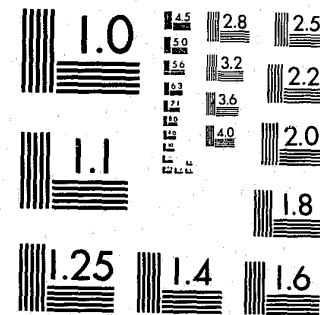


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How does
your Defender
Office rate?

Self-Evaluation Manual
for Public Defender Offices



National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice



How does your Defender Office rate? Self-Evaluation Manual for Public Defender Offices


By Roberta Rovner-Pieczenik
Alan Rapoport
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FOREWORD

The federal legal services program, established a short decade ago, has constituted the very core of the legal assistance movement. It has been an important catalyst, leading to the growth of the use of paraprofessionals, and legal assistance to indigents (civil and defender), to servicemen, and to the near-poor. It has provided impetus for the development of public interest law practice and clinical legal education. In short, the movement toward equal access to our justice system embraces a wide range of legal activity and has gained enormous, indeed, irresistible momentum over the last decade.

Until 1963 and Gideon v. Wainwright, our adversary system of justice provided no systematic, constitutionally guaranteed legal assistance to the poor in either civil or criminal cases. We relied exclusively upon the voluntary efforts of the private bar, the United Funds and dedicated individuals to provide "free" legal services and to nurture the concept of legal assistance to the indigent.

The legal assistance movement, however, began long before 1963. The conscience of this nation began to awaken to the injustices of denial of access to our justice system in the 50's and early 60's as a direct result of the civil rights movement. We began, as a nation, to awaken to the need for social change; the need to begin to implement those principles of freedom so pragmatically expressed in the writings of Thomas Jefferson and James Madison. We have begun to understand that the establishment of justice is our great purpose as a nation and that the principles enumerated in the Bill of Rights must be implemented on behalf of all persons and all segments of our society.

Five years ago, in early 1971, the National Legal Aid and Defender Association (NALDA) began to spearhead the move toward the creation of a national legal services corporation which would insure for the poor of our nation independent legal assistance of the highest quality. In 1975 this goal was finally realized. At the same time that NLADA began its work to establish an entity for the institutionalization of legal assistance on the civil side, it began to intensify its efforts toward awakening the nation to the importance of providing high quality services for the indigent accused.

The Law Enforcement Assistance Administration (LEAA) had, at that time, only recently become operational. Its enabling legislation spoke primarily to the question of crime reduction and more efficient law enforcement techniques. While there was some awareness of the role courts played in our criminal justice system, very little priority was given to this area. Defense services, an integral part of our justice system, was given even less attention. NLADA, therefore, initiated a program of educating the nation to the need for legal representation on the Defender side, in accordance with the mandates of

Gideon v. Wainwright and Argersinger v. Hamlin. And, over the last five years, NLADA, LEAA and other organizations working together have made great strides toward expanding and enhancing the quality of defender services throughout the nation. The Defender Evaluation Project classically illustrates the success of these cooperative efforts.

This study, the first of its kind, coupled with a most creative self-evaluation design, is destined to play an extraordinarily important role in our efforts to upgrade the quality and quantity of justice to the indigent accused.

The entire legal assistance movement is indebted to the project and its staff for this important contribution. For, it shall form the backdrop for the next five years of progress.

Frank Jones, Executive Director
National Legal Aid and Defender Association

Ongoing dialogue with Marshall Hartman and Nancy Goldberg, Director and Deputy Director, respectively, of the Defender Division of the National Legal Aid and Defender Association continually questioned the project's objectives and directions to stimulate staff thinking. Discussions with the staff of the National Center for Defense Management, William Higham, Gustav Goldberger, and Prescott Eaton provided additional perspectives for DEP to consider. Cheryl Martorana and Voncile Gowdy, both following and monitoring the grant for the Law Enforcement Assistance Administration of the U.S. Department of Justice, were always accessible, supportive and helpful.

Lastly, and most importantly, go my special thanks to a very hardworking DEP staff: Alan Rapoport, Martha Lane, Kathy Bradt and Kate Lenski. Working as a team they shared complementary skills they often didn't realize they possessed until called into use; we all learned in the process. The self-evaluation manual reflects the best they had, and a project filled with their cheerfulness and dedication to work. Melvin Keebaugh has earned my lasting gratitude for the awesome task of typing the final manuscript.

ROBERTA ROVNER-PIECZENIK, Ph.D.
Director, Defender Evaluation Project
June 30, 1976

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An increasing crime rate, and Supreme Court decisions such as Gideon v. Wainwright, 372 U.S. 335 (1963) and Argersinger v. Hamlin, 407 U.S. 25 (1972), have resulted in the creation of new defender offices around the country and the expansion of responsibilities in existing ones. Higher workloads, however, are seldom accompanied by commensurate funding. Defender services are often viewed by cost-conscious local governments as a necessary evil forced upon them by Supreme Court decisions, with quality of representation frequently a secondary consideration. It is imperative, therefore, that each defender office maximize its capability to provide representation which is effective as well as efficient.

A Self-Evaluation Manual is an instrument which allows a defender to assess for him/herself the quality of representation his/her office is providing its clients, by comparing office performance against performance expectations established by the profession. The performance expectations which appear in this Manual are synthesized from the (a) National Advisory Commission on Criminal Justice Standards and Goals Reports of the Law Enforcement Assistance Administration, U.S. Department of Justice (NAC); (b) the American Bar Association Project on Minimum Standards for Criminal Justice (ABA); (c) the National Legal Aid and Defender Association Proposed Draft Standards (NLADA); and (d) the National Study Commission on Defense Services (NLADA). Defenders around the country reviewed the first draft of the manual; their suggestions are incorporated in the present volume.

This Manual is primarily intended for use by the chief defender or administrative officer who desires to evaluate the quality of client representation given by the office, as well as some of its management functions. It has been constructed to:

1. Highlight important defender issues;
2. Specify those activities against which an office's performance should be evaluated;
3. Provide a method by which an office can determine whether it is operating according to expected levels of performance; and
4. Suggest a general approach to office improvement.

The Manual is written from the perspective that a defender office should provide its clients with the same high quality representation that is available to the affluent individual who retains private counsel. It also adopts the belief that defender offices have an obligation to ensure that any individual in their jurisdiction who faces the possibility of government-imposed loss of liberty will do so with competent and zealous legal counsel at his/her side. If the defender cannot provide this service, s/he should take steps to see that someone else does.

A Self-Evaluation Manual differs markedly from a technical assistance handbook, and the two should not be confused. While the Self-Evaluation Manual is primarily a diagnostic tool, the technical assistance handbook provides detailed solutions for specific problems which have already been diagnosed to exist in a particular defender office.

USING THE SELF-EVALUATION MANUAL

The Self-Evaluation Manual which follows consists of a series of 14 topics on which a defender office can evaluate itself. The format for each topic is similar: a) a series of questions upon which an office should assess its performance; b) suggestions for planning a reorganization of the office if it does not appear to meet the professional standards implicit in the questions; and c) methods of ascertaining the answers to questions for which data are not readily available.

Each section begins with the major Topic/Question against which to evaluate the office, and a short commentary which outlines the manual's perspective on that topic. This is followed by a short set of questions, color-coded for visual ease, which should be answered by the Chief Defender or administrative officer. Questions which are not applicable to the operation of your office should be omitted.

- When the answers to all questions under any topic are Yes, the defender office is providing the kind of representation expected of it. The evaluator should continue to the next set of questions after briefly reviewing the ensuing pages to see if any of the suggestions offered can further improve office operations.
- If the answer to any question is No, the defender office is not giving the kind of services and representation expected of it. The "Suggestions for Organizing the Office" section offers a few management-oriented techniques to help the office meet expected performance criteria. This entire section should be reviewed.

- If the answer to any question is Uncertain, the defender office is lacking important information about its own operations. The "Making Certain" section offers simple suggestions for obtaining needed information.

At the end of the 14 topics are copies of pertinent standards and recommendations of: the American Bar Association Standards for Criminal Justice; the National Advisory Commission of the LEAA, U.S. Department of Justice; and the National Legal Aid and Defenders Association National Study Commission on Defense Services. These are provided for your information. The order in which the topics appear is not related to their priority of importance. In addition, some of the topics overlap and have been separated purely for organizational purposes.

There is little doubt that many defender problems do not lie with the defenders; power, politics and finances can always be counted on as causes of or solutions for what on the surface appear to be defender problems. The best effort by the defender -- litigation, appearances before the legislature, work with community groups -- do not always counteract these forces. Although this manual recognizes the panoply of problems facing the defender, the suggestions it contains also embody the notion that marginal representation due to these problems cannot be tolerated.

Disagreements remain in the defender world about what the defender's obligations are to his/her clients in a given community. This Manual avoids many of these disputed issues to, more constructively, concentrate on areas of general agreement. Suggestions contained in this Manual which pertain to office reorganization will appear impractical to some defenders and overly general to others. To the former group of critics it should be pointed out that marginal representation, whether because of limited resources, overworked defenders or understaffed offices, is not acceptable and that attempts should continue to rectify such situations. To the latter group of critics it should be admitted that the suggestions offered are often general; this was a choice which seemed compatible with the Manual's national audience, and in keeping with what is self-evaluation rather than technical assistance. Unfortunately, one Manual cannot be all things to all offices. As presently constructed, the Manual attempts to be an evaluation tool which will serve the majority of offices and needs.

The discussion which follows provides some general pointers on good management. The fourteen topics which follow this discussion comprise the body of the self-evaluation approach.

MANAGING A DEFENDER OFFICE

Management may be defined as the process of achieving desired results by organizing the efforts and tasks of individuals within an office/organization. Sound management undertakes several activities:

1. Planning - the process of establishing goals, and specifying the steps needed for their accomplishment.
2. Organization - the development of an organizational structure to accomplish the goals established;
3. Administration - the activities associated with integrating the efforts of individuals so that assigned tasks are performed and goals met; and,
4. Control - the process of checking whether progress is being made toward the established goals within the established time frame.

Planning

The planning function of management provides an "operational blueprint", enabling people both inside and outside the organization to anticipate the organization's performance. It aids, as well, in the integration and coordination of an organization's activities, allowing the office to operate smoothly and efficiently. The planning process in a Defender Office can be divided into the following five stages:

1. Assessing the situation. Analyzing past defender office performance, and the reasons for successes and failures, is an essential part of the planning process. For example, budget planning requires the office administrator to review the last few years' budgets and analyze trends which can help him/her determine the office's future financial needs; personnel planning requires that attorneys delve into the number and type of arrests in the community and criminal cases assigned to the office to develop crime trends and project office staff needs. Two types of variables must be considered when forecasting needs: external needs which influence defender operations, including technological change (e.g. new office equipment), legal change (e.g. increased defender responsibilities), political change (e.g. community sentiment); and, internal factors which influence defender operations, including the success of the current "game plan", or the efficiency of the present organization of the office.

2. Setting goals. After assessing the office's progress to date, and pinpointing those external and internal variables which are likely to be of future consequence, the office should determine its goals. These goals must be realistic, compatible with one another, and in line with an office's basic philosophy of providing competent and zealous legal representation to the indigent with maximum effectiveness and efficiency. Goals should be written down, and stated in as clear and precise language as possible. This enables an office to measure whether or not specific goals have been accomplished. Examples of goals established by a defender office could include: establishing a defender training program; hiring new attorneys to handle increased caseload; or, maintaining records of all client complaints on jail cruelty for possible legal action.
3. Developing strategies. An office must consider the steps necessary to accomplish a set goal. It is important to include the staff in this process, as well as soliciting ideas from involved community groups. Once various alternatives have been considered, the best strategy is selected. Again, it is important to put into writing the stages involved in reaching a set goal. To illustrate: an office which established the development of a defender training program as one goal might: a) assign an individual to head the program; b) investigate training programs in existence in other offices; c) develop an in-house training course outline for new attorneys on specific topics such as trial procedure and plea bargaining; and d) require new attorneys to be trained internally prior to accepting trial responsibilities.
4. Establishment of a time table. It is important to estimate the time it should take to accomplish each stage in the strategy developed for reaching a goal. In the training program example above, the individual heading the program might be selected within a set period (e.g. two weeks); the investigation of other training programs might involve a two month effort; development of the course outline can take two months. In short, the office might plan to have the capability to train new attorneys approximately 4-1/2 months after the strategy is implemented.
5. Budgeting resources. To ensure implementation of set goals, a suitable amount of money must be set aside. Realization of the training program, for example, might need an additional appropriation in the next fiscal year, or it may only require a redeployment of personnel time and effort.

Planning should become an integral part of an office's activities, to be repeated on a regular basis. As previously established goals are achieved -- or deemed unrealistic -- new goals should be set and former goals revised.

Organization

A good organizational structure assures that different divisions of work will knit together into integrated, purposeful action to accomplish objectives established during the planning stage. Each employee should be aware of his/her duties and responsibilities, working relationships with others in the office, and range of authority.

1. Integration of activity. Job positions should be clearly defined, and each employee fully aware of the extent of his/her duties. An individual should be responsible to only one other individual (e.g. supervisor), and each supervisor responsible only for the number of individuals whom s/he can adequately supervise. Relationships among various individuals in an office should be clear. Each employee should be kept aware of decisions made which affect everyone in the office.
2. Specialization. While specialization in a small office may not be appropriate, in a larger office specialized groupings may be of personnel by function (e.g. juvenile court, adult court) necessary for efficient performance. The manner in which a given defender office specializes its personnel will depend on several variables, including number and types of functions performed, caseloads, type of cases handled, and number of offices involved.

Organization, then, shapes the structure of an office to best fit its responsibilities.

Administration

Administration involves the selection and motivation of employees who will ultimately be responsible for the implementation and success of established office goals. Effective administration includes: the careful screening of potential employees; orientation and training of new employees; establishment of clearly specified duties for each employee; delegation of authority to capable individuals; supervision of employee work; and, dissemination of communications which relate to the office.

1. Leadership. Each administrator has his/her own personal style. No one style can be labeled "best".

Three major styles are frequently used: autocratic, democratic, and laissez-faire. An autocratic leader is one who orders personnel to accomplish objectives as s/he deems fit. There is minimal, if any, participation in planning and control on the part of subordinates. Democratic (or participative) leadership, on the other hand, allows all personnel to participate in determining goals and strategies. Laissez-faire leadership, almost a contradiction in terms, allows each employee to function with little or no supervision. A manager may change his/her leadership style in order to meet the needs of the moment.

2. Staffing. Staffing involves manpower planning, authorization for staffing, developing sources of applicants, applicant evaluation, employment decisions and offers, induction and orientation, training, assimilation, transfer, demotions, promotions, and separations.
3. Delegation of authority and supervision. Once duties are assigned to a manager, s/he in turn redelegates some of these tasks to subordinates. In order to ensure that tasks have been assigned wisely, and that work is being performed competently, the administrator must supervise employees. Use of monthly reports and regular staff meetings are aids to effective supervision.
4. Communication. Formal channels of communication should be known and used in the office. Employees should be aware of matters pertaining to discipline, layoffs, transfers, promotion, privileges, work schedules, and wages, and should feel free to ask questions or make suggestions to their supervisors regarding office policies and procedures.
5. Appraisal and equity. Salary rates should be established for the entire office after assessing competitive salary levels in the criminal justice community and considering the money available for salaries. Systematic evaluation of personnel should occur. Rewards and penalties should be awarded personnel in proportion to contribution to the office. Employees expect, and should receive, treatment based on policies and rules which are applicable to the entire office.

Administration, then, is an aspect of management which deals directly with people. It calls for the delegation of responsibilities and holds those individuals accountable to accomplish office goals.

Control

"Control" is the means by which an office evaluates its progress toward established goals. This involves a regular and systematic review of information to detect trends and problems as they emerge so that corrective action can be taken when needed. When goals are initially determined during the planning stage, methods of measuring progress should be developed to ensure a successful program. At this time the office may institute a "check system" whereby it can assess whether employees know what to do, when and how to do it, and how to report it. This "measuring" of office and employee performance may be either subjective or objective. Objective checks might include determining the amount of time spent by an attorney when compared with the original estimate, or the amount of money being spent by the office to achieve a goal when compared with the original estimate. Subjective checks could include an increase or decrease in positive or negative feedback from clients, community, criminal justice personnel, and office staff. Depending on the information gained by these methods, the office will be able to measure progress toward its goals and take any needed corrective action.

TOPIC: AVAILABILITY/IMMEDIACY

QUESTION: Are you giving early representation to potential clients?

COMMENTARY

The Objective of "availability" is primarily designed to ensure that where circumstances exist which would warrant an affluent individual to consult with an attorney in a criminal matter, the poor person will likewise be able to consult with the public defender. Implicit in the concept of availability is the question of early representation. It is well known among participants in the criminal justice system that the assistance of counsel in the first few hours after arrest is crucial to effective representation, particularly if interrogation takes place. (Escobedo v. Illinois, 378 U.S. 478, 1964). Statements made at this time by the client without legal counsel may make it difficult or impossible for the attorney to provide effective assistance under the 6th Amendment to the U.S. Constitution.

Current data indicate that most defender clients are in contact with an attorney within 72 hours after arrest but rarely within three or four hours. Limitations beyond the direct and immediate control of the local defender often exist which make early representation difficult. It is the responsibility of the defender, however, to take the steps necessary to correct any situation which denies the poor client early access to an attorney.

TOPIC: AVAILABILITY/IMMEDIACY

QUESTION: Are you giving early representation to potential clients?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Are you available to potential clients prior to arrest?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Are you available to potential clients prior to interrogation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Are you available to potential clients at first court appearance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Are you available to potential clients at line-ups?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are you available to represent potential clients at probable cause hearings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is the community aware of the existence and nature of your services?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Is your location accessible to clients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Do you provide representation to your clients as early as that given clients of the private attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Have defendants who are self-represented been overlooked by your office?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Do written office policies/procedures exist on defender availability to clients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are office policies/procedures on defender availability followed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: AVAILABILITY/IMMEDIACY

If you have responded
"Uncertain" to Question:

- 7 THEN Determine the percentage of client contact for those out on bail which is done via the telephone and office/home visits. Ask yourself whether the percentage of office/home visits would be increased if the location of the defender office were more accessible. Poll your present clients about their feelings on office accessibility. Draw a map of the community which pinpoints the residential areas of the client population and criminal courts to help you determine the appropriateness of your location to both clients and courts.
- 8 THEN Ask local attorneys who have a large criminal practice to estimate the percentage of their criminal accused clients who contacted them: (a) prior to arrest; (b) at arrest; (c) at first court appearance; and, (d) at the probable cause hearing. These statistics should be compared with those developed for your own office (see 1, 3, 5 above).
- 9 THEN Check the local jail each week for a month to determine: (a) the number of inmates who are unrepresented; (b) the length of time they have been in jail; and (c) whether they desire a defender attorney. Check the court docket each week for a month to determine: (a) the number of people who appear unrepresented; and (b) the reasons why.
- 10,11 THEN Review existing policy statements on defender availability for their comprehensiveness, clarity and precision. Determine whether specified procedures exist which follow these policies and whether appropriate manpower and resources have been deployed. Then question relevant staff on (a) their understanding of what the policies are, and (b) the role each employee plays in implementing these policies. Ask each employee to outline his/her mode of operation in typical cases. If written procedures/policies do not exist, consider their addition to your office manual.

