct form that busy officials and policymakers can readily review and apply.

Few states meet the majority of the Ten Principles – let alone all ten.

Continuing the Louisiana Story – A Further Case Study

The combination of underfunding and a lack of judicial independence in Louisiana has produced an indigent defense system that is beyond the point of crisis and near collapse. Based on a review of Louisiana statutes, recent reports by other reputable organizations, and firsthand courtroom observations, NLADA has created an easy-to-reference scorecard (below) regarding the extent to which the indigent defense system in Louisiana fails to meet the vast majority of the Ten Principles:

<table>
<thead>
<tr>
<th>ABA Principle</th>
<th>Explanation</th>
<th>Grade</th>
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<tbody>
<tr>
<td>1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.</td>
<td>Louisiana Statutes do not safeguard against undue judicial interference. Judges appoint IDB board members in direct violation of this principle.</td>
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<td>2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.</td>
<td>Instead of creating public defender offices in those jurisdictions where high caseloads warrant such a model, Louisiana’s judicial districts have instead closed public defender offices in favor of flat-fee contract systems. The indigent defense system is not entirely state-funded, as directed in this Principle’s subsection.</td>
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</table>
ABA Principle

3. **Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.**

**Explanation**

As demonstrated in Avoyelles Parish, clients are not screened for eligibility. Counsel is not appointed in a timely manner. Clients are not appointed counsel in the early stages of a case. Statutory guarantees of a “speedy trial” are not effective in practice. Under Louisiana Statutes, a defense lawyer must stipulate on the record that he or she is prepared to go to trial when filing a speedy trial motion. Since most are effectively just beginning the case when the motion can be filed, the lawyer cannot do so and often waives the right to a speedy trial.

**Grade**

F

4. **Defense counsel is provided sufficient time and a confidential space with which to meet with the client.**

**Explanation**

There are no provisions in Louisiana statutes safeguarding confidentiality. Substantive conversations on felony cases between clients and attorneys in Avoyelles Parish were conducted in the open courtroom audible to the courtroom audience and staff. The Avoyelles Parish Sheriff owns and operates the jail phone system, and we were told that it cost $5.00 to place a collect call from the jail plus long distance rates for the entirety of the conversation. This policy has forced the contract lawyers to set a policy that no collect calls from the jail be accepted due to the financial limitations of their contracts.

**Grade**

F

5. **Defense counsel’s workload is controlled to permit the rendering of quality representation.**

**Explanation**

Louisiana statutes do not safeguard against public defender overload. Failure to control caseload permits poor quality representation. One Avoyelles Parish contract attorney handles the workload equivalency of 6.3 full-time attorneys while only working part-time. Assuming a 1,387 hour work year, clients facing felony charges are afforded, on average, approximately two hours apiece of this attorney’s time, **including those charged with capital offenses.**

**Grade**

F

6. **Defense counsel’s ability, training, and experience match the complexity of the case.**

**Explanation**

Louisiana statutes do not safeguard against unqualified attorneys being appointed to indigent defense cases. For example, the Avoyelles Parish IDB recently hired an attorney with no trial-level experience to handle all juvenile and misdemeanor cases. In doing so, the lives of poor people have become a “practice” forum for the recent law school graduate to learn through the process of “sink or swim.” At-risk juveniles require special attention from public defenders if there is hope to change behavior and prevent escalating behavioral problems that increase the risk that they will eventually be brought into the adult criminal justice system in later years. There is no systematic indigent defense training in the state.

**Grade**

F
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<td>7. The same attorney continuously represents the client until completion of the case.</td>
<td>In Avoyelles Parish, the first attorney assigned to a felony case does nothing substantial prior to arraignment and has no responsibility for the case post-arraignment. Thus, nothing that would help the client (investigation, psychiatric exams, drug-treatment placement) occurs until his second attorney receives the case. This is usually on the eve of preliminary hearings or pre-trial settlement conferences– several months later.</td>
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<td>8. There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.</td>
<td>Indigent defense is not a co-equal partner in the justice system in Louisiana. On average, Louisiana prosecutors outspent their indigent defense counterparts by nearly 3 to 1. This does not take into account the amount of investigative resources provided at no cost to the prosecution by police, sheriffs, or FBI but which the indigent defense system must pay for directly. At the close of 2002, Louisiana district attorneys collectively had over $38 million in unused revenue in reserve accounts.</td>
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<td>9. Defense counsel is provided with and required to attend continuing legal education.</td>
<td>All attorneys are required to attend continuing legal education in Louisiana. In violation of this Principle’s subsection, the general training is not specifically appropriate to the indigent defense field. Indigent defense training is not equal to the prosecutor training.</td>
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<td>10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.</td>
<td>Louisiana statutes provide no guarantee that indigent defense attorneys be reviewed for quality. There is no supervision or quality review of the indigent defense system.</td>
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1 The Rules of the Supreme Court of Louisiana require all attorneys to complete 12.5 hours of continuing legal education (CLE) annually. At least one hour each must be devoted to ethics and legal professionalism.