MAKING CERTAIN ABOUT: AVAILABILITY/IMMEDIACY

If you have responded
"Uncertain" to Question:

- 1,3,5 THEN Review all cases opened during any recent month to determine the stage at which your office made contact with each client or potential client, either directly or through friends or family. Tabulate whether individuals contacted the defender office, or were contacted: (a) prior to arrest; (b) following arrest; (c) at first court appearance; and, (d) at the probable cause hearing. If this information cannot be gathered from your files, a review of your record keeping system is in order.
- 2 THEN Review all cases opened during any recent month to determine the percentage of cases in which evidence derived from police/prosecutor interrogation of your client has been (or is being) used against him/her. If the percentage is substantial, it may indicate a lack of early availability. If this information cannot be gathered from your files, a review of your record keeping system is appropriate.
- 4 THEN Review all cases opened during any recent month to determine whether an attorney was present during line-ups in which your clients participated. If this information is not present in your files, police records should be checked. If this information is not available anywhere, an addition to your records is suggested.
- 6 THEN For a period of one month, ask each new contact (i.e. client, potential client, family or friend representative) how s/he learned about the defender. Poll a variety of groups - high school, church, manpower agency, community organizations - to determine what their constituents would do if they desired to speak with or use a criminal defense attorney. Ask yourself: (a) what, if any effort you have made to make the community aware of your services -- television and radio "spots" and programs, brochures, cards, posters, audio-visual materials, newspaper articles, talks to community groups; (b) whether this effort is regular or haphazard; and (c) if you have developed a means of getting feedback about whether you have, in fact, increased community awareness.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

AVAILABILITY/IMMEDIACY

One of the most important factors in effective criminal case representation is the client's access to legal advice prior to and during police interrogation. If your office does not provide such representation, the need for change is apparent.

The following discussion provides suggestions on methods and procedures designed to provide representation at an early stage in the arrest and adjudication process. Due to the diversity of existing defender offices, each office should select those suggestions which are appropriate, and adapt the others wherever possible.

Begin by determining whether, and in what areas, your office is formally restricted from delivering representation at early stages (i.e., arrest, interrogation). Review federal and state laws, local court rules, and/or the contract under which your office is providing representation. You may decide that change is needed in one or all of these areas. Efforts in drafting new legislation, raising issues through litigation, or renegotiating the scope of your activities may be appropriate.

If your office is not restricted formally from providing early representation, establish realistic goals toward which you will direct effort. For example, you may decide that your office should be:

1. Representing potential clients prior to arrest; or
2. Available at time of booking.

Once you have pinpointed office goals, you must determine a strategy by which these goals can be accomplished. Since a strategy entails the development of a careful plan or method, thinking through strategy for any goal will take you through the following stages:

1. Discussions with key individuals in the criminal justice and general communities;
2. Establishment of policies for your office;
3. Creation of an appropriate organizational structure to carry out your plans;
4. Assignment of administrative responsibilities;
5. Development of a set of procedures to be followed by staff; and,

6. The monitoring of the progress of the plan to ensure that goals are met and that policies and procedures are implemented.

A reasonable timetable should be set, with checkpoints to ensure that plans are being followed. Adequate resources (i.e. time, manpower, and money) should be allocated.

Depending upon the specific goals chosen for your office, discussions should be opened with the appropriate individuals: staff attorneys, in the "prior arrest" goal; police officers in the "booking" goal. You should also discuss your ideas with your governing or advisory board members in order to hear their suggestions and gain their support.

After these discussions and ideas have been translated into policy statements (or goals), the existing organizational structure and administrative system should be reviewed. Can you accomplish the new goals within the existing structure? For example:

1. Do you want to establish a special intake unit to handle calls requesting information?; or
2. Do you want to schedule attorneys for duty at police stations to interview potential clients at time of arrest?

In some offices the entire organizational structure and administrative system will have to be revised; in other offices it will suffice merely to add new responsibilities to staff. You may decide, for example, that each attorney will be responsible for his/her clients from initial contact through case closing.

A set of procedures should then be established which follow from your policies and are integrated with the organizational and administrative structure. To represent clients at an early stage you might establish the policy that an attorney is available to the potential client at the time of booking. To implement this policy, procedures may include:

1. Using an on-call device for notification that line-ups are being held; or
2. Phoning the police station periodically to determine whether an attorney's presence is required.

The final stage of implementing "availability" goals involves ensuring that goals are being met. Techniques should be established which allow you, or a designated staff member, to determine whether or not clients are being represented at interrogations, prior to arrest, or at time of booking. You may want to check on a quarterly basis:

1. Whether your attorneys are aware of office policy;
2. Whether clients appearing at preliminary hearings (from a list supplied by the court) had contacted attorneys at an earlier stage;
3. Whether individuals who desired representation were being interrogated without an attorney; and,
4. The percentage of client contact, for those out on bail, which is done via telephone and office/home visits.

Organizing your office for "availability" requires systematic planning, implementation, and review. The process should be similar in each defender office; the specifics of the goals and strategies chosen, however, will vary considerably.

TOPIC: ELIGIBILITY

QUESTION: Are you providing representation to all eligible individuals who desire representation?

COMMENTARY

The determination of eligibility for public representation is a perplexing problem throughout the criminal justice system. Surveys have found that existing eligibility criteria frequently deny counsel to persons who are unable to retain effective private counsel without substantial hardship to self and family. In many jurisdictions the eligibility criteria do not conform to realistic evaluations of the cost of retaining private counsel. In others, the eligibility criteria are not applied equally to all individuals.

The problem is critical in the felony area because of the potential expense of full representation through appeal. It is less obvious, but equally important, in the misdemeanor area where representation at public expense may mean the difference between fair trial and assembly line justice. Recent studies have shown that the Argersinger decision (407 U.S. 25) has been implemented sporadically; defendants are often not advised of their right to counsel or are actively discouraged from exercising that right.

TOPIC: ELIGIBILITY

QUESTION: Are you providing representation to all eligible individuals who desire representation?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Does your staff use a clear and precise definition of eligibility?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the eligibility definition in your jurisdiction based on the client's ability to obtain private counsel without substantial hardship to self and family?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the eligibility definition in your jurisdiction omit reference to the client's bail status?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Is the eligibility definition in your jurisdiction broad enough to serve the indigent community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Is the eligibility definition applied fairly to all potential clients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is an individual who is deemed ineligible for representation aided in obtaining competent private counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Does redress exist for an individual deemed ineligible?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Have unrepresented jailed individuals been offered representation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. If your office is not involved in the eligibility determination process, do you provide representation pending the decision?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Do written office policies/procedures exist on client eligibility?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are office policies/procedures on eligibility followed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: ELIGIBILITY

If you have responded
"Uncertain" to Question:

- | | | |
|-------|------|--|
| 1,2,3 | THEN | Review office manuals for eligibility criteria. Question relevant staff on their understanding and interpretation of these criteria. Compare responses. |
| 4 | THEN | Discuss eligibility with community groups to ascertain problems of poor constituents when criminal representation is needed. Review existing eligibility criteria to determine their relevance for the community and current economic conditions (e.g. unemployment and poverty figures). Contact local attorneys with a substantial criminal practice to determine typical fees and the frequency with which for various categories of cases they place client accounts in the hands of collection agencies. |
| 5 | THEN | Select cases opened during any recent one month period, as well as those found ineligible during that same period, to determine discrepancies between eligibility criteria used and the judgment made on each case. If neither eligibility criteria nor file information exists, there is a strong likelihood that decisions are not being made equitably. |
| 6,7 | THEN | Select the last ten cases in your "ineligible" file and discuss with the relevant staff member the steps taken following the determination of ineligibility. Follow up with calls to the ineligible client to determine the adequacy of the procedure, their feelings about the judgment of ineligibility, and the availability of redress. |
| 8,9 | THEN | Conduct a jail check to determine the number of incarcerated individuals without an attorney. Question each of these defendants to determine whether they desire representation. |
| 10,11 | THEN | Review existing policy statements on eligibility for their comprehensiveness, clarity and precision. Determine whether specified procedures exist which follow these policies, and whether appropriate manpower and resources have been deployed. Then question relevant staff on: (a) their understanding of what the policies are; and (b) the role each employee plays in implementing these policies. Ask each his/her mode of operation in typical cases. If written policies/procedures do not exist, consider their addition to your office manual. |

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

DETERMINING ELIGIBILITY

Eligibility requirements have long been a problem area, causing confusion in many courts and animosity between the defender office and the private Bar. It is imperative that your office have formalized eligibility guidelines, so that it can work towards providing representation to all eligible individuals who request it.

Begin by determining those individuals whom the office is formally restricted from representing. Review federal and state laws, local court rules, and/or the contract under which your office is providing representation. You may decide that change is needed in one or all of these areas. Efforts in drafting new legislation, raising issues through litigation, or renegotiating the scope of your contractual activities may be appropriate.

Depending upon the nature and extent of your present restrictions, representation to a specific or expanded group entails realistic goals towards which you should direct effort. For example, you may decide that your office should be:

1. Applying the definition of indigency fairly and equitably to all potential clients; or
2. Assisting ineligible individuals in obtaining private counsel.

Once you have pinpointed office goals, you must determine a strategy by which these goals can be accomplished. Since a strategy entails the development of a careful plan or method, thinking through strategy for any goal will take you through the following stages:

1. Discussions with key individuals in the criminal justice and general communities;
2. Establishment of policies for your office;
3. Creation of an appropriate organizational structure to carry out your plans;
4. Assignment of administrative responsibilities;
5. Development of a set of procedures to be followed by staff; and,
6. The monitoring of the progress of the plan to ensure that goals are met and that policies and procedures

are implemented.

A reasonable timetable should be set, with checkpoints to ensure that plans are being followed. Adequate resources (i.e. time, manpower, and money) should be allocated.

Depending upon the specific goals chosen for your office, discussions should be opened with the appropriate individuals: staff defenders in the "fair and equitable" goal; staff defenders and private attorneys in the "assisting ineligibles" goals. You should also discuss your ideas with your governing or advisory board members in order to hear their suggestions and gain their support.

After these discussions and ideas have been translated into policy statements (or goals), the existing organizational structure and administrative system should be reviewed. Can you accomplish the new goals within the existing structure? For example:

1. Do you want to establish a special organizational unit to handle eligibility determination?; or
2. Do you want to establish a separate unit responsible for assisting ineligible individuals in obtaining counsel?

In some offices the entire organizational structure and administrative system will have to be revised; in other offices it will suffice merely to add new responsibilities to staff. You may decide, for example, that each attorney will be responsible for his/her clients from initial contact through case closing.

A set of procedures should then be established which follow from your policies and are integrated with the organizational and administrative structure. In the case of determining eligibility you might establish the policy that an attorney is available to the potential client at the time of booking. To implement this policy, procedures may include:

1. Asking each client to complete an eligibility application;
2. Calling references given by clients to verify eligibility; and,
3. Filing a memo concerning eligibility with the other case file papers.

In the case of obtaining counsel for ineligible individuals, the procedures may include:

1. Asking the client if s/he needs assistance in obtaining counsel;

2. Referring a client to an approved list of private counsel who have stated that they will accept delayed payment; or,
3. Referring the client to an approved attorney referral service.

The final stage of implementing "eligibility" goals involves ensuring that goals are being met. Techniques should be established which allow you, or a designated staff member, to determine whether or not clients are being represented at interrogations, prior to arrest, or at time of booking. You may want to check on a quarterly basis:

1. Whether your attorneys are aware of office policy;
2. Whether community groups feel the criteria are fairly and equitably applied; and,
3. A sample of cases opened during the quarter, to see whether discrepancies exist between criteria used and the judgment made on each case.

In "assisting ineligibles," you may want to review on a semi-annual basis:

1. The attorney referral list to ascertain that all information is current; and,
2. The number of ineligible clients who represented themselves in court.

Organizing your office for "eligibility" requires systematic planning, implementation, and review. The process should be similar in each defender office; the specifics of the goals and strategies chosen, however, will vary considerably.

TOPIC: SCOPE

QUESTION: Are you providing representation throughout all criminal and related proceedings at which an individual is faced with the possible deprivation of liberty?

COMMENTARY

One of the goals of our system of justice is to ensure that effective representation be available in every proceeding, and at each stage of the proceeding, where it is necessary to ensure a fair and just process. This is applicable in strictly criminal trials and in many quasi-criminal or criminally related hearings as well. Of particular concern are juvenile and mental commitment proceedings, extraditions, and parole and probation hearings which might result in the initiation or continuation of incarceration.

Effective assistance of counsel is essential to the fairness of all such proceedings. While the defender need not be the representative in all circumstances, this objective places a burden upon him/her to assure that the local jurisdiction makes effective representation available to the indigent individual wherever liberty is threatened.

TOPIC: SCOPE

QUESTION: Are you providing representation throughout all criminal and related proceedings at which an individual is faced with the possible deprivation of liberty?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Is representation provided when an individual is charged with a misdemeanor offense and faces the possible deprivation of liberty?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is representation provided when an individual is charged with a felony offense?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is representation provided to individuals facing juvenile proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Is representation provided to individuals facing mental commitment proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Is representation provided to individuals facing administrative proceedings involving parole?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is representation provided to individuals facing probation revocation proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Is representation provided to individuals facing formal proceedings involving diversion?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is representation provided to individuals facing civil and criminal contempt proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Is representation provided to individuals facing extradition proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Is representation in disciplinary proceedings provided to your incarcerated clients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are you aware of the institutional grievances of incarcerated clients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Do written office policies/procedures exist on the scope of representation provided to clients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Are office policies/procedures on the scope of representation provided to clients followed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: SCOPE

If you responded
"Uncertain" to Question:

- 1 THEN Review your office policies regarding misdemeanor representation, as well as statutes and court rules. Do they comply with the latest Supreme Court decisions and national standards on the issue? Review the court docket of misdemeanor cases closed during the previous two months to determine the number of individuals given confinement sentences who were not represented by an attorney. A judgment must be made on your part whether this number is related to a real desire on the part of defendants for self-representation, or a court policy/procedure which denies or discourages misdemeanor representation.
- 2 THEN Review your office policies regarding felony representation, as well as statutes and court rules. Do they comply with the latest Supreme Court decisions and national standards on the issue? Review the court docket of felony cases closed during the previous two months to determine the number of individuals given confinement sentences who were not represented by an attorney. A judgment must be made on your part whether this is related to a real desire on the part of defendants for self-representation, or court policy/procedure which denies or discourages felony representation.
- 3,4,8,9 THEN Review your office policies regarding juvenile, mental health, criminal contempt, and extradition representation, as well as statutes and court rules. Visit the courts at which such proceedings take place to determine the availability of representation. Visit the relevant institutions and interview staff to determine their procedures and the number of clients and potential clients who were not represented by counsel at appropriate proceedings and hearings.
- 5 THEN Are the defenders aware of parole office procedures for handling hearings for indigents and others? Ask the parole board for a list of individuals reviewed for parole over its last two sessions. Check the list for former clients and determine for each client whether an attorney was aware of or appeared at the hearing. Check individuals appearing at the hearing without

MAKING CERTAIN ABOUT: SCOPE

If you have responded
"Uncertain" to Question:

- 6 THEN representation and try to determine whether representation would have been appropriate.
- 6 THEN Are the defenders aware of probation office procedures for handling revocation hearings for indigents and others? Ask the local probation office for a list of clients appearing at revocation hearings over the last three months. Check the list for former clients and determine for each client whether the defender was aware of or appeared at the hearing. Also check for individuals appearing at the hearing without representation and try to determine whether representation would have been of assistance.
- 7 THEN Are the defenders aware of diversion program procedures for handling hearings for indigents and others? Ask the diversion program for a list of individuals reviewed for diversion over its last two sessions. Check the list for former clients and determine for each client whether an attorney was aware or appeared at the hearing. Check individuals appearing at the hearing without representation and try to determine whether representation would have been appropriate.
- 10 THEN Ask the defenders in your office whether they have represented clients in disciplinary proceedings related to the local jail or prison over the past year. Ascertain from jail and prison personnel the number of defender clients who have been the focus of disciplinary proceedings over the past year and whether the defender was contacted and in attendance.

MAKING CERTAIN ABOUT: SCOPE

If you have responded
"Uncertain" to Question:

- 11 THEN Ask the defenders in your office about the frequency of contact they have with incarcerated clients, sampling one-half of their current caseload. Review those files for attorney notation and client correspondence related to institutional grievances. From this group of cases, select a few on which to question the defender about concerns of the clients and his/her knowledge of client concerns. Ask local client advocacy groups about the nature and extent of institutional grievances.
- 12,13 THEN Review existing policy statements on scope of representation for their comprehensiveness, clarity and precision. Determine whether specified procedures exist which follow these policies and whether appropriate manpower and resources have been deployed. Are these policies/procedures coordinated with the relevant ones in other organizations (e.g. probation)? Question relevant defender staff on: (a) their understanding of what the policies are; and (b) the role each employee plays in implementing the policies. Ask each employee to outline his/her mode of operation in typical cases. Visit the relevant courts and institutions at which representation might be or is provided for observation of existing conditions. If written policies/procedures do not exist, consider their addition to your office manual.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

SCOPE

Providing representation at the trial level is a responsibility of each defender office when a potentially eligible individual is faced with possible loss of liberty. If your office does not provide or ensure representation at all trial level proceedings, responsibilities should be altered to meet this requirement.

Begin by determining whether, and in what areas, your office is formally restricted from delivering representation at early stages (i.e., arrest, interrogation). Review federal and state laws, local court rules, and/or the contract under which your office is providing representation. You may decide that change is needed in one or all of these areas. Efforts in drafting new legislation, raising issues through litigation, or renegotiating the scope of your activities may be appropriate.

If your office is not restricted formally from providing post-trial representation, establish realistic goals toward which you will direct effort. For example, you may decide that your office should be:

1. Representing clients in [institutional] grievances against institutions; or
2. Representing clients during all proceedings which may involve post-conviction confinement.

Once you have pinpointed office goals, you must determine a strategy by which these goals can be accomplished. Since a strategy entails the development of a careful plan or method, thinking through strategy for any goal will take you through the following stages:

1. Discussions with key individuals in the criminal justice and general communities;
2. Establishment of policies for your office;
3. Creation of an appropriate organizational structure to carry out your plans;
4. Assignment of administrative responsibilities;
5. Development of a set of procedures to be followed by staff; and,
6. The monitoring of the progress of the plan to ensure

that goals are met and that policies and procedures are implemented.

A reasonable timetable should be set, with checkpoints to ensure that plans are being followed. Adequate resources (i.e. time, manpower, and money) should be allocated.

Depending upon the specific goals chosen for your office, discussions should be opened with the appropriate individuals: prison or jail offices, in the "grievances" goal; staff defenders in the "confinement" goal. You should also discuss your ideas with your governing or advisory board members in order to hear their suggestions and gain their support.

After these discussions and ideas have been translated into policy statements (or goals), the existing organizational structure and administrative system should be reviewed. Can you accomplish the new goals within the existing structure? For example, do you want to establish a special unit to handle institutional grievances and assign one or more attorneys to this function? In some instances, new structures and responsibilities will have to be created; in other instances, the existing structure will suffice, but new duties will be added to those of staff. You may decide, for example, that each defender will be responsible for his/her own clients throughout every proceeding involving a potential loss of liberty.

A set of procedures should then be established which follow from your policies and are integrated with your organizational and administrative structure. In the case of representing clients who might be confined, procedures may include:

1. A listing of all confined clients and their locale;
or
2. Weekly visits to confined clients, or a periodic letter to the client stating the case's status.

In the case of assuring that institutional grievance representation is available to clients, procedures may include:

1. Asking the client to complete a form with regard to his/her complaints concerning the institution;
2. Polling correctional personnel about grievances within the institution;
3. Visiting the institutions to investigate grievances and to observe operations;
4. Sending an explanatory letter to clients regarding grievance and the procedures to be followed.

The final stage of implementing "scope" goals involves ensuring that goals are being met. Techniques should be established which allow you, or a designated staff member, to determine whether or not clients are being represented in institutional problems.

For the "grievance" goal, you may want to review, on a semi-annual basis:

1. Whether the attorneys have represented clients in grievance proceedings related to the local jail or prison over the past year;
2. The number of defender clients who have been the focus of disciplinary proceedings over the past year and whether the defender was contacted and in attendance; and
3. The frequency of contact attorneys have with incarcerated clients, and files for attorney notations and client correspondence related to institutional grievances and disciplinary proceedings.

Organizing your office for "scope" requires systematic planning, implementation, and review. The process should be similar in each defender office; the specifics of the goals and strategies chosen, however, will vary considerably.

TOPIC: DURATION

QUESTION: Are you providing representation until all reasonable avenues of relief are exhausted?

COMMENTARY

In a sporadic but inexorable trend, the Supreme Court has extended to the criminally accused indigent the right to legal counsel at all critical phases of a criminal prosecution, under the 6th amendment to the U.S. Constitution. The constitutional right of prisoners to access to the courts, arising out of the 1st and 14th amendments, is widely recognized. One federal circuit court recently termed prisoner access to courts "the fundamental constitutional right." (475 F.2d 475 5th Cir. 1973). While the U.S. Supreme Court has repeatedly struck down rules or practices which might impede court access, it has failed to specify exactly what a state must do affirmatively to assure the implementation of the right.

The legal basis for requiring the state and federal government to provide indigent prisoners appropriate legal counsel is somewhat vague. But the practical advantage -- to the prisoner, criminal justice system and community -- of assuring comprehensive legal services outweighs any seeming deficiencies in the legal arguments. The range of representation required by state statutes varies considerably. While many states have not yet implemented U.S. Supreme Court decisions such as Argersinger (407 U.S. 25) others provide defenders even in strictly civil proceedings. Because the assistance of counsel is so fundamental to the fairness of all legal proceedings, and the deprivation of liberty is so serious a sanction in our society, the defender should take steps to ensure that all reasonable attempts to obtain release from incarceration are made either by the defender or some other appropriate individual or organization.

TOPIC: DURATION

QUESTION: Are you providing representation until all reasonable avenues of relief are exhausted?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Are you aware of the needs of former clients for post-trial representation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Are you advising all convicted former clients of potential avenues of relief?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is appellate recourse provided to indigents as a matter of routine?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. If appeals are done in the office, is the appeals division sufficiently independent of the trial section to ensure that all proper questions are raised on appeal?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Does your office represent clients following adverse parole decisions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Does your office represent clients in obtaining relief from adverse disciplinary determinations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Does your office represent clients following adverse probation decisions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Does your office represent clients in adverse diversion decisions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Does your office represent clients in obtaining relief from adverse contempt proceedings.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Do written office policies/procedures exist on the effort to be expended in following avenues of relief in decisions which are adverse to clients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are office policies/procedures on relief representation followed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: DURATION

If you have responded
"Uncertain" to Question:

- 1 THEN Review your last three months of mail correspondence to ascertain: (a) the desire for legal assistance among convicted former clients; and (b) the nature of the post-conviction problems. Question the appropriate defending attorney on whether contact has been made with the particular former client or whether it is planned for the future. Has the attorney maintained contact with incarcerated former clients? What steps have been taken by the defender to determine whether these clients desire post-trial representation?
- 2 THEN Review a large sample of files of clients convicted at trial over the previous three months for attorney notations or correspondence indicating that the question of appeal or other measures of relief have been discussed. If data is unavailable, the fault may lie with either poor record-keeping or lack of appeals or other advice by the defender.
- 3 THEN Review six months of cases, tabulating the actual number of misdemeanor and felony clients who were convicted at trial and the percentage of cases appealed. If few appeals were started, the reasons should be explored. Ask the courts for the number of cases in which appeals by former defender clients were attempted without representation.
- 4 THEN Review your organizational chart and office policies for implementation procedures. Review recent appeals to determine the grounds which were raised and which were not. Is this due to the office's organization or its method of providing appellate representation?
- 5 THEN Are the defenders aware of parole office procedures for handling relief from adverse parole decisions for indigents and others? Ask the parole board for a list of individuals reviewed for relief from adverse parole decisions over its last two sessions. Check the list for former clients and determine for each client whether an attorney was aware of or appeared at the hearing without representation and try to determine whether representation would have been appropriate.

MAKING CERTAIN ABOUT: DURATION

If you have responded
"Uncertain" to Question:

- 6 THEN Are the defenders aware of office procedures for relief from adverse disciplinary determinations for indigents and others? Ask the local jail and prison for a list of individuals involved in adverse disciplinary determination over its last two sessions. Check the list for former clients and determine for each client whether an attorney was aware of or appeared at the hearing. Check individuals appearing at the hearing without representation and try to determine whether representation would have been appropriate.
- 7 THEN Ask the local probation office for a list of clients appearing at revocation hearings over the last three months. Check the list for former clients and determine for each client whether the defender was aware of or appeared at the hearing. Also check for individuals appearing at the hearing without representation and try to determine whether representation would have been of assistance.
- 8 THEN Are the defenders aware of office procedures for handling adverse diversion decisions for indigents and others? Ask the local diversion program for a list of clients appearing at termination hearings over the last three months. Check the list for former clients and determine for each client whether the defender was aware of or appeared at the hearing. Also check for individuals appearing at the hearing without representation and try to determine whether representation would have been of assistance.
- 9 THEN Are the defenders aware of office procedures for handling adverse contempt proceedings for indigents and others? Ask the court for a list of individuals appearing at contempt proceedings over the last three months. Check the list for former clients and determine for each client whether the defender was aware of or appeared at the hearing. Also check for individuals appearing at the hearing without representation and try to determine whether representation would have been of assistance.

MAKING CERTAIN ABOUT: DURATION

If you have responded
"Undecided" to Question:

10,11 THEN Review existing policy statements on providing post-trial representation for their comprehensiveness, clarity and precision. Determine whether specified procedures exist which follow these policies and whether appropriate manpower and resources have been deployed. Are these policies/procedures tied in with other offices in the criminal justice system? Question relevant staff on: (a) their understanding of what the policies are; and (b) the role each employee plays in implementing these policies. Ask each employee to outline his/her mode of operation in a typical case. If written policies/procedures do not exist, consider their addition to your office manual.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

DURATION

Organizing your office to provide post-trial representation may entail a rethinking of your office's goals and the strategies available to you for achieving these goals.

Begin by determining whether, and in what areas, your office is formally restricted from delivering post-trial representation to indigents. Review federal and state laws, local court rules, and/or the contract under which your office is providing representation. You may decide that change is needed in one or all of these areas. Efforts in drafting new legislation, raising issues through litigation, or renegotiating the scope of your activities may be appropriate.

If your office is not formally restricted from providing post-trial representation, establish realistic goals toward which you will begin to direct effort. For example, you may decide that your office should be:

1. Representing clients in gaining relief from adverse parole decisions; or
2. Assuring that appellate recourse is available.

Once you have pinpointed office goals, you must determine a strategy by which these goals can be accomplished. Since a strategy entails the development of a careful plan or method, thinking through strategy for any goal will take you through the following stages:

1. Discussions with key individuals in the criminal justice and general communities;
2. Establishment of policies for your office;
3. Creation of an appropriate organizational structure to carry out your plans;
4. Assignment of administrative responsibilities;
5. Development of a set of procedures to be followed by staff; and,
6. The monitoring of the progress of the plan to ensure that goals are met and that policies and procedures are implemented.

A reasonable timetable should be set, with checkpoints to ensure

that plans are being followed. Adequate resources (i.e., time, manpower, and money) should be allocated.

Depending upon the specific goals chosen for your office, discussions should be opened with the appropriate individuals: parole office, for "relief" hearings: staff defenders for appellate counsel. You should also discuss your ideas with your governing or advisory board members in order to hear their suggestions and gain their support.

After these discussions and ideas have been translated into policy statements (or goals), the existing organizational structure and administrative system should be reviewed. Can you accomplish the new goals within the existing structure? For example:

1. Do you want to establish a special organizational unit to handle post-trial representation and redeploy staff?; or
2. Do you want to establish a separate appellate division and reassign one or more defenders to this function?

In some offices the entire organizational structure and administrative system will have to be revised; in other offices it will suffice merely to add new responsibilities to staff. You may decide, for example, that each defender will be responsible for his/her clients from initial contact through case closing.

A set of procedures should then be established which follow your policies and are integrated with the organizational and administrative structure. To represent clients in gaining relief from adverse parole decisions, you might establish the policy that each defender is responsible for his/her own former clients throughout the post-trial period. Procedures used in implementing this policy may include:

1. Maintaining a card file on clients in jail, in prison, or on parole; and,
2. Checking periodically with the client, the appropriate institution, or officer to verify status or change of status.

To assure the availability of appellate recourse, procedures may include:

1. Having the client complete a form with regard to his/her desire for appeal;
2. Automatically referring a convicted client's case to the appellate division for review;

3. Checking with the appellate division within a given time period to determine whether an appeal is warranted;
4. Sending an explanatory letter to the client regarding the grounds for appeal and the procedures to be followed.

The final stage in implementing your "duration" goals involves ensuring that goals are being met. Techniques should be established which allow you, or a designated staff member, to determine, for example, whether or not clients are being represented following adverse parole decisions, or whether appellate recourse is being made available to them. For the "relief from adverse decisions" goal, you may want to check, on a quarterly basis:

1. Whether your attorneys are aware of office policy;
2. Whether former clients who suffered adverse parole decisions; and,
3. Whether individuals appearing without an attorney at parole hearings which were adverse to the individual desired representation.

For the "appellate recourse" goal, you may want to review, on a semi-annual basis:

1. The number of misdemeanor and felony clients who were convicted at trial, and the percentage of cases which were appealed;
2. A sample of tried cases resulting in conviction which were not appealed; and,
3. The number of cases in which appeals by former defender clients were attempted without representation.

Organizing your office for "duration" requires systematic planning, implementation, and review. The process should be similar in each defender office; the specifics of the goals and strategies chosen, however, will vary considerably.

TOPIC: COMPETENCE

QUESTION: Are you providing competent representation to your clients?

COMMENTARY

It is axiomatic to our adversary system of justice that skilled advocacy on both the prosecution and defense sides, coupled with the presence of a judge knowledgeable about both the criminal law and the roles of the advocates appearing before him/her are essential to a fair determination of issues and facts. While defendants are permitted to represent themselves if they so choose, unanimous opinion among professionals in the criminal justice system militates strongly in favor of representation by counsel. It is believed that such counsel is in the defendant's best interests, and also promotes efficiency in the determination of cases.

The legal profession, unlike many other professions, has been remiss in providing practical training at the academic level. It becomes incumbent upon defender programs then to assist new defenders in acquiring and developing the very specialized skills necessary for criminal defense advocacy, and to promote continued study of new developments in the law.

Of equal importance in effective representation is the defender's attitude toward his/her clients. In short, the evaluation of defender competence, if it is to be a true measure, requires consideration of many aspects of the defender's training and performance.

TOPIC: COMPETENCE

QUESTION: Are you providing competent representation to your clients?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Do your defenders, paralegals and investigators keep abreast of developments which pertain to criminal law and forensic science?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is case preparation and management thorough and powerful when a trial is involved?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the plea bargained case receive the type of preparation and management which reflects a thorough and powerful defense?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Does courtroom work by defenders reflect the most thorough and powerful defense?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are case files in such condition as to allow another attorney to take over or review cases with minimal difficulty?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the experienced defender have sole responsibility and authority for case management?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Does your representation compare well with that given by local private attorneys who have a substantial criminal practice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Can defenders limit their workload if additional cases may result in inadequate representation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Does the client community feel you are providing competent representation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Does the criminal justice community feel you are providing competent representation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Does the office encourage staff self-improvement as a matter of policy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Do written office policies/procedures exist on what constitutes competent representation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Are office policies dealing with case file preparation and file maintenance followed?			

MAKING CERTAIN ABOUT: COMPETENCE

If you have responded
"Uncertain" to Question:

- 1 THEN Review your office procedures to ascertain the manner (e.g. weekly digests, in-house meetings) in which staff are informed about new developments in criminal law and procedure and forensic scientific and investigative developments and techniques. Is information transmitted to staff regularly? Is it timely? During staff or individual meetings, question staff on their handling of a recent case and the statutes and case law which are being relied upon in preparing the case. Review your library and/or other frequently used legal references for up-to-dateness.
- 2 THEN Select five recently closed typical cases tried by each defender. Review the files for comprehensive information: (a) general background information on client and family; (b) defense investigative reports; (c) defense technical and scientific reports; (d) witness examinations; (e) motions; (f) client interviews; (g) preparation for various hearings; (h) pleadings; (i) conference notes; (j) trial documents; (k) sentence explorations; (l) transcripts (where available); and (m) correspondence. If this information is not available in the files, attention should be given to instituting better forms, case file recording procedures, and guidelines for recording information. In the absence of such files, each defender should be questioned orally on the above points. Did trial preparation maximize techniques such as visual aids and demonstrative evidence to the extent that these might have been helpful in the case?
- 3 THEN Select five recently closed typical cases plea bargained by each defender. Review the files for information on whether: (a) factual and legal issues are being thoroughly explored; (b) the attorney is providing the client with full information on the consequences of the plea; (c) the attorney has explored the various kinds of concessions that the defendant might offer to the prosecutor or the prosecutor might make available to the defendant; and (d) the attorney has assessed the worth of the various concessions in light of the customary sentencing practices of the courts and the roles and practices of correctional authorities. In the

MAKING CERTAIN ABOUT: COMPETENCE

If you have responded
"Uncertain" to Question:

- 4 THEN absence of files, each defender should be questioned orally on the above points. Question a small number of present clients to determine whether they are aware of whether a plea and its consequences have been discussed, and whether they feel the defender is representing them adequately.
- 5 THEN On a periodic and rotating basis, the performance of defenders should be observed at all court stages: first court appearance, preliminary hearing, plea bargaining sessions, and trial. Observations might focus upon: (a) the dignity of the proceedings; (b) defender courtroom performance (e.g. presentation of issues; advocacy role; relationship to prosecutor and his/her case; confidence, ingenuity, and creativity of defender); (c) defender appearance; and (d) relationship with client. Do you have an attorney evaluation program in the office?
- 6 THEN During a staff meeting, ask each defender to exchange three of his/her present cases with another defender in the office. Have defenders review the contents of each case file, and give an opinion on the ease with which cases could be entered by a new attorney if the case file was the main vehicle for transmitting information. Point out omissions and deficiencies.
- 7 THEN In what ways has anyone outside or inside the office recently attempted to influence the manner in which an experienced defender is handling a particular case? Try to assess whether this was viewed as interference by the defender, or as on-the-spot training by those with more experience. Was this interference appropriate (e.g. in-service training) or inappropriate (e.g. political influence, improper judicial control) to the maintenance of the defender/client relationship?
- 8 THEN Choose one case type which is frequently handled by your office (e.g. burglary of a business). Then select twenty-five recently closed cases of this type and abstract information on: (a) time between arrest and first contact with attorney; (b) time between initial arraignment

MAKING CERTAIN ABOUT: COMPETENCE

If you have responded
"Uncertain" to Question:

and case closing; (c) defendants prior convictions, age, sex; (d) bail set; (e) disposition; and (f) sentence. Using the court do kets, select the most recently closed cases of this type which were handled by well-respected private attorneys and abstract similar information. Compare case profiles and results. Although in many ways each case is unique, such a comparison should indicate whether further, more detailed comparison between defenders and private counsel is in order.

8. THEN As your defenders whether they feel they are handling more cases than they feel they are able to give. The kind of representation they would like to. Do they feel they can say "no" to additional cases?
9. THEN Ask present and former clients at the local jail for comments about their representation by defenders. Do the same at the prison to which most incarcerated offenders are sent. Review your general client correspondence file and some specific attorney case files for further information. Ask jail and prison personnel about comments made by inmates regarding defenders.
10. THEN Survey your defenders for their impressions of the feelings of the criminal justice community toward their representation of clients. Solicit names of individuals who are particularly positive or negative towards the defenders. Make it a point to informally discuss defender performance with these individuals in the course of routine contact. Their opinions should be viewed in relation to their particular role and bias in the criminal justice system, as well as in relation to national professional standards set for defenders.
11. THEN Are defenders who continue to perform well, recognized and/or rewarded in any consistent way? Do any organizational techniques exist which measure improvements in staff performance? Survey the defender office staff for opinions regarding needed improvements in the office which would aid defender performance.
- 12,13. THEN Review for comprehensiveness, clarity and precision, existing policy statements concerning: (a) self-improvement efforts by staff; and (b) case file preparation and maintenance. Determine whether specified procedures exist which follow these

MAKING CERTAIN ABOUT: COMPETENCE

If you have responded
"Uncertain" to Question:

policies and whether appropriate manpower and resources have been deployed. Then question relevant staff on: (a) their understanding of what the policies are, and (b) the role each employee plays in implementing these policies. Give each employee a series of hypothetical situations in order to determine his/her mode of operation. If written policies/procedures do not exist, consider their addition to your office manual.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

COMPETENCE

Organizing your office to provide competent representation may entail a rethinking of your office's goals and strategies. You should begin by determining whether, and in what areas, your office is failing to deliver competent representation to indigents, and establish realistic goals towards which you will direct effort. For example, you may decide that your office should:

1. Emphasize thorough case preparation and management; or
2. Provide expert and support services to ensure effective defense.

Once you have pinpointed office goals, you must determine a strategy by which these goals can be accomplished. Since a strategy entails the development of a careful plan or method, thinking through strategy for any goal will take you through the following stages:

1. Discussions with key individuals in the criminal justice and general communities;
2. Establishment of policies for your office;
3. Creation of an appropriate organizational structure to carry out your plans;
4. Assignment of administrative responsibilities;
5. Development of a set of procedures to be followed by staff; and
6. The monitoring of the progress of the plan to ensure that goals are met and that policies and procedures are implemented.

A reasonable timetable should be set, with checkpoints to ensure that plans are being followed. Adequate resources (i.e., time, manpower, and money) should be allocated.

Depending upon the specific goals you have chosen for your office, discussions should be opened with the appropriate individuals: staff attorneys for the "defense" goal; investigators for the "support" goal. You should also discuss your ideas with your governing or advisory board members in order to hear their suggestions and gain their support.

After these discussions and ideas have been translated into policy statements (or goals), the existing organizational structure and administrative system should be reviewed. Can you accomplish the new goals within the existing structure? For example:

1. Do you want to assign teams consisting of attorneys and support staff to cases?; or,
2. Do you want to establish a special organizational unit of support staff to handle investigations and research?

In some offices the entire organizational structure and administrative system will have to be revised; in other offices it will suffice merely to add new responsibilities to staff. You may decide, for example, that each attorney will be responsible for his/her clients from initial contact through case closing.

A set of procedures should then be established which follow from your policies and are integrated with the organizational and administrative structure. To offer clients thorough case preparation might establish the policy that each attorney is responsible for ensuring a complete case work-up. To implement this policy, procedures may include:

1. Maintaining a file on each case;
2. Providing investigators with an initial list of people to interview for each case;
3. Providing support staff with research possibilities for a particular case; and,
4. Checking periodically with the investigators to verify that cases are being amply researched and prepared.

For good case preparation, you might insist that each file contain:

1. Client background data;
2. Complaints, warrants, indictments;
3. Requests for investigation;
4. Discovery notices;
5. Motions filed;
6. Requests for hearings;
7. Briefs;
8. Stipulations; and
9. Preparation of exhibits and/or demonstrative evidence.

When plea bargaining takes place, the following checklist may be used by the defender office to ensure that plea bargaining does not hamper the thorough preparation and management of a client's case:

1. A complete factual and legal investigation is performed and appropriate motions decided before any plea offer is considered.
2. The client is kept fully informed on the progress of the case, any offers made to the defendant by the prosecution or others, and the defender's recommendations based on:
 - a. the nature of the charges;
 - b. the facts of the case;
 - c. the state of the evidence;
 - d. possible defenses;
 - e. sentencing and alternative disposition probabilities;
 - f. the client's background;
 - g. the client's attitude;
 - h. the quid pro quo for any agreement.
3. The defender informs and advises the client on the consequences of each alternative and which would be in his/her best interests.
4. The plea bargaining is approached with an adversary spirit; the defender is an advocate, not an arbitrator.
5. The plea bargain is in writing, and the defender keeps complete notes of all offers and conditions as they occur. If prosecution agreements are broken, the defender seeks either rescission or specific enforcement according to the client's best interests.
6. The plea decision belongs to the client.

The following is a sample case file procedure. An unorganized case file can result in costly mistakes in a law office and can be the source of embarrassment in the courtroom. Yet lawyers, in general, give little or no attention to the organization of their file folders.

There are many methods and procedures for organizing the file folder, a basic tool in all law firms. The particular method employed in an office is not as important, however, as having a uniform procedure for organizing the folder. The following is a description of one method of organizing a file folder. The organization and forms should be modified for use in your particular office, but the principle of organization is applicable in every defender office.

In considering the organization of file folders, remember that manufacturers now produce them in variety: file folders currently on the market are constructed of plastic as well as the traditional cardboard; they are sold in a variety of colors; they are available with inserts as part of the total file, resulting in as many as six file fasteners within one file folders.

One method of file organization employs a folder with inserts, the result being six file fasteners within one file. Its main concern is that all relevant information is kept and that none of the papers can be lost by slipping out of the folder. Each folder could be organized according to the following headings:

- a. Client Background Information, including eligibility data.
- b. Correspondence. Correspondence is located on one file fastener inside the cover of the file. On top of the correspondence is a sheet which provides basic facts, eliminating the need for searching through the file for data. A great deal of time can be saved by summarizing, in one place, such information as: the name, address and telephone number of the client and witnesses; pertinent information re: the case, the date the case is set for trial, the dates of reminder cards outstanding; and solution. In an office which employs paralegals, consideration should be given to assigning specific files to specific paralegals. If this is done, the summary sheet should be rubber-stamped with the name of the paralegal to whom the file is assigned.
- c. Pleadings. The pleading section is separated with dividers to allow easy location of the various pleadings. On top of the pleadings section is a checklist for use when processing the case.
- d. Discovery. In the discovery fastener is information such as written testimonial transcripts, questions, and interrogatories. A witness checklist should be maintained with despositons and statements.
- e. Telephone Messages, Memos, and Notes. Filed in this divider are telephone messages, memos, notes and so forth. Dividers separate telephone messages, inter-office memos, and office notes, and allow easy location. In addition, a "plan of action" for the files is maintained which describes the overall plan and serves as a memo for projects which need to be performed in connection with the file.

- f. Court Orders, Motions, and Miscellaneous Materials. In the last section of the file is kept motions, exhibits, and miscellaneous material. This material, too, is organized with dividers to allow easy location. On top of the material is a calender which indicates motions, requests for trial setting, and the trial setting itself.

Other important steps to take concerning case files include:

1. Case Status Reports. At the end of each week this report is filed with the chief defender indicating the total number of cases currently being handled by each attorney, upcoming jury trials, evidentiary motions and oral arguments.
2. File Disclosures. Files are the work product of the attorney-client relationship. As such, the materials in the files constitute privileged information and should not be disseminated to any third party without the client's knowledge and permission and for good reason. In the event that an outside attorney takes over the case, you may provide him/her with relevant materials by xeroxing the materials. In no event should you give the entire file to the new attorney. Files are the property of the office and are the only record of work performed by the office.

Your last responsibility in implementing "competence" goals involves ensuring that goals are being met. Techniques should be established which allow you, or a designated staff member, to determine whether or not clients are being represented competently. You may want to check, on a quarterly basis:

1. Five recently closed typical cases represented by each defender. Review the files for comprehensive information on:
 - a. general background information on client and family;
 - b. defense investigative reports;
 - c. defense technical and scientific reports;
 - d. witness examinations;
 - e. motions;
 - f. client interviews;
 - g. preparation for various hearings;
 - h. pleadings;
 - i. conference notes;
 - j. trial documents;
 - k. sentence explorations;
 - l. transcripts (where available);
 - m. correspondence; and
 - n. plea negotiation memos.

2. The performance of defenders by observing at all court stages: first court appearance, preliminary hearing, plea bargaining sessions, and trial.

For the "support" goal, you might want to review:

1. The manner (e.g., weekly digests in-house meetings) in which staff are informed about new developments in criminal law and procedure and forensic scientific and investigative developments and techniques. Is information transmitted to staff regularly? Is it timely? During staff or individual meetings, question staff on their handling of a recent case and the statutes and case law which are being relied upon in preparing the case;
2. How investigators are used. Are they merely providing additional secretarial or messenger assistance, or are they actually assisting the attorney in case preparation?

Organizing your office for "competence" required in systematic planning, implementation, and review. The process should be similar in each defender office; the specifics of the goals and strategies chosen, however, will vary considerably.

TOPIC: TRAINING

QUESTION: Is your office providing sufficient training to its employees?

COMMENTARY

In order for a defender, and all other personnel, to reach a high level of competence, both introductory and on-going training is essential. The defender who is new to office procedures and/or the local criminal justice system will require an orientation which may include intensive work with an experienced attorney for several weeks. The office should also have a standardized procedure for ensuring that all defenders are current in the law. Finally, defender staff should be encouraged to take advantage of programs, both in and outside of the office, which are directed at "fine tuning" in trial and/or investigative techniques.

TOPIC: TRAINING

QUESTION: Is your office providing sufficient training to its employees?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Do you have an orientation program for new employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you provide new employees with the training necessary to perform their duties?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you provide on-the-job training for the continued development/improvement of staff performance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you provide training opportunities external to the office to enhance staff development/improvement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you provide equal training opportunities for all personnel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Are your training materials/programs appropriate for your training purposes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: TRAINING

If you have responded
"Uncertain" to Question:

- 1 THEN Review your office's procedures for orienting new employees. Do you introduce him/her to fellow employees? Do you take him/her around to other offices within the criminal justice system? How long does your "program" last? In short, is it a non-program, left to individual devices? Ask your newest defenders, investigators and other employees whether they felt there was an initial orientation program to their job, what it consisted of, and what additions they might suggest for future orientations.
- 2 THEN Do you or a supervisor explain job duties and responsibilities to new employees? Are new employees "walked through" case preparation steps? Do new attorneys "second chair" cases until supervisors feel they are capable of providing good representation on their own? Ask your supervisors about the initial training they provide for new employees - compare these responses with these of new employees who are asked a similar question - what suggestions do both groups have for strengthening this program?
- 3 THEN Observe your attorneys in court on a periodic basis to determine areas of weakness. Review sample case filed to note where improvements could be made in preparation. Could weaknesses which are discovered be minimized in weekly staff meetings, formal training sessions in criminal law and its developments, through luncheon speakers and "rehearsals" for court presentation, videotape, and seminars? Are these being done? Ask your staff whether they feel that on-the-job training is being provided, what it consists of, and their suggestions for improvement.
4. THEN Do you seek out seminars offered by professional groups to which to send attorneys? Tabulate the number of attorneys, investigators and paralegals who have attended training institutes within the previous year. Does your budget provide for this?
- 5 THEN Review your personnel records. Is there an imbalance in the particular staff members, or type of staff that have been provided with training opportunities during the past three years? Have you sent support staff to training courses, seminars, or conventions?
- 6 THEN Review your training materials/programs. Ask the staff whether they feel the training materials/programs are relevant, and for suggestions on their improvement. Are the examples used current and appropriate?

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

TRAINING

The defender should be providing its staff with the opportunity to improve and expand its knowledge. No matter how busy an office is, training programs can be established by using a little imagination.

To design and implement a staff training program, the same strategy should be followed as is followed when working through any problem in a defender office:

1. Discuss your ideas with staff, advisory board and other key individuals in the criminal justice community;
2. Develop a plan for the program;
3. Establish an appropriate organizational structure to carry out your plans;
4. Assign administrative responsibilities;
5. Develop a set of procedures to be followed by staff; and,
6. Monitor the implementation of the plan.

A reasonable timetable for the development of the training program should be set, with checkpoints to ensure that plans are being followed. Adequate resources (e.g. manpower, and money) should be allocated to the training effort.

The following discussion of training in a small and medium defender office assumes that it will be shaped to fit the specific needs of an office, and that it will become a regular and integral part of the office's operation.

TRAINING IN THE SMALL AND MEDIUM DEFENDER OFFICE *

The attorney assigned to training must back off from his/her caseload, and seek to assess those areas in which s/he would like to seek improvement among the attorney staff. Some requirements are perennial -- keeping up with case law and new statutes. Other needs may be more limited (i.e. the psychiatric defense in a serious homicide).

Many attorneys attempt to learn law to suit the individual case, rather than to create a basic foundation of legal knowledge from which to meet requirements of many cases. A training program can greatly assist defenders in establishing new thought processes. Also, activities of a small defender office which might be considered the result of common experience can be the subject matter for organized training (e.g. interviewing techniques, and methods of counseling clients). The attorney in charge of training (this may be a head defender in a small office) should assess the experience of attorneys in the office, as well as the areas of potential deficiency that could be remedied with training. Once these weaknesses are identified, they should be phrased in terms of goals and objectives. A training program should be scheduled, a series of objectives established, and training made mandatory. For example, a new compilation of the Rules of Evidence could not be handled in one training class, but would be subject matter for a series of sessions. A practical demonstration involving a trial run on an appellate argument by younger attorneys might have been preceded by a training session on oral advocacy on appeal.

TRAINING PROGRAMS

A. Orientation Programs

The new defender attorney is often a recent law school graduate who has just been admitted to practice. An orientation program may begin in law school, where law students may participate in an office's clinical legal intern programs. This experience introduces them to the office, and provides them with a general orientation to the type of practice in which the office is involved. The law graduate who is interested in becoming a trial attorney may be requested to commence work after completion of the bar exam so that he may be assigned his/her own cases when she/he is admitted.

Upon his/her arrival, a new attorney should be given the office policy manual and basic materials on the office's type of criminal practice. S/he should be assigned cases in conjunction with an experienced defender. For the law graduate or new attorney, an intensive lecture directed at furnishing an overview of criminal law practice, with an emphasis on soliciting questions from the trainee, is most helpful.

* Adapted from "Training for the Small and Medium Defender Office," presented by John J. Cleary to Defender Management Institute, National College for Criminal Defense Lawyers and Public Defenders, Washington, D. C., February 1976.

Cases should be assigned that will tax his/her ability, but will also provide him/her with variety. A senior attorney should "second chair" him/her for the first two or three trials. Thereafter, some younger attorneys may request a particular attorney to "second chair", but that is optional even though the practice is encouraged. Although a case is the professional responsibility of the new attorney, this new attorney should have access to the chief trial attorney or other senior attorneys to discuss problems and questions. Informal conferences ensure that the new attorney develops self-confidence while still learning. One of the best places for these informal discussions is during a dinner which will, without any compulsion, turn into a "mini staff meeting."

B. Weekly Staff Meeting

Weekly staff meetings, lasting approximately one hour, should be mandatory for all trial attorneys. These meetings can be used to discuss case problems and possible solutions, and administrative policies or actions taken by the office (either new or problem areas). These staff meetings, conducted on a regular basis, are a key to maintaining high morale and esprit de corps within the office.

C. Formal Training Session

Formal training sessions for attorneys with substantial experience should be oriented toward substantive criminal law and procedure. A training phase can last one evening or may take ten weeks. Examples of training topics are trial strategies, federal rules of evidence or the Speedy Trial Act of 1975.

Formal training sessions should be organized on a regular basis. Each attorney should be assigned a topic in advance. This permits adequate development of materials and ensures a quality presentation. For example, an attorney might prepare a brief, but comprehensive, memorandum to be given to each attorney in advance of the training session. At the session, the attorney would moderate the discussion and summarize the matters set forth in his/her written materials, as well as provide examples and applications. At the end of the training phase the materials should be preserved. Thus, providing a comprehensive written analysis on a particular topic. If the topic should reoccur at a training program in subsequent years, some materials will have already been developed as a starting point.

The good training program encourages participation; the poor ones provokes little comment. The attorney in charge of training should critique both the written materials and the general program with the attorney assigned to make the presentation.

The formal sessions also allow the defender office to invite private criminal attorneys to attend and participate, and to improve relationships with the private bar.

D. Luncheon Speakers

Speakers may occasionally be invited to address the staff and other criminal attorneys during their lunch hour. This can provide the attorneys with a short introduction to a specific topic of criminal law, and provide better communication or coordination with other activities within the criminal justice system. Speakers might include an expert on polygraph, a chemist to speak on drugs, community resource workers on local drug rehabilitation projects, resource people on employment opportunities, or local criminal lawyers who have special expertise in a particular area. Time should be allotted for staff questions.

E. Practical Demonstration Programs

Rehearsal always improves performance. Lawyers often feel that presentation of cases in court must be a natural, spontaneous event, unimpeded by prior preparation. Although the performance should be natural, preparation never hurts. A standard technique may be used to review closing arguments; this may be very informal, with the attorney outlining his general approach to two or three other attorneys in the office. With inexperienced attorneys, the office may require that a case be argued before a small panel of senior attorneys, and that the presentation follow precisely the format which the attorney will encounter in court. After the presentation, the attorney should be critiqued by the panel.

F. Videotape Presentations

Videotape equipment can be an asset in any type of training. Videotape has two main uses. First, it may be used to record the practice presentation of attorneys. Second, it may be used to record sample trial presentations for general educational purposes. Videotape material can help provide excellent orientation programs. For example, videotaped mock trials could include a felony marijuana smuggling trial, or a tape involving the direct and cross-examination of a defense and prosecution psychiatrist where an insanity defense is raised at trial. Written analyses can be prepared for the full-scale trials emphasizing different aspects of trial procedure and strategy.

A helpful publication in considering the purchase of videotape equipment is the recent LEAA National Institute of Law Enforcement and Criminal Justice Publication entitled "Video Support in the Criminal Courts: Executive Summary" (October, 1975). The possibility of obtaining videotape cassettes from the National College for Criminal Defense Lawyers and Public Defenders should also be considered. If your office cannot afford such equipment, local law schools or universities might make such equipment available to you. If the equipment is purchased by your own office someone should become familiar with its operation and maintenance.

G. Seminars

Staff should be encouraged and sponsored in attendance at various seminars on criminal law. The National College of Criminal

Defense Lawyers and Public Defenders (NCCDLPD) holds excellent three-week and two-week programs in Houston, as well as regional seminars geared to a three-day weekend. In addition, a one-week program is scheduled in Denver by the University of Denver; Northwestern University conducts a Short Course for Criminal Defense Lawyers in Chicago.

A defender office should budget for attendance at various seminars. While scholarships can be obtained in some cases, the office should definitely assume their financial responsibilities and include them as a regular part of the budget. Upon completion of a seminar, a memorandum should be prepared and discussed at a subsequent staff meeting. The program should be rated; if it is good, efforts should be made to have other attorneys attend in the future. Materials obtained from such programs should be placed in the office library.

H. Visits

Although not formally a training program, one of the best techniques to evaluate one's own office performance is to visit another defender office. The policy of visiting other defender offices should be encouraged in conjunction with out-of-town training programs. When an attorney visits another office, she/he meets the staff, gets a chance to observe the operation in the office, and picks up forms or other publications that might be of help to his own office. To encourage such visits if attorneys are on vacation in distant cities, they can be given a work-day credit for visiting that city's defender office.

An office should schedule a regular series of visits to the prisons in which its clients are confined. Information relating to available vocational programs, work furloughs, study programs, and other activities at the institution should be obtained. Since parole authorities do develop general guidelines, a visit to the institution give an attorney an opportunity to determine the release procedure so that a more accurate estimate as to the term of confinement can be gauged.

I. Individual Attorney Training

It is advisable to have the Chief Trial Attorney or another senior attorney in the office personally counsel and advise new attorneys and those encountering problems. Although at first some might resent the supervision of a senior attorney, after jury trial experience has been acquired, they are likely to invite the comments of the senior attorneys on their performance. Within a small office, each attorney can sit down and discuss his/her cases with one of the senior attorneys, who should make her/himself available, even if it includes after-hours work. Senior attorneys should not become so preoccupied with their own cases or their administrative functions that they lose contact with the other attorneys in the office. Senior attorneys should make it known throughout the office that they endorse an "open-door" policy. If this attitude is not positively encouraged and fostered by the senior attorneys, the younger

attorneys will feel that they are intruding on the time of the senior attorneys.

J. Language Training

In those areas where the defender office serves a large number of non English-speaking clients, attorneys should be encouraged to study the language spoken by these clients. A tape recorder and language cassettes, as well as language books, should be made available to interested attorneys.

INSTRUCTIONAL TECHNIQUES

A. Newsletter and Publication Review

The quality of legal service will often depend upon its effective use of the latest case law. Each office must have an adequate library. The office should have available, or should create, its own newsletter which would disseminate the most recent developments in criminal defense law. Developments in criminal law published in state newsletters should also be systematically passed through the office, so that every attorney will have the opportunity to read and review these digests of recent opinions. Publications such as the Criminal Law Reporter are also essential, and the summaries provided in such publications should be routed to each attorney in the office. Every opportunity should be taken to encourage attorneys to review legal periodicals.

B. Brief and Motion Bank

To prevent the "re-invention of the wheel", a copy of every brief an office has filed in any criminal appeal should be maintained. They should be indexed so that a given topic can be quickly reviewed. With the brief bank only a minimum expenditure of time is then required to arrive at an understanding of current case law. These banks must be maintained continuously and purged of out-dated or inadequate material. The accumulation of previous forms aids not only in the teaching of form, but also of substance.

C. Paralegals

Paralegals are a valuable addition to a defender office staff. They can be trained to research and prepare drafts of briefs on appeal as well as drafts of motions in the trial court. Paralegals are able to locate the law quickly, and their interaction with the attorneys provides a complementary and highly rewarding relationship. Attorneys outline and discuss a problem, and these paralegals then locate the applicable case or statutory precedent. Often a discussion of the problem will develop new avenues where there is no existing precedent. Paralegals who have years of legal research experience offer an added resource for the recently admitted attorney. Their assistance in counseling and advising other appointed and retained counsel in the area of criminal law is also valuable.

D. Jury Trial Memo

After the completion of any jury trial, the trial attorney should prepare a short memorandum outlining the essentials of the trial, the points at issue, and items to be raised on appeal, where appropriate. This memorandum allows the attorney to outline his/her trial strategy and techniques with a candid evaluation of success or failure. The jury trial memorandum is much like a postmortem, but it also includes advise and counsel on how to avoid similar pitfalls. Each attorney should be encouraged to engage in self-critique. The memorandum which may be helpful if seeking specialization recognition with the Bar.

LOCAL ATTORNEY TRAINING PROGRAM

A organized defender office should work in conjunction and cooperation with the local Bar, especially those members who are engaged in the defense of criminal cases. The local Bar can serve as an important sponsor and protector for a defender office.

An exchange of briefs and motions is one helpful cooperative venture. The defender office could serve as a clearing-house of information on criminal law for all attorneys. The organization could sponsor a criminal law training program on its own or in conjunction with the Bar association or a local law school. A defender organization can organize a familiarization course in basics of criminal law. Speakers might include members of the judiciary, the prosecutor's office, local private counsel, and other specially qualified on a particular subject. These speakers should be requested to prepare written materials that can be compiled and later distributed to those attending.

A defender office can conduct one-day or half-day programs in specialized areas: appeals, the witness before the grand jury or motions to suppress statements and evidence. To obtain experience, it might be best to try a half-day or three-hour training session to determine the interest of the local Bar in such a program. The cost to outsiders should be kept at a level sufficient to make the program self-sustaining.

LEGAL INTERN PROGRAM

Most law schools encourage and foster legal clinical programs. The defender office is a natural recipient of legal interns, but students must be effectively integrated into the work of the office. This means that the program should be coordinated by a designated attorney supervisor, even though students have the opportunity to work with all of the attorneys in the office. Students could work full-time in the summer and part-time during the school year on a regularly scheduled basis. A full year's participation is required for a program to be beneficial to both student and office. During the early months students may work before the lower criminal

courts, and with attorney supervision may handle cases at plea, trial, and sentencing. Students can also be concerned with the release of defendants on bail. At the end of the clinical program, students may be helping with an appeal, working with an investigator, and developing their own techniques of client and witness viewing. Clinical programs can produce very well-qualified candidates for trial attorney positions in your office.

During all stages of training, the attorney in charge must be cognizant of the success or failure of the programs by receiving feedback from clients, attorneys and other involved members of the criminal justice system. The programs should be restructured and updated as needed.

The defender is encouraged to contact defender offices near his/her community and across the country to learn which training methods have been successful and to acquire materials previously developed.

TOPIC: ZEAL

QUESTION: Are you providing zealous representation to your clients?

COMMENTARY

According to the American Bar Association Code of Professional Responsibility, zealous advocacy means "vigorous investigation of every viable line of defense or litigation and equally vigorous presentation of those defenses or mitigating circumstances which have been chosen to be asserted." This definition implies for all lawyers, but particularly for defenders, a sensitivity to client needs which goes far beyond traditional efforts at case preparation and courtroom advocacy. Defender clients, unlike more affluent individuals represented by retained counsel, often have significant social and personal problems which may be contributing factors in the matter for which the defender has been appointed. As a result, it is incumbent upon the defender to deal not only with the specific legal case at hand, but also the repercussions of that case upon the client in his/her social and cultural setting. The evaluation of zealousness requires an attempt to discover whether the defender has put forth that extra effort on behalf of the client which rises above legal competence to human involvement. Zealousness for the defender means a deep commitment to the role of counselor as well as that of advocate.

TOPIC: ZEAL

QUESTION: Are you providing zealous representation to your clients?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Does your obligation to your clients supercede your obligation to the courts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Do your clients feel you are zealous on their behalf?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you assist your clients in dealing with their non-legal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Are client complaints followed up?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you seek to divert your clients from adjudication after exploring whether it is in their best interests?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Do you seek alternative sentences for your convicted clients if in their best interests?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do you maintain comprehensive, up-to-date reference material on all available community resources?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Do you challenge interlocutory adverse decisions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Do written office policies/procedures exist which outline what constitutes zealous representation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Are office policies/procedures in furtherance of zealous representation of clients followed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: ZEAL

If you have responded
"Uncertain" to Question:

1	THEN	Review, for the previous year, the number of appellate reviews of bond questions, civil suits, extraordinary writs, Federal Court appeals, and interlocutory appeals pursued. Determine whether this number was appropriate, given the general conditions of criminal justice in your community (i.e. law enforcement, jails, courts, convictions, probation, parole). Ask the defenders whether their appearance before certain judges inhibits their filing of motions, writs, and appeals. Observe the courtroom behavior of the defenders to ascertain the impression given to the client of the defender's relationship to police, prosecution, and bench.
2	THEN	Review general client correspondence and that contained in individual case files. Ask the supervisor and some of the guards at the local jail and prison about inmate opinion regarding their representation by defenders. Former and present clients and family members of clients should be surveyed, along with local legal aid and community groups.
3	THEN	Review recently closed case files of each defender for notations regarding client assistance in non-legal matters. Ask defenders about the frequency with which they make contact with community agencies in this regard, and the names of these agencies. Also question the defenders on their desire to deal with non-legal problems and/or their ability to do so.
4	THEN	Review your general correspondence file and a series of files of each defender for complaints made by current and former clients. Ask the defenders about the manner in which such complaints were handled. Does your office have an organizational procedure for soliciting and handling complaints?
5	THEN	Ascertain jurisdictional and program criteria used for referrals to diversion programs. Review the previous month's case files of each defender to determine whether cases meeting the criteria were referred; discuss the situation with the defenders. Contact local pretrial diversion programs to ask about: (a) the

MAKING CERTAIN ABOUT: ZEAL

percentage of cases referred by the defenders; and (b) problems encountered in working with the defenders. Is information on diversion available in your office? Review case files of recently diverted clients to determine the thoroughness of the legal and factual investigation which was performed prior to the decision to divert.

- 6 THEN Review files for sentences given all clients over the previous month. In what percentage of cases were alternative sentences given? Question the defenders in your office to determine: (a) their usual approach to sentencing; and (b) the number and type of community-based programs and agencies with which they are in contact which could be considered a sentencing alternative. Do you have a routine pre-sentence work-up procedure?
- 7 THEN Ask each defender for his/her list of community resources used. Compare this information with that you can gather from local charity and community action groups.
- 8 THEN Do any policies/procedures exist in your office for challenging adverse interlocutory decisions? Determine the pervasiveness of such challenges through a tabulation over any three-month period during the previous year. Question the defenders in your office about: (a) their motivation to challenge different types of decisions; and (b) factors which constrain them from such challenges.
- 9,10 THEN Review for comprehensiveness, clarity, and precision, existing policy statements on the expected nature of the attorney/client relationship, client contact, and management of client complaints. Determine whether specified procedures exist which follow these policies and whether appropriate manpower and resources have been deployed. Do the same for policies/procedures relating to diversion from adjudication, alternative sentences, and challenges to adverse interlocutory decisions. Are decisions not to pursue certain matters discussed or contained in policy? If written policies/procedures do not exist, consider their addition to your office manual.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

ZEAL

A chief defender should encourage the zealous representation of clients. To accomplish this the office should establish realistic goals concerning "zeal". For example, you may decide that your office should be:

1. Seeking sentencing alternatives for clients; or
2. Processing and resolving clients complaints.

Once you have pinpointed office goals, you must determine a strategy by which these goals can be accomplished. Since a strategy entails the development of a careful plan or method, thinking through strategy for any goal will take you through the following stages:

1. Discussions with key individuals in the criminal justice and general communities;
2. Establishment of policies for your office;
3. Creation of an appropriate organizational structure to carry out your plans;
4. Assignment of administrative responsibilities;
5. Development of a set of procedures to be followed by staff; and,
6. The monitoring of the progress of the plan to ensure that goals are met and that policies and procedures are implemented.

A reasonable timetable should be set, with checkpoints to ensure that plans are being followed. Adequate resources (i.e. time, manpower, and money) should be allocated.

Depending upon the specific goals chosen for your office, discussions should be opened with the appropriate individuals: community-oriented programs in the "alternatives" goals; staff defenders in the "complaints" goals. You should also discuss your ideas with your governing or advisory board members in order to hear their suggestions and gain their support.

After these discussions and ideas have been translated into policy statements (or goals), the existing organizational structure and administrative system should be reviewed. Can you accomplish the new goals within the existing structure? For example:

1. Do you want to establish a special organizational unit to handle diversion and rehabilitation alternatives?; and,
2. Do you want to establish a separate complaints division and reassign one or more support staff to this function?

In some offices the entire organizational structure and administrative system will have to be revised; in other offices it will suffice merely to add new responsibilities to staff. You may decide, for example, that each defender will be responsible for his/her clients from initial contact through case closing.

A set of procedures should then be established which follow from your policies and are integrated with the organizational and administrative structure. In the case of seeking sentencing alternatives for clients, you might establish the policy that each attorney is responsible for his own clients. To implement this policy, procedures may include:

1. Maintaining a listing of all available community-based programs;
2. Checking cases periodically with the defender to determine whether all possible avenues are explored; and,
3. Informing the media of the status of community-based sentencing programs.

Procedures used in resolving complaints may include:

1. Establishing a file for client complaints;
2. Investigating each complaint, responding to it, and recording the action in the case file; and,
3. Review of sentences given all clients over the previous month. In what percentage of cases were alternative sentences considered? In what percentage of cases were alternatives given?

For the "complaints" goal, you may want to review, on a semi-annual basis:

1. Your general correspondence file and files belonging to each defender for complaints made by current and former clients. Ask the defenders about the manner in which such complaints were handled;
2. Existing policy statements, for comprehensiveness, clarity and precision, on the nature of the defender/client relationship, client contact, and the management of client complaints; and,

3. Whether procedures exist which follow these policies and whether appropriate manpower and resources have been deployed.

Organizing your office for "zeal" requires systematic planning, implementation, and review. The process should be similar in each defender office; the specifics of the goals and strategies chosen, however, will vary considerably.

TOPIC: POLITICAL INFLUENCE/JUDICIAL CONTROL

QUESTION: Is your office free from political influence and improper judicial control?

COMMENTARY

Political influence may have a significant bearing on both the quality and quantity of defense services. When funding is inadequate and caseloads are too high, improper investigation and preparation of cases is inevitable. High staff turnover results in an office of inexperienced lawyers, while political considerations in staff selection and promotion may exclude the best lawyers from defender work altogether.

Defenders must rely on public resources for their existence and must be accountable for expenditures. This accountability, however, cannot be allowed to intrude on the attorney-client relationship or on attorney performance in representation. For purposes of evaluation, the relationship between the defender and the funding agency must be closely scrutinized with particular emphasis on funding and personnel policies. If the resources of the defender are less than roughly equivalent to those of the prosecutor, political concerns may be the reason. If defender hiring, promotion or compensation are subject to outside confirmation, legal expertise may be sacrificed. Political considerations have no place in the attorney-client relationship and if they are extant either directly or indirectly, representation is intolerably compromised.

Judicial control over defense services is most likely to occur in three areas: a) defender funding, b) selection and tenure of defender personnel; and most importantly, c) case handling in the courts. Earlier commentary with regard to political influence over defenders dealt with funding and personnel policies. Suffice it to say that in those areas the distinction between political and judicial control may be more semantic than real.

In the courtroom, however, the reality becomes apparent to all concerned, particularly the defender client. National standards on defense services are unanimous in recommending that defender counsel be subject to no greater judicial control than private attorneys. Criminal defense lawyers are, in many ways, the "policemen" of the criminal justice system, since it is their responsibility to call into question the professional activities of all the other components of the system including the judge. An inherent and often apparent conflict of interest exists when judges exercise any more control over defenders than over the private bar. To quote Judge Bazelon, "Prosecutors are

independent. Privately retained defense are independent. Is there any valid argument for diminishing the independence of counsel for indigent accused?...The appointment of counsel by judges tends to dilute the independence of the defender and to produce an invidious double standard of justice which demeans our system."

TOPIC: POLITICAL INFLUENCE/JUDICIAL CONTROL

QUESTION: Is your representation free from political influence and improper judicial control?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Are case assignments made independent of political pressures and considerations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Are case assignments made independent of improper judicial influence and considerations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is case preparation and decision-making independent of political pressure or concern for possible political consequences?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Is case preparation and decision-making independent of improper judicial influence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Is staff selection and promotion free from political and judicial control?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Does your office retain its stability during times of political changeover?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Does your office retain its stability during times of judicial changeover?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Do written office policies/procedures exist concerning how to handle attempted political and judicial control?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Are office policies/procedures concerning how to handle attempted political and judicial control followed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT:

POLITICAL INFLUENCE/JUDICIAL CONTROL

If you have responded
"Uncertain" to Question:

1,3	THEN	Ask the defenders about the ways in which recent political pressures have affected their work. Ask specifically about case assignments, case preparation, and case management. Question the defenders about their involvement in community politics (e.g. their membership in parties, lectures given, offices held, ambitions) and try to evaluate its potential influence on each defender's performance.
2	THEN	Ask the defenders about the ways in which they feel judicial pressures negatively affect their work. Ask for specific examples in addition to general comments. If not addressed by the defenders, specifically ask about the present method of case assignment. Question the defenders about their relationship to the judiciary and try to evaluate its potential influence on defender performance.
4	THEN	Ask the defenders about the ways in which they feel judicial pressures negatively affect their work. Ask for specific examples in addition to general comments. Question the defenders about the nature of their in-court and out-of-court relationship with specific judges before whom they appear frequently. Are they related personally? Do they belong to the same fraternal or other groups? Try to evaluate its potential relationship on defender performance. Ask the defenders about contempt of court citations issued or threatened during the previous year.
5	THEN	Review your personnel policies to determine its autonomy and imperviousness to political and judicial pressure or change. Review the files of staff who were recruited, selected, promoted, and dismissed over the previous year. Did political and/or improper judicial concerns influence these decisions?
6,7	THEN	Review the authorization, funding, and organizational structure of your office to determine its autonomy and imperviousness to political and judicial pressure or change. Ask the defenders whether they feel their jobs would

MAKING CERTAIN ABOUT:

POLITICAL INFLUENCE/JUDICIAL CONTROL

If you have responded
"Uncertain" to Question:

be in jeopardy if political or judicial change occurred in the community or state, or whether the delivery of services to clients would suffer. Are their fears appropriate? Trace the effects on your office of the most recent political and judicial change in the community or state.

8,9

THEN

Review, for their comprehensiveness, existing policy statements on political and judicial pressure. Determine whether specified procedures exist which follow these policies. Then question relevant staff on (a) their understanding of what the policies are, and (b) the role each employee plays in implementing these policies. Ask each employee to outline his/her mode of operation in typical circumstances. If written policies/procedures do not exist, consider their addition to your office manual.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

POLITICAL AND JUDICIAL INDEPENDENCE

Political pressure and improper judicial control hamper the effectiveness of a public defender's office. If your office has such controls placed upon it, it is necessary to impose whatever changes are necessary to free your office.

Begin by determining whether, and in what areas, your office is formally restricted from being independent in case assignments, preparation and decision-making. Review federal and state laws, local court rules, and/or the contract under which your office is providing representation. You may decide that change is needed in one or all of these areas. Efforts in drafting new legislation, raising issues through litigation, or renegotiating the scope of your activities may be appropriate.

If your office is not restricted formally from making independent decisions, establish realistic goals toward which you will direct effort. For example, you may decide that:

- a. Case management should be free from all improper attempts at judicial control; or
- b. Case management should be free from all attempts at political control.

Once you have pinpointed office goals, you must determine a strategy by which these goals can be accomplished. Since a strategy entails the development of a careful plan or method, thinking through strategy for any goal will take you through the following stages:

1. Discussions with key individuals in the criminal justice and general communities;
2. Establishment of policies for your office;
3. Creation of an appropriate organizational structure to carry out your plans;
4. Assignment of administrative responsibilities;
5. Development of a set of procedures to be followed by staff; and,
6. The monitoring of the progress of the plan to ensure that goals are met and that policies and procedures are implemented.

A reasonable timetable should be set, with checkpoints to ensure that plans are being followed. Adequate resources (i.e. time, manpower, and money) should be allocated.

Depending upon the specific goals chosen for your office, discussions should be opened with the appropriate individuals: judges in the "judicial control" goal; politicians in the "political control" goal. You should also discuss your ideas with your governing or advisory board members in order to hear their suggestions and gain their support.

After these discussions and ideas have been translated into policy statements (or goals), the existing organizational structure and administrative system should be reviewed. Can you accomplish the new goals within the existing structure? Do you want to establish a special organizational unit to handle attempts at improper judicial and political control? In some offices the entire organizational structure and administrative system will have to be revised; in other offices it will suffice merely to add new responsibilities to staff. You may decide, for example, that each attorney will be responsible for reporting his/her own "control" problems.

A set of procedures should be established which follow your policies and are integrated with your organizational and administrative structure. In the case of suspected judicial control, you might establish the policy that a defender is responsible for reporting each attempt at control. Procedures used in implementing this policy may include:

1. Maintaining a card file on reported incidents; and
2. Checking periodically with the judges to see what justification they have for pressuring the defender attorneys.

The same procedures may be used to deal with political control.

The final stage or goal implementation involves ensuring that goals are being met. Techniques should be established which allow you, or a designated staff member, to determine whether or not improper attempts at control are being made. For the "judicial and political control" goal, you may want to check, on a monthly basis:

1. The ways in which defenders feel political pressures negatively affect their work; or
2. The ways in which defenders feel improper judicial pressures negatively affect their work.

You may also want to review, on a semi-annual basis, whether the authorization, funding, organizational structure and personnel policies of your office guarantee its autonomy and imperviousness to political pressure or political change.

Organizing your office for "independence" requires systematic planning, implementation, and review. The process should be similar in each defender office; the specifics of the goals and strategies chosen, however, will vary considerably.

TOPIC: PERSONNEL

QUESTION: Does your office have formal personnel policies?

COMMENTARY

The Personnel function of any office is concerned with the recruitment, selection, development, utilization and accomodation of human resources. The human resources consist of all individuals, regardless of their positions, who are engaged in any of the organization's activities. It is the chief defender's obligation to determine standards which apply fairly and equitably to all the employed staff, to define each person's responsibilities and duties, and to evaluate each person's capabilities and performance.

TOPIC: PERSONNEL

QUESTION: Does your office have formal personnel policies?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Does your office recruit personnel on an affirmative action basis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Are personnel selection standards related to criteria for job performance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Are personnel selection procedures based on equal employment opportunity criteria?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Are personnel tenure and promotion procedures based on merit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are personnel terminated only for good cause?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Are your salaries and benefits on par with those of competing organizations (e.g. prosecution)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do your personnel policies specify job descriptions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Do your personnel policies specify reasonable workload standards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Do case assignment policies take into consideration the experience and competence of staff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Are your personnel evaluation procedures equitable?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Is your personnel manual comprehensive?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Are there formal procedures which ensure that the personnel policies are implemented?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Are policies/procedures reviewed regularly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Are personnel policies/procedures known to staff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: PERSONNEL

If you have responded
"Uncertain" to Question:

- 1,2,3,4,5 THEN Ask your staff if they feel that personnel policies and procedures are fair and fairly applied. Review and analyze your recruitment, selection, promotion, and termination policies and procedures to determine whether they discriminate against any particular segment of potential candidates for each position. Your review should include the following:
1. Analyze the present representation of your staff - race, sex, religious, ethnic
 2. Analyze your previous year's recruitment - selection promotion and termination policies and procedures, including such things as job descriptions, application forms, recruitment methods and sources, interview procedures, test administration and test validity, educational requirements, experience requirements.
 3. Analyze your provisions for upgrading and promotion, lateral or vertical transfer, and formal and informal training during the previous year.
- Gather relevant data on the eligible candidate community (e.g. number of minorities graduating local law school) and compare with your staff statistics. Explore discrepancies in light of your policies and procedures.
- 6 THEN Gather salary and other personnel information from the local office of the prosecuting attorney, as well as from local private firms specializing in criminal work, and compare with those in your office.
- 7 THEN Review your personnel policies for job description information. Is your staff aware of their jobs descriptions? Do they consider them adequate?
- 8 THEN Review your personnel policies for workload standards. Is your staff aware of them? Do they consider them reasonable in terms of delivering effective counsel to each client?
- 9 THEN Review your case assignment policies. Do they take into consideration the experience and competence of staff? Ask defenders whether the case assignment system which presently exists results in a balanced workload distribution?

MAKING CERTAIN ABOUT: PERSONNEL

If you have responded
"Uncertain" to Question:

- 10 THEN Review your personnel evaluation procedures. Collect and summarize data on the actual results of your use of your evaluation procedures. Determine whether evaluation procedures are known fully and equally to all employees, and ask their opinions of (a) the relevance of the procedures and (b) the fairness with which they are implemented.
- 11 THEN Review your personnel manual for the existence of policies on: office organization; general personnel policies (seniority, employment, termination of employment); employee benefits (holidays, vacation, leaves of absence, insurance); compensation program of wages and salaries; personnel conduct; duplicating services (document reproduction, printing and binding); financial management (time records, disbursements, cash receipts, billing procedures, payroll, collection procedures, retention schedule for financial records); communication systems (telephone, telegraph/telex, telecopier or facsimile transmitting equipment, mails and express service, messenger services); support personnel responsibilities; information systems (filing and record procedures, information retrieval, docket control); office security (emergency procedure, medical emergencies, work injuries); miscellaneous guidelines (general secretarial procedures, purchasing, library).
- 12 THEN Review files and/or speak with supervisors to determine their utilization of the personnel policies and procedures.
- 13 THEN Do you have a routine for reviewing policies and procedures? When was the last time it was done? Does your personnel manual reflect any changes made?
- 14 THEN Ask your staff specific questions pertaining to specific sections of the personnel manual to determine whether they are familiar with it.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

PERSONNEL POLICIES

The existence of personnel policies and procedures are essential to an efficient and effective defender office operation. These policies/procedures should be able to handle all day-to-day routine operations, as well as unique situations that may arise. To design and implement a personnel manual, the same strategy should be followed as is followed when working through any problem in a defender office:

1. Discuss your concerns, additions, and deletions with staff, advisory board, and other key individuals in the criminal justice community;
2. Establish an appropriate organizational structure to carry out your plans;
3. Assign administrative responsibilities;
4. Develop a set of procedures to be followed by the staff; and,
5. Monitor the implementation of the policies and procedures.

A reasonable timetable for the development of a comprehensive personnel manual should be set, with checkpoints to ensure that plans are being followed. Adequate resources (e.g. manpower and money) should be allocated.

The following checklist which covers the most important items in any Defender Office, may help you prepare a comprehensive personnel policy manual for your office:

SAMPLE OFFICE MANUAL*

I. INTRODUCTION

Our Office
Manual Should
Include:

- Yes ☐ No ☐ A. Purpose and use of the manual
Yes ☐ No ☐ B. Circulation
Yes ☐ No ☐ 1. To all employees and attorneys
Yes ☐ No ☐ 2. New employees
Yes ☐ No ☐ 3. Confidentiality
Yes ☐ No ☐ C. Supplements
Yes ☐ No ☐ D. Authority for establishing new or revised policies
Yes ☐ No ☐ E. Questions re policy or procedure directed to whom

II. OFFICE ORGANIZATION

- Yes ☐ No ☐ A. Organization chart
Yes ☐ No ☐ B. Roster of specific assignments within office
Yes ☐ No ☐ C. Office map or directory

III. GENERAL PERSONNEL POLICIES

Seniority

- Yes ☐ No ☐ A. Overtime work distribution
Yes ☐ No ☐ B. Vacation scheduling
Yes ☐ No ☐ C. New office equipment and/or furnishings
Yes ☐ No ☐ D. Promotions

Employment

- Yes ☐ No ☐ A. Probationary period
Yes ☐ No ☐ 1. Length and purpose
Yes ☐ No ☐ 2. Employee benefits offered or not offered
Yes ☐ No ☐ B. Hours of work
Yes ☐ No ☐ 1. Definition of workday and workweek
Yes ☐ No ☐ 2. Definition of hours or work which are compensable as:
Yes ☐ No ☐ (a) Regular or straight time
Yes ☐ No ☐ (b) Overtime
Yes ☐ No ☐ 3. Method of reporting
Yes ☐ No ☐ 4. Employment agency fees
Yes ☐ No ☐ 5. Outside employment or "moonlighting" permitted

Termination of Employment

- Yes ☐ No ☐ A. Misconduct which warrants termination without prior warning
Yes ☐ No ☐ B. Procedure to be followed in issuing warnings in less severe types of disciplinary action before termination
Yes ☐ No ☐ C. Resignation procedure
Yes ☐ No ☐ 1. Requiring employee notice of intent to resign
Yes ☐ No ☐ (a) Form of notification and time limit
Yes ☐ No ☐ (b) Penalty for failure to give required notice
Yes ☐ No ☐ (1) No letter of recommendation or reference
Yes ☐ No ☐ (2) Loss of severance pay
Yes ☐ No ☐ (3) Other
Yes ☐ No ☐ 2. Notice of intent to resign not required
Yes ☐ No ☐ D. Policy re issuing letters of reference for terminated employees

IV. EMPLOYEE BENEFITS

Holidays

- Yes ☐ No ☐ A. Number and name of paid holidays
Yes ☐ No ☐ B. Arrangements for religious holidays
Yes ☐ No ☐ C. Holidays occurring on nonworking days
Yes ☐ No ☐ D. Arrangements for long holiday weekends
Yes ☐ No ☐ E. Eligibility requirements for paid holidays
Yes ☐ No ☐ F. Reimbursement for holidays worked

Vacation

- Yes ☐ No ☐ A. Eligibility and length of vacation
Yes ☐ No ☐ B. Vacation pay procedures

* Adapted from "A Blueprint for Preparing Your Own Law Office Staff Manual," Legal Economics, Vol. 1, No. 3, Fall 1975, p. 19. Any reproductions of this material, except that going to offices of the public defender is expressly forbidden without prior approval from the Legal Economics section of the American Bar Association.

IV. EMPLOYEE BENEFITS - Vacation [cont'd]

Our Office
Manual Should
Include:

- Yes ☐ No ☐ C. Scheduling vacation time
 Yes ☐ No ☐ D. Sickness during vacation
 Yes ☐ No ☐ E. Extending, accumulating or splitting vacation
 Yes ☐ No ☐ F. Military or summer camp training
 Yes ☐ No ☐ G. Effect of termination of employment
 Yes ☐ No ☐ H. Part-time and temporary employees
 Yes ☐ No ☐ I. Effect of reemployment

Leaves of Absence

- Yes ☐ No ☐ A. Sick leave
 Yes ☐ No ☐ 1. Eligibility requirements
 Yes ☐ No ☐ 2. Effect of termination of employment
 Yes ☐ No ☐ 3. Number of sick leave days or hours
 Yes ☐ No ☐ 4. Amount of sick leave pay
 Yes ☐ No ☐ 5. Proof of illness
 Yes ☐ No ☐ 6. Accumulation of sick leave benefits
 Yes ☐ No ☐ 7. Method of reporting
 Yes ☐ No ☐ 8. Part-time and temporary employees
 Yes ☐ No ☐ B. Military
 Yes ☐ No ☐ 1. Eligibility and procedure
 Yes ☐ No ☐ 2. Length of military leave
 Yes ☐ No ☐ 3. Effect on earnings, seniority and benefits
 Yes ☐ No ☐ 4. Reemployment privileges and obligations
 Yes ☐ No ☐ C. Maternity (consult Federal and State Law requirements)
 Yes ☐ No ☐ 1. Procedure for maternity leave
 Yes ☐ No ☐ 2. Length of maternity leave
 Yes ☐ No ☐ 3. Effect on earnings, seniority and benefits
 Yes ☐ No ☐ 4. Reemployment privileges and obligations
 Yes ☐ No ☐ D. Civic duty
 Yes ☐ No ☐ 1. Jury duty
 Yes ☐ No ☐ 2. Responding to subpoena to appear as witness in other than personal business transactions or cases of own misconduct or unlawful conduct
 Yes ☐ No ☐ 3. Pay arrangements for jury duty and subpoena fees:
 Yes ☐ No ☐ (a) Reimbursement to firm for fees received
 Yes ☐ No ☐ (b) Deduction from pay if fees not remitted
 Yes ☐ No ☐ 4. Voting leave (consult State Law requirements)
 Yes ☐ No ☐ E. Personal leaves of absence
 Yes ☐ No ☐ 1. Medical and dental appointments
 Yes ☐ No ☐ 2. Illness, injury or death in employee's immediate family
 Yes ☐ No ☐ 3. Funerals
 Yes ☐ No ☐ 4. Weddings
 Yes ☐ No ☐ 5. Eligibility and procedure for taking
 Yes ☐ No ☐ 6. Length of personal leave
 Yes ☐ No ☐ 7. Effect on earnings and other benefits
 Yes ☐ No ☐ F. Reporting absences from office

Insurance

- Yes ☐ No ☐ A. Group life insurance
 Yes ☐ No ☐ 1. Description of plan
 Yes ☐ No ☐ 2. Eligibility requirements
 Yes ☐ No ☐ 3. Amount of coverage or benefits
 Yes ☐ No ☐ 4. Contributory or noncontributory plan
 Yes ☐ No ☐ 5. Conversion privileges upon termination of employment
 Yes ☐ No ☐ 6. Accidental death or dismemberment benefits
 Yes ☐ No ☐ 7. Dependent coverage
 Yes ☐ No ☐ 8. Administration of plan

IV. EMPLOYEE BENEFITS - Insurance [cont'd]

Our Office
Manual Should
Include:

- Yes ☐ No ☐ B. Group health and accident insurance
 Yes ☐ No ☐ 1. Description of plan
 Yes ☐ No ☐ 2. Eligibility requirements
 Yes ☐ No ☐ 3. Amount and description of benefits provided and deductions
 Yes ☐ No ☐ 4. Contributory or noncontributory plan
 Yes ☐ No ☐ 5. Conversion privileges upon termination of employment
 Yes ☐ No ☐ 6. Claims procedure
 Yes ☐ No ☐ 7. Individual or family coverage
 Yes ☐ No ☐ 8. Administration of plan
 Yes ☐ No ☐ C. Retirement and/or deferred compensation plans
 Yes ☐ No ☐ 1. Type and description of plan offered
 Yes ☐ No ☐ 2. Eligibility requirements
 Yes ☐ No ☐ 3. Amount of benefits provided
 Yes ☐ No ☐ 4. Vesting requirements
 Yes ☐ No ☐ 5. Contributory or noncontributory plan
 Yes ☐ No ☐ 6. Death and disability benefits
 Yes ☐ No ☐ 7. Effect of reemployment
 Yes ☐ No ☐ 8. Retirement age requirements
 Yes ☐ No ☐ D. Disability income insurance
 Yes ☐ No ☐ 1. Description of plan
 Yes ☐ No ☐ 2. Eligibility requirements
 Yes ☐ No ☐ 3. Type and amount of benefits provided
 Yes ☐ No ☐ 4. Contributory or noncontributory
 Yes ☐ No ☐ 5. Relationship to Social Security benefits
 Yes ☐ No ☐ 6. Proof and length of disability
 Yes ☐ No ☐ 7. Conversion privileges upon termination
 Yes ☐ No ☐ E. Workman's compensation (consult State Law requirements)

Miscellaneous

- Yes ☐ No ☐ A. Work or Coffee breaks
 Yes ☐ No ☐ 1. Time of day
 Yes ☐ No ☐ 2. Duration
 Yes ☐ No ☐ 3. Where taken
 Yes ☐ No ☐ B. Lunch or meal periods
 Yes ☐ No ☐ 1. Time of day
 Yes ☐ No ☐ 2. Duration
 Yes ☐ No ☐ 3. Where taken
 Yes ☐ No ☐ 4. When working overtime, weekends or holidays
 Yes ☐ No ☐ C. Bonuses
 Yes ☐ No ☐ 1. Eligibility
 Yes ☐ No ☐ 2. Discretionary year-end and Christmas bonuses
 Yes ☐ No ☐ 3. Nondiscretionary
 Yes ☐ No ☐ 4. Other
 Yes ☐ No ☐ D. Employee services, recognition and privileges
 Yes ☐ No ☐ 1. Length of service awards
 Yes ☐ No ☐ 2. Loans and advances
 Yes ☐ No ☐ 3. Lounge or rest area facilities
 Yes ☐ No ☐ 4. Food services/refreshments
 Yes ☐ No ☐ 5. Legal service discounts for employees
 Yes ☐ No ☐ 6. Work-related training courses, tuition education programs, and organization membership
 Yes ☐ No ☐ (a) Contributory or noncontributory
 Yes ☐ No ☐ (b) Eligibility requirements
 Yes ☐ No ☐ (c) Procedure for firm approval of financial assistance
 Yes ☐ No ☐ 7. Recreation program

IV. EMPLOYEE BENEFITS - Miscellaneous [cont'd]

Our Office
Manual Should
Include:

Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐

8. Sabbaticals
E. Parking
1. Eligibility requirements
2. Where located
3. Contributory or noncontributory

V. COMPENSATION PROGRAM Basic Wage and Salary Policies

Yes ☐ No ☐ A.

- How wages and salaries are determined

Yes ☐ No ☐

1. Employee performance evaluation

Yes ☐ No ☐

2. Merit or performance increases

Yes ☐ No ☐

3. Cost of living adjustments

Yes ☐ No ☐

4. Length of Service

Yes ☐ No ☐

5. Incentive plans

Yes ☐ No ☐

6. When compensation reviewed

Yes ☐ No ☐ B.

- Compensation differences

Yes ☐ No ☐

1. Hours worked

Yes ☐ No ☐

2. Special skills or aptitudes

Yes ☐ No ☐

3. Apprentices or trainees

Yes ☐ No ☐

4. Supervisory personnel

Yes ☐ No ☐

5. Handicapped personnel

Yes ☐ No ☐ C.

- Overtime pay policies

Yes ☐ No ☐

1. Employees eligible

Yes ☐ No ☐

2. Employees not eligible

Yes ☐ No ☐

3. How computed

Yes ☐ No ☐

4. Pay rate

Yes ☐ No ☐

- (a) Regular working days

Yes ☐ No ☐

- (b) Weekends and holidays

Yes ☐ No ☐

5. Compensatory time in lieu of payment for overtime

Yes ☐ No ☐

6. Method of reporting

Yes ☐ No ☐

7. How authorized

Yes ☐ No ☐

8. Meal allowance when working evenings, weekends or holidays

Yes ☐ No ☐

9. Taxi expense when going home late or coming to work early

Yes ☐ No ☐ D.

- Method of payment

Yes ☐ No ☐

1. Cash

Yes ☐ No ☐

2. Check

Yes ☐ No ☐ E.

- Time of Payment

Yes ☐ No ☐

1. Pay period

Yes ☐ No ☐

2. Payday

Yes ☐ No ☐

3. Advances

Yes ☐ No ☐ F.

- Payroll deductions

Yes ☐ No ☐

1. Required by State and Federal Law

Yes ☐ No ☐

2. Required by employer

Yes ☐ No ☐

3. Deductions authorized by employee

Yes ☐ No ☐

4. Garnishments and wage attachments

Yes ☐ No ☐ G.

- Personnel forms used in administering compensation policies

Yes ☐ No ☐

1. Illustrations

Yes ☐ No ☐

2. Instructions for use

VI. PERSONAL CONDUCT

Yes ☐ No ☐ A.

- Office decorum

Yes ☐ No ☐

1. Respect for fellow employees

Yes ☐ No ☐

2. Treatment of clients and visitors to office

Yes ☐ No ☐

3. Addressing of attorneys and clients

Yes ☐ No ☐

4. Responsibility for keeping office, lounges or rest areas in neat and orderly condition

VI. PERSONAL CONDUCT - [cont'd]

Our Office
Manual Should
Include:

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

Yes ☐ No ☐

5. Responsibility for maintaining work areas clean and uncluttered
6. Safeguarding client files and matters
7. Covering of equipment with dust covers
8. Decorating of personal work area with pictures, art work, personal mementos, etc.
B. Personal appearance and dress

1. During normal working hours
(a) Acceptable dress for male employees
(b) Acceptable dress for female employees
2. During other than normal working hours

- C. Punctuality

- D. Visitation of relatives or friends during working hours

- E. Personal telephone usage

1. When allowed

2. Personal long distance calls

- F. Eating and drinking in office

- G. Smoking in office

- H. Personal use of office equipment, supplies or facilities:

1. Postage

2. Document reproduction

3. Typewriters

4. Calculators or adding machines

5. Office supplies

6. When allowed and under what financial arrangement

- I. Reading of magazines, newspapers, books during working hours

- J. Listening to radios, tape recorders, etc., during working hours

- K. Ethical standards for employees

1. Confidentiality of client matters

2. Confidentiality of office or firm matters

3. Client or other persons requests for information from files, etc.

4. Use of firm letterhead for personal use or correspondence

- L. Employee suggestions

VII. DUPLICATING SERVICES

Document Reproduction

Yes ☐ No ☐ A.

- Types and uses of equipment available

Yes ☐ No ☐

1. Where located

Yes ☐ No ☐

2. Operating instructions

Yes ☐ No ☐

3. Copying procedures

Yes ☐ No ☐

- (a) Self-service

Yes ☐ No ☐

- (b) Full-time operator

Yes ☐ No ☐

4. Charges for use and recording of copies made

Yes ☐ No ☐

- (a) Non-defender

Yes ☐ No ☐

- (b) Office

Yes ☐ No ☐

- (c) Employees

Yes ☐ No ☐

5. Special copying requests

Yes ☐ No ☐

- (a) Form

Yes ☐ No ☐

- (b) Procedures

Yes ☐ No ☐

6. Equipment maintenance and repair

Yes ☐ No ☐

- (a) Who notified

Yes ☐ No ☐

- (b) Key operators

Yes ☐ No ☐

7. Supplies

Yes ☐ No ☐

8. Defective copies credit procedure

Yes ☐ No ☐

9. Out-of-office document reproduction services

Yes ☐ No ☐

- (a) When used

Yes ☐ No ☐

- (b) Location

CONTINUED

1 OF 3

VII. DUPLICATING SERVICES - Document Reproduction (cont'd)

Our Office
Manual Should
Include:
Yes ☐ No ☐
Yes ☐ No ☐

- (c) Billing Procedure
10. Paper cutter

VIII. FINANCIAL MANAGEMENT Time Records

- Yes ☐ No ☐ A. Form used and instructions re same
Yes ☐ No ☐ B. Who completes
Yes ☐ No ☐ C. When turned in
Yes ☐ No ☐ D. Where kept or recorded
Yes ☐ No ☐ E. Time units recorded, i.e., tenth of hour, five-minute increments
Yes ☐ No ☐ F. No-charge time procedures

Accounting Disbursements

- Yes ☐ No ☐ A. Client
Yes ☐ No ☐ 1. Forms used in requesting and instructions re same
Yes ☐ No ☐ 2. Authorization
Yes ☐ No ☐ (a) Procedure
Yes ☐ No ☐ (b) Authorized signatures
Yes ☐ No ☐ 3. Types of client disbursements

- Yes ☐ No ☐ (c) Certification of documents

- Yes ☐ No ☐ (j) Deposition cost
Yes ☐ No ☐ (k) Document reproduction
Yes ☐ No ☐ (l) Expert fee
Yes ☐ No ☐ (m) Filing fees
Yes ☐ No ☐ (n) Expense charges
Yes ☐ No ☐ (o) Investigation expenses

- Yes ☐ No ☐ (q) Meal charges

- Yes ☐ No ☐ (s) Messenger services

- Yes ☐ No ☐ (u) Parking or toll expense
Yes ☐ No ☐ (v) Photographic expenses
Yes ☐ No ☐ (w) Postage
Yes ☐ No ☐ (x) Printing

- Yes ☐ No ☐ (z) Records search
Yes ☐ No ☐ (aa) Additional secretarial help
Yes ☐ No ☐ (bb) Service of process

VIII. FINANCIAL MANAGEMENT - Disbursements (cont'd)

Our Office
Manual Should
Include:

- Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐

- (cc) Sheriff's fee
(dd) Taxi, bus charges
(ee) Telecopier expenses
(ff) Telephone toll charges
(gg) Telegraph
(hh) Travel expenses

- Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐

- (1) Travel economy
(2) Use of credit cards
(3) Use of travel agency
(ii) Trial exhibits
(jj) Witness fee

4. Reimbursement procedure for out-of-pocket costs

5. Mileage reimbursement

- (a) Amount
(b) Procedure

- B. Firm

1. Authorization procedure
2. Signatures required
3. Pay on invoice or statement

- Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐

5. Credit cards
(a) Who authorized to use
(b) When used
(c) Furnishing of receipts
(d) Use for personal expenses—permitted or not permitted

- Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐

7. Professional dues
8. Continuing legal education
9. Bar conventions
10. Reimbursement procedure for out-of-pocket costs
Petty cash
1. Procedure for use
2. Who has responsibility
3. Cashing of personal or payroll checks

Cash Receipts

- Yes ☐ No ☐ A. Who receives

- Yes ☐ No ☐ 2. Accounting
Yes ☐ No ☐ 3. Other

Billing Procedures

- Yes ☐ No ☐ A. Billing responsibilities
Yes ☐ No ☐ 1. Billing attorney
Yes ☐ No ☐ 2. Billing clerks or secretaries
Yes ☐ No ☐ B. Billing cycle
Yes ☐ No ☐ 1. Monthly
Yes ☐ No ☐ 2. Quarterly

VIII. FINANCIAL MANAGEMENT - Billing Procedures (cont'd)

Our Office
Manual Should
Include:

- Yes ☐ No ☐ 3. Annually
Yes ☐ No ☐
Yes ☐ No ☐ 5. Other
Yes ☐ No ☐ C. Billing of disbursements
Yes ☐ No ☐ 1. Cycle
Yes ☐ No ☐ 2. Over a certain amount of dollars disbursed

Payroll

- Yes ☐ No ☐ A. Reporting of absences
Yes ☐ No ☐ B. Overtime
Yes ☐ No ☐ C. Deductions other than required by law
Yes ☐ No ☐ 1. Personal expenses
Yes ☐ No ☐ (a) Postage
Yes ☐ No ☐ (b) Telephone
Yes ☐ No ☐ (c) Document reproduction
Yes ☐ No ☐ 2. Loans or advances
Yes ☐ No ☐ 3. Fringe benefits not paid for by firm
Yes ☐ No ☐ D. Sick leave
Yes ☐ No ☐ E. Vacation
Yes ☐ No ☐ F. How pay calculated

Trust Account

- Yes ☐ No ☐ A. When used
Yes ☐ No ☐ B. Procedure for use (deposits and withdrawals)
Yes ☐ No ☐ C. Time required for drafts or deposits to clear bank before disbursement made

Retention Schedule for Case File Records

- Yes ☐ No ☐ A. How preserved
Yes ☐ No ☐ B. Length of retention (consult State and Federal Laws and regulations)
Yes ☐ No ☐ C. How destroyed

IX. COMMUNICATION SYSTEMS

Telephone

- Yes ☐ No ☐ A. Description of system and how it works
Yes ☐ No ☐ B. Switchboard hours
Yes ☐ No ☐ C. Answering of incoming calls
Yes ☐ No ☐ D. Automatic answering equipment
Yes ☐ No ☐ E. Answering service
Yes ☐ No ☐ F. Night telephone numbers
Yes ☐ No ☐ G. Paging procedure
Yes ☐ No ☐ H. Long distance calls
Yes ☐ No ☐ 1. Who places

IX. COMMUNICATION SYSTEMS - Telephone (cont'd)

Our Office
Manual Should
Include:

- Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐ I. Collect calls
Yes ☐ No ☐ K. Telephone message procedures
Yes ☐ No ☐ L. Recording telephone calls
Yes ☐ No ☐ M. "I want to speak to an attorney"
Yes ☐ No ☐ N. Personal calls by employees
Yes ☐ No ☐ O. Reporting mechanical or repair problems
Yes ☐ No ☐ P. Requesting equipment changes
Yes ☐ No ☐ Q. Speaker phones — location and use
Yes ☐ No ☐ R. Inquiries when attorney is in conference

Mail and Express Service

- Yes ☐ No ☐ A. Mail procedures
Yes ☐ No ☐ 1. Incoming
Yes ☐ No ☐ (a) When received
Yes ☐ No ☐ (b) Who receives
Yes ☐ No ☐ (c) How distributed — opened or unopened
Yes ☐ No ☐ (d) Stamped with "Received" and date
Yes ☐ No ☐ (e) Postage-due mail
Yes ☐ No ☐ (f) Certified and registered mail
Yes ☐ No ☐ (g) Checks for payment of services and disbursements
Yes ☐ No ☐ 2. Outgoing
Yes ☐ No ☐ (a) Office pickup schedule
Yes ☐ No ☐ (b) Use of stamps
Yes ☐ No ☐ (c) Use of postage meter
Yes ☐ No ☐ (d) Who posts and when
Yes ☐ No ☐ (e) Zipcodes on all mail
Yes ☐ No ☐ (1) Amount
Yes ☐ No ☐ (2) How recorded
Yes ☐ No ☐ 3. Types of mail services and when used
Yes ☐ No ☐ (b) Registered mail
Yes ☐ No ☐ (c) Certified mail
Yes ☐ No ☐ (d) Insured mail
Yes ☐ No ☐ (e) Parcel post
Yes ☐ No ☐ (f) Special delivery
Yes ☐ No ☐ (g) Foreign
Yes ☐ No ☐ 4. Equipment usage and instructions
Yes ☐ No ☐ (a) Letter opening equipment

IX. COMMUNICATION SYSTEMS - Mail and Express Service [cont'd]

Our Office
Manual Should
Include:

- Yes ☐ No ☐ (b) Postage scales
 Yes ☐ No ☐ (c) Postage meter machine
 Yes ☐ No ☐ (d) Refund of unused meter stamps
 Yes ☐ No ☐ (e) Metered reply mail
 Yes ☐ No ☐ (f) Repairs and maintenance
 Yes ☐ No ☐ 5. Mailing after office hours
 Yes ☐ No ☐ (a) Location of nearest postal boxes with pickup schedule
 Yes ☐ No ☐ (b) Nearest post office
 Yes ☐ No ☐ 6. Personal use of firm postage machines or stamps

Express or Air Freight Services

- Yes ☐ No ☐ A. Who used and how notified
 Yes ☐ No ☐ B. Description of service
 Yes ☐ No ☐ C. Billing procedure

Messenger Services

- Yes ☐ No ☐ A. In-house messenger services
 Yes ☐ No ☐ B. Outside or independent messenger services
 Yes ☐ No ☐ C. Special instructions
 Yes ☐ No ☐ D. Pickup procedure and schedule of deliveries
 Yes ☐ No ☐ E. Billing procedure
 Yes ☐ No ☐ F. "Rush" deliveries
 Yes ☐ No ☐ G. Service of process

X. SUPPORT PERSONNEL RESPONSIBILITIES

- Yes ☐ No ☐ A. Receptionist — Functions
 Yes ☐ No ☐ 1. Telephone
 Yes ☐ No ☐ (a) Answering
 Yes ☐ No ☐ (b) Paging
 Yes ☐ No ☐ (c) Placing of calls
 Yes ☐ No ☐ (d) Messages
 Yes ☐ No ☐ 2. Calendar of attorneys and employees in and out of office, in conference, etc.
 Yes ☐ No ☐ 3. Hostess
 Yes ☐ No ☐ (a) Greeting and announcing of visitors
 Yes ☐ No ☐ (b) Serving of refreshments
 Yes ☐ No ☐ (c) Escorting visitors to attorney's office
 Yes ☐ No ☐ (d) Calling taxis, etc.
 Yes ☐ No ☐ (e) Receiving documents:
 Yes ☐ No ☐ (1) Deliveries
 Yes ☐ No ☐ (2) Service of process
 Yes ☐ No ☐ (f) Arranging for pickup of documents, service of process, messenger and express service
 Yes ☐ No ☐ (g) Handling of salesmen, equipment vendors, solicitors
 Yes ☐ No ☐ (h) "I want to see an attorney."
 Yes ☐ No ☐ 4. Housekeeping
 Yes ☐ No ☐ (a) Watering of plants
 Yes ☐ No ☐ (b) Organization of reading materials
 Yes ☐ No ☐ (c) Maintaining neatness of reception area
 Yes ☐ No ☐ (d) Scheduling of conference or deposition rooms
 Yes ☐ No ☐ (e) Advising switchboard operator of attorneys and employees in and out of office and in conference
 Yes ☐ No ☐ (f) Reporting heating, air conditioning, lighting or electrical problems to the appropriate service company or building maintenance personnel
 Yes ☐ No ☐ 5. Secretarial
 Yes ☐ No ☐ (a) Typing
 Yes ☐ No ☐ (b) Filing
 Yes ☐ No ☐ (c) Miscellaneous clerical assignments

X. SUPPORT PERSONNEL RESPONSIBILITIES [cont'd]

Our Office
Manual Should
Include:

- Yes ☐ No ☐ (a) Smoking
 Yes ☐ No ☐ (b) Eating or drinking
 Yes ☐ No ☐ (c) Dress
 Yes ☐ No ☐ (d) Taking care of personal appearance while at desk
 Yes ☐ No ☐ (e) Personal business while at desk
 Yes ☐ No ☐ 7. Emergency responsibilities
 Yes ☐ No ☐ (a) Activate fire or emergency alarm
 Yes ☐ No ☐ (b) Power failure
 Yes ☐ No ☐ (c) Advise clients of exit procedures in event of emergency
 Yes ☐ No ☐ B. Switchboard
 Yes ☐ No ☐ 1. Opening and closing of board
 Yes ☐ No ☐ 2. Identifying office
 Yes ☐ No ☐ 3. Handling of long distance calls
 Yes ☐ No ☐ 4. Logging of calls
 Yes ☐ No ☐ 5. Accepting collect calls
 Yes ☐ No ☐ 6. Reporting repairs or trouble calls
 Yes ☐ No ☐ 7. Telephone messages
 Yes ☐ No ☐ 8. Giving out personal telephone numbers and addresses of attorneys and employees
 Yes ☐ No ☐ 9. Office telephone directory
 Yes ☐ No ☐ 10. Conference calls
 Yes ☐ No ☐ 11. Frequently asked questions and problems:
 Yes ☐ No ☐ (a) "Let me speak to the attorney who is handling the Jones case."
 Yes ☐ No ☐ (b) "Who is your office manager?"
 Yes ☐ No ☐ (c) Calls for someone who has left the firm
 Yes ☐ No ☐ (d) "I have a telecopier message."
 Yes ☐ No ☐ (e) Obscene calls
 Yes ☐ No ☐ (f) Telephone solicitations
 Yes ☐ No ☐ (g) Important messages or inquiries when attorney is in conference
 Yes ☐ No ☐ C. Librarian
 Yes ☐ No ☐ 1. Book purchases and continuation of cataloging
 Yes ☐ No ☐ (a) Internal legal memoranda, briefs, books and other materials
 Yes ☐ No ☐ (b) Personal attorney reference materials
 Yes ☐ No ☐ 2. Book placement
 Yes ☐ No ☐ 3. Controlling circulation and check-out
 Yes ☐ No ☐ (a) Firm personnel
 Yes ☐ No ☐ (b) Nonfirm personnel
 Yes ☐ No ☐ 4. Routing new materials, advance sheets
 Yes ☐ No ☐ 5. Maintaining of library materials
 Yes ☐ No ☐ (a) Shelving
 Yes ☐ No ☐ (b) Filing of upkeep services
 Yes ☐ No ☐ (c) Binding and book repair
 Yes ☐ No ☐ (d) Disposition of old publications
 Yes ☐ No ☐ 6. Shepardizing
 Yes ☐ No ☐ 7. Proofing citations
 Yes ☐ No ☐ D. Docket clerk
 Yes ☐ No ☐ E. File clerk
 Yes ☐ No ☐ F. Mail clerk
 Yes ☐ No ☐ G. Messenger
 Yes ☐ No ☐ H. Relief personnel
 Yes ☐ No ☐ I. General clerical

XI. INFORMATION SYSTEMS Filing and Record Procedures

- Yes ☐ No ☐ A. Description of filing and numbering system

XI. INFORMATION SYSTEMS - Filing and Record Procedures [cont'd]

Our Office
Manual Should
Include:

- Yes ☐ No ☐ B. Opening of files
Yes ☐ No ☐ C. Organization of file folders
Yes ☐ No ☐ D. Maintenance of files
Yes ☐ No ☐ E. Types of files
Yes ☐ No ☐ F. Indexing of files
Yes ☐ No ☐ G. Removal of files or use of locator or "out cards"
Yes ☐ No ☐ H. Closing of files
Yes ☐ No ☐ I. Microfilming
Yes ☐ No ☐ J. Storage
Yes ☐ No ☐ K. Preventing conflict of interests
Yes ☐ No ☐ L. Dating information and mail received
Yes ☐ No ☐ M. Form files
Yes ☐ No ☐ 1. Location
Yes ☐ No ☐ 2. Index or contents
Yes ☐ No ☐ N. Billing files
Yes ☐ No ☐ O. Stock books, minute books, corporate seals and abstracts
Yes ☐ No ☐ P. Wills
Yes ☐ No ☐ Q. Safe files, safety deposit boxes or vaults for valuable documents or negotiable instruments
Yes ☐ No ☐ R. Record retention schedule and procedures
Yes ☐ No ☐ 1. Employee records
Yes ☐ No ☐ 2. Payroll records
Yes ☐ No ☐ 3. Financial records
Yes ☐ No ☐ 4. Client files
Yes ☐ No ☐ 5. Firm files
Yes ☐ No ☐ 6. Tax returns and reports
Yes ☐ No ☐ S. Destruction of records
Yes ☐ No ☐ 1. Paper shredding
Yes ☐ No ☐ 2. Burning
Yes ☐ No ☐ 3. Other

Information Retrieval

- Yes ☐ No ☐ A. Acquisition of information
Yes ☐ No ☐ 1. Brief
Yes ☐ No ☐ 2. Opinion letter
Yes ☐ No ☐ 3. Memos
Yes ☐ No ☐ 4. Pleadings
Yes ☐ No ☐ 5. Other documents
Yes ☐ No ☐ B. Indexing
Yes ☐ No ☐ C. Storage
Yes ☐ No ☐ D. Search
Yes ☐ No ☐ E. Retrieval

Docket Control

- Yes ☐ No ☐ A. Items to be calendared
Yes ☐ No ☐ B. Description of system used
Yes ☐ No ☐ C. Tickler system used by secretary
Yes ☐ No ☐ D. Individual attorney responsibility

XII. OFFICE SECURITY

- Yes ☐ No ☐ A. Keys
Yes ☐ No ☐ B. Security personnel
Yes ☐ No ☐ C. Office hours
Yes ☐ No ☐ D. Admission of visitors when office closed
Yes ☐ No ☐ E. Closing of office facilities
Yes ☐ No ☐ 1. Checking doors
Yes ☐ No ☐ 2. Turning off office machines, coffee pots, hot plates, etc.

XII. OFFICE SECURITY - [cont'd]

Our Office
Manual Should
Include:

- Yes ☐ No ☐ F. Building security procedure
Yes ☐ No ☐ 1. Personal identification cards, passes
Yes ☐ No ☐ 2. Signing in or out
Yes ☐ No ☐ G. Protection of valuables and personal belongings
Emergency Procedure
Yes ☐ No ☐ A. Fire or other emergency evacuation plan
Yes ☐ No ☐ B. Emergency telephone numbers
Yes ☐ No ☐ C. Where fire or emergency exits located
Yes ☐ No ☐ D. Use of elevator in event of emergency
Yes ☐ No ☐ E. Fire extinguisher location
Yes ☐ No ☐ F. Fire or emergency alarm procedures and locations
Yes ☐ No ☐ G. Use of fire or emergency exits during other than emergencies
Medical Emergencies, Work Injuries or Accident
Yes ☐ No ☐ A. Doctor's office, clinic, hospital or other medical facility to contact
Yes ☐ No ☐ B. Reporting on-the-job accidents

XIII. MISCELLANEOUS GUIDELINES

- Yes ☐ No ☐ A. Client parking
Yes ☐ No ☐ 1. Where located
Yes ☐ No ☐ B. Workload
Yes ☐ No ☐ 1. Resolving conflicting requests for work
Yes ☐ No ☐ 2. Request for additional secretarial or clerical assistance
Yes ☐ No ☐ 3. Sharing workload
Yes ☐ No ☐ (a) When overloaded
Yes ☐ No ☐ (b) When have spare time
Yes ☐ No ☐ C. Outside services
Yes ☐ No ☐ 1. Travel agency
Yes ☐ No ☐ 2. Photographic supplies and processing
Yes ☐ No ☐ 3. Car rental agency
Yes ☐ No ☐ 5. Taxi or special ground transportation
Yes ☐ No ☐ 6. Charter aircraft arrangements
Yes ☐ No ☐ 7. Hotel accommodations for witnesses
Yes ☐ No ☐ 8. Investigative agencies and reports
Yes ☐ No ☐ 10. Service of process
Yes ☐ No ☐ 11. Translation services
Yes ☐ No ☐ D. Monthly or periodic staff meetings
Yes ☐ No ☐ E. Travel on office or firm business
Yes ☐ No ☐ 1. Use of attorney's automobile
Yes ☐ No ☐ 2. Use of office automobiles
Yes ☐ No ☐ 3. Mileage reimbursement if own auto used
Yes ☐ No ☐ F. Notary Public
Yes ☐ No ☐ 1. Application and authorization
Yes ☐ No ☐ 2. General guidelines
Yes ☐ No ☐ 3. Firm directory
Yes ☐ No ☐ G. Solicitations by employees
General Secretarial Procedures
Yes ☐ No ☐ A. Power typing equipment uses
Yes ☐ No ☐ 1. Resolving conflicting work requests
Yes ☐ No ☐ 2. Night — weekend
Yes ☐ No ☐ 3. Operator duties and responsibilities
Yes ☐ No ☐ B. Typing pool
Yes ☐ No ☐ 1. Routine work

XII. MISCELLANEOUS GUIDELINES - General Secretarial Procedures (cont'd)

Our Office
Manual Should
Include:

- Yes ☐ No ☐ 2. Rush
Yes ☐ No ☐ 3. Night — weekend
Yes ☐ No ☐ C. File number on all correspondence, documents, etc.
Yes ☐ No ☐ D. Copies of documents, correspondence pleadings to client.

Purchasing

- Yes ☐ No ☐ A. Office supplies
Yes ☐ No ☐ 1. Inventory reorder procedure
Yes ☐ No ☐ 2. Person responsible for ordering
Yes ☐ No ☐ B. Office refreshments
Yes ☐ No ☐ C. Furniture, equipment, fixed improvements
Yes ☐ No ☐ D. Requests for new supplies or new products
Yes ☐ No ☐ E. Centralized or decentralized purchasing
Yes ☐ No ☐ F. Meeting with salesmen and equipment manufacturing representatives

Library

- Yes ☐ No ☐ A. Purchasing of new library books and materials
Yes ☐ No ☐ 1. Receiving of new materials
Yes ☐ No ☐ 2. Where located
Yes ☐ No ☐ 3. Organizing
Yes ☐ No ☐ 4. Catalogs
Yes ☐ No ☐ 5. Shelving
Yes ☐ No ☐ (a) When done
Yes ☐ No ☐ (b) By whom
Yes ☐ No ☐ (c) Procedure when don't want item shelved
Yes ☐ No ☐ 6. Cassettes
Yes ☐ No ☐ 7. CLE materials and programs
Yes ☐ No ☐ 8. Sign-out or check-out system
Yes ☐ No ☐ 9. Use by other than members of firm
Yes ☐ No ☐ 10. Circulation of new materials, advance sheets, etc.

TOPIC: NON-DISCRIMINATION

QUESTION: Is representation provided to clients in a non-discriminatory manner?

COMMENTARY

The most fundamental precept under which all lawyers are required to function, according to the American Bar Association Code of Professional Responsibility, is that the lawyer is an advocate for his client's interests. Even though the client himself, the crime with which he is charged, and the law applicable to the case may be personally distasteful, the lawyer must maintain professional detachment from such considerations and advance the client's interests without regard to the lawyer's personal feelings.

Because of the sensitive nature of the areas with which this objective is concerned, measurement of discrimination within the defender office is most difficult. The overall climate of the local jurisdiction is crucial. Prevailing attitudes in the community, particularly in the criminal justice system, may militate in favor of the defender's retaining a low profile on issues of discrimination where the interests of a particular client are at stake. But careful selection and close supervision of defender personnel can minimize prejudicial defender performance and set an example for the community as a whole. The defender is often expected to be the "conscience of the community." This objective legitimizes that expression.

TOPIC: NON-DISCRIMINATION

QUESTION: Is representation provided to clients in a non-discriminatory manner?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Is thorough and powerful representation provided without regard to the racial/ethnic characteristics of clients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is thorough and powerful representation provided without regard to the sex of clients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do written office policies/procedures exist concerning non-discrimination in case representation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Are office policies/procedures regarding non-discriminatory representation followed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: NON-DISCRIMINATION

If you have responded "Uncertain" to Question:

- 1

THEN

Select three frequently charged types of offenses. For these offense types only, review recently closed cases, selecting 25-50 cases in which the client was a member of the majority racial/ethnic group, and 25-50 cases in which the client was a member of the minority racial/ethnic group. Maintain separate groupings, and for each case tabulate the following data:

(1) Time interval between arraignment and case closing

(2) Bail status

(3) Final disposition

(4) Final sentence

(5) Personal data, such as prior conviction record, sex, age

Review the tabulated data to determine whether majority and minority clients appear to receive similar justice. If the answer is "no", consider the reasons why. Is the situation out of your control? Is it a situation which you can begin to alter? Question local client advocate groups about perceived racial/ethnic discrimination.
- 2

THEN

Select three frequently charged types of offenses. For these offense types only review recently closed cases, selecting 25-50 cases in which the client was male and 25-50 cases in which the client was female. Maintain separate groupings, and for each case, tabulate the following data:

(1) Time interval between arraignment and case closing

(2) Bail status

(3) Final disposition

(4) Final sentence

(5) Personal data, such as prior conviction record, sex, age

Review the tabulated data to determine whether clients of different sexes appear to receive similar justice. If the answer is "no", consider the reasons why. Is the situation out of your control? Is it a situation which you can begin to alter? Question local client advocate groups about perceived sex discrimination.

MAKING CERTAIN ABOUT: NON-DISCRIMINATION

If you have responded
"Uncertain" to Question:

- 3,4 THEN Review existing policy statements on discrimination for their comprehensiveness, clarity and precision. Determine whether specified procedures exist which follow these policies and whether appropriate manpower and resources have been deployed. Then question relevant staff on: (a) their understanding of what the policies are; and (b) the role each employee plays in implementing the policies. Give each employee a series of hypothetical situations to ascertain his/her mode of operation. If written policies/procedures do not exist, consider their addition to your office manual.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

NON-DISCRIMINATION

A defender office should treat each of its clients equally. If this is not happening, a change is required. Your overall goal should be that: "Representation is provided to clients in a non-discriminatory manner."

Establish realistic non-discriminatory goals for your office towards which you will direct effort. For example, your goals may be:

1. Representation which is not affected by the racial characteristics of clients; or
2. Representation which is not affected by the sexual characteristics of clients.

Once you have pinpointed office goals, you must determine a strategy by which these goals can be accomplished. Since a strategy entails the development of a careful plan or method, thinking through strategy for any goal will take you through the following stages:

1. Discussions with key individuals in the criminal justice and general communities;
2. Establishment of policies for your office;
3. Creation of an appropriate organizational structure to carry out your plans;
4. Assignment of administrative responsibilities;
5. Development of a set of procedures to be followed by staff; and,
6. The monitoring of the progress of the plan to ensure that goals are met and that policies and procedures are implemented.

A reasonable timetable should be set, with checkpoints to ensure that plans are being followed. Adequate resources (i.e. time, manpower, and money) should be allocated.

Depending upon the specific goals chosen for your office, discussions should be opened with the appropriate individuals -- e.g., minority community groups, women's liberation groups, staff attorneys and support staff. You should also discuss

your ideas with your governing or advisory board members in order to hear their suggestions and gain their support.

Once these discussions and your ideas have been translated into policy statements (or goals), your existing organizational structure and administrative system should be reviewed. Can you accomplish your new goals, keeping your office as it is now? Or do you want to establish a complaint division and reassign one or more paralegals to this function?

In some offices the entire organizational structure and administrative system will have to be revised; in other offices it will suffice merely to add new responsibilities to staff. You may decide, for example, that each attorney should be asked by an investigator or paralegal about the attitude of his/her defense counsel.

A set of procedures should then be established which follow from your policies and are integrated with the organizational and administrative structure. In the case of racial or sexual representation, you might establish the policy that each client should be asked by an investigator or paralegal about the attitude of his/her defense counsel. Procedures for implementing this policy may include:

1. Maintaining a file on complaints received from clients; and
2. Reviewing the complaint file periodically.

Your last responsibility while implementing your "discrimination" goals concerns ensuring that goals are being met. Techniques should be established which allow you, or a designated staff member, to determine whether or not clients are being represented in a non-discriminatory manner. To ensure this, you may check, on a quarterly basis, three types of frequently charged offenses committed by clients you represent. For these offense types only, review recently closed cases, selecting 25-50 cases in which the defendant was white and non-white (i.e. the prevalent minority in your community, be it racial or ethnic). Maintain separate groupings, and for each case tabulate the following data:

- (1) time interval between arraignment and case closing;
- (2) bail status;
- (3) final disposition;
- (4) final sentence;
- (5) personal data, such as prior conviction record, sex age.

You might also want to check existing policy statements on discrimination for their comprehensiveness, clarity and precision.

Determine whether specified procedures exist which follow these policies and whether appropriate manpower and resources have been deployed. Ascertain if staff is aware of existing policies.

Organizing your office for "non-discrimination" requires systematic planning, implementation, and review. The process should be similar in each defender office; the specifics of the goals and strategies chosen, however, will vary considerably.

TOPIC: ACCOUNTING

QUESTION: Does your office maintain an adequate accounting system?

COMMENTARY

Accounting is primarily concerned with past and current fiscal events. Accounting measures and arrays economic data and communicates the results of this process to interested parties. It is a tool needed by a defender office to provide financial and administrative information essential to the management of an office. Through the information generated by the accounting process a defender office can discharge its accounting responsibilities to funding and governmental bodies.

TOPIC: ACCOUNTING

QUESTION: Does your office maintain an adequate accounting system?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Does your office maintain an accounting system which is fitted to your specific needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does your office prepare relevant financial reports?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does your office prepare relevant administrative reports summarizing office activities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Does your accounting system include an internal control mechanism?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Does your office maintain basic accounting books?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Does your accounting system use forms which are needed to support most financial and administrative transactions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Is your accounting system easily transferable into a data processing format for future use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Does your office maintain adequate attorney time records?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: ACCOUNTING

If you have responded
"Uncertain" to Question:

- 1 THEN Contract for the services of an independent accountant or a management consultant to review your accounting system (i.e. the data gathered, ledger and forms utilized, statements issued, and internal control devised).
- 2,3 THEN What decisions have you made in the last three months for which accounting information: (a) was helpful; (b) would have been helpful; or (c) was not used? Review those decisions in light of financial statements, budgets, attorney time reports, attorney workload information, and case-type information, to determine whether such information would have improved the decision-making process. Review your accounting reports to determine whether information relevant to these decisions was missing. Are three basic reports issued on a monthly or quarterly basis: Statement of Revenue and Expenditure, Balance Sheet, and Statement of Functional Expenses?
- 4 THEN Trace a few financial transactions from beginning to end, focusing on whether responsibilities for authorizing, performing and recording each transaction are shared by two or more individuals.
- 5 THEN Review the books and materials kept by your accountant for the following: general ledger, subsidiary ledgers, journals, vouchers. Each of these is needed for a sound accounting system. Are they up-to-date?
- 6 THEN Review your accounting forms for the following: invoices, vouchers, receiving reports. Each of these is needed for a sound accounting system. Are they being completed accurately, and for each financial transaction?
- 7 THEN Ask an automated data processing system person to review your office procedures to see what, if any, changes are needed.
- 8 THEN Can you determine attorney time spent in court appearance, travel, training, teaching, administration, case preparation, research, public relations, and vacation? If not, your record

MAKING CERTAIN ABOUT: ACCOUNTING

If you have responded
"Uncertain" to Question:

keeping system needs improvement. This type of information is needed to pinpoint how manpower resources are spent, and is a preliminary step to determining whether the deployment of manpower or the structure of the defender office should be revised.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

AN ACCOUNTING SYSTEM

A sound accounting system in a defender office is designed to maintain the financial and administrative records of the office and communicate the significant events which have internal and external impact. Although no one accounting system can be designed to fit the needs of every defender office, each system should be held responsible for:

1. Recording, classifying, summarizing and interpreting transactions which are financial and administrative in character; and,
2. Providing internal controls to safeguard assets, check the accuracy and reliability of the accounting information, promote operational efficiency, and encourage adherence to managerial policies.

In every office, the accounting system developed is directly related to the needs of the organization and its established goals and objectives.

Recording transactions means committing transactions and events to writing: "writing" encompasses everything from entering figures in ledgers, to punching holes in computer cards, to putting impressions on magnetic tape. Classifying transactions involves sorting the transactions in an orderly and systematic manner. It is likely that standard accounting forms and procedures are readily available which can facilitate this process for your office. Summarizing transactions brings together the recorded accounting data in a form (e.g. financial reports, case load summaries) that is useful to the chief defender for management decisions, as well as serving other purposes (e.g. the needs of funding authorities). This process can be the sum of all operations of a day, week, month or year depending on the needs of the defender office. Interpreting transactions involves taking the accounting data as summarized and displayed in various financial and administrative reports and highlighting and explaining trends and developments. This process is important in management decisions which entail an assessment of prior decisions affecting office operations and indicating future changes of directions for the office.

The major accounting functions are as follows:

1. Keeping all financial records;
2. Preparing accurate financial statements;
3. Determining acceptable cost and income standards;
4. Measuring the progress of an organization in terms of achievement of predetermined goals and objectives;
5. Budgeting and anticipating future financial problem;
6. Safeguarding and administering the organization's financial assets; and,
7. Ensuring compliance with reporting requirements of governmental and other authoritative bodies.

Each of these should be developed with the advice of an independent accountant or management consultant so that the system which is designed fits the specific needs of your defender office. The use of a consultant on an as-needed basis can often be highly economical in the long-run.

Accounting forms are the tools through which an accounting system operates. These "tools" include:

1. General Ledger, the record of all financial office transactions. This ledger is needed for the preparation of financial statements. Although small defender offices may not need a full-time accountant to maintain the General Ledger, larger offices will find it necessary to develop a more complex system, manual or automated, to provide internal controls required for effective management.
2. Subsidiary Ledgers, the group of detailed accounts which are back-up to the General Ledger. These detailed accounts may include an accounts receivable ledger, voucher or accounts payable ledger, deferred charges or prepaid expenses ledger, or a land-building equipment ledger.
3. Journals, the basic chronological record of financial transactions which are divided into debits and credits for subsequent posting to the ledger accounts which are affected. No entries should be made on any

ledger which have not first been recorded on one or more of the Journals. Detailed journals which support the General Ledger may include one for cash receipts and revenue, cash disbursements, voucher register and purchases, payroll and general.

4. Vouchers, the supporting documentation for an accounting transaction. A variety of different forms of vouchers exist and the format of these vouchers and procedures for their use should be designed with a specific defender office in mind.
5. Administrative Reports, the group of detailed summaries which enable the defender office to maintain control on office activities. Information found in the major administrative reports would include:

- °Attorneys' time reports
 - Court appearances
 - Travel
 - Training
 - Teaching
 - Case preparation
 - Administrative
 - Research
 - Vacation
 - Public relations
- °Case information report
- °Workload reports (by attorney)
 - Active cases
 - Cases closed to date
 - Backlog cases (pending)

A systems specialist with a data processing background can point out which of these activities presently being done by hand could be accomplished faster and more economically through automation.

Financial statements which summarize the data entered on the accounting forms should provide information which is useful for assessing the effectiveness of the management of resources in achieving the office's goals. The statement should indicate the various sources of revenue and the purposes for which the office's resources were employed. Although the reporting requirements placed upon every defender office by its authorizing and funding authorities will vary to some degree, three types of statements are usually required as a minimum, on a monthly basis:

1. Invoice, which informs the recipient of an intent to provide a service or deliver goods;
2. Voucher, which informs the recipient that the services are being provided or the goods shipped; and,
3. Receiving Report, which informs the recipient that the services have been performed, the goods have been received, and that payment can be made.

It cannot be overemphasized that an accountant or management consultant should be consulted to help devise an efficient and effective accounting system to fit the needs of a specific defender office. For example, whether a defender office keeps basic payroll information in the form of time reports completed by staff is a management decision. An accountant's services will be helpful in determining the type of information which should be kept (e.g. court appearances, travel, training, teaching, case preparation, administrative duties, research, vacation, public relations), in relation to the management decisions which should incorporate such information (e.g. the need for specialized support staff in next year's budget).

1. Balance Sheet (or Statement of Financial Condition), a presentation of office assets (i.e. cash, equipment), liabilities (e.g. payables, due to others), and fund balance.
2. Statement of Revenue and Expenditures and Change in Fund Balances, a summary of all financial activities for period covered. This highlights sources of support or revenue and all expenditures. This statement should also present a comparison with the office's budget for the period covered.
3. Statement of Functional Expenses, a summary statement which presents an analysis of office expense by program and support function. The statement displays how much money was spent on the offices programs and services, and how much was expended on support services (e.g. management, general administration, and fund-raising). When possible, functional expenses should also be compared with the budget for the period covered.

The accounting system and financial statements needed for the not-for-profit office and the profit-making office vary considerably. This is a point that should be kept in mind when consulting an outside accountant.

Administrative reports should be provided on a monthly, quarterly and yearly basis.

In the small defender office internal control may center on one or two individuals, the chief defender and bookkeeper/secretary, to ensure that each transaction is recorded accurately, processed correctly, and is valid. As the size of the office increases it is impossible for the chief defender to personally review each transaction. A principle means of achieving sound internal controls is to attempt to prevent one person or department from having complete responsibility for handling all phases of a transaction. For example, at least two signatures should be required on every check issued by the defender office.

Wherever possible, the responsibility for authorizing a financial transaction, performing the transaction, and recording the transaction should be separated. Three forms which support most basic transaction are:

TOPIC: BUDGETING

QUESTION: Does your office budget for its future operations?

COMMENTARY

A budget is concerned mainly with the future use of financial resources. It can best be described as a "plan of action". It represents an organization's "blueprint" for the coming months, with respect to the proposed use of funds for specified purpose. A sound budget displays what the defender organization is hoping to achieve during the coming months and how the dollar amounts will be distributed to achieve these goals and objectives. The second major function of budgeting it as a tool for monitoring financial activities during the budget period and generally to help manage the affairs of an organization effectively.

TOPIC: BUDGETING

QUESTION: Does your office budget for its future operations?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Do supervisory personnel assist in the preparation of the budget?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does your budget describe, in detail, present programs and their accomplishments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does your budget describe, in detail new programs to initiate and their anticipated achievements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you monitor the financial activities of your office during the budget period?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you routinely use financial information in managing your office?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is your budget comprehensive?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: BUDGETING

If you have responded
"Uncertain to Question:

- 1 THEN Determine whether supervisory personnel are assigned the responsibility of preparing their own budget, which is then merged with the office budget. Do you schedule meetings of all supervisors to review the budget and establish priorities?
- 2 THEN Review your budget to determine if it describes in detail what each special program within the office is designed to accomplish. Is this description supplemented with statistics depicting the "before" and "after" results? Are letters included from involved individuals which comment on the worthwhileness of the program? Ask a state or local accountant outside your office, but familiar with the criminal justice system and defender operations to review your budget. Is it clear to him/her? Does it reflect your full needs?
- 3 THEN Review your budget to determine if it describes in detail what each new program plans to accomplish, what people are needed and the position description for each, and what money is needed. Are special notes made if matching federal or local funds are available? Are any editorials included from local papers, letters or requests which depict needs for these new programs?
- 4 THEN Has anyone on your staff been given the responsibility for overseeing the financial activities of the office? Do you have the capability to obtain up-to-date information on your status at any given time, including: payroll, financial record of annual and sick leave balance, status of vendor invoices, receipts of purchasing, petty cash, travel expenses and special services?
- 5 THEN What decisions have you made in the last three months for which financial information (a) was helpful, or (b) would have been helpful, had the information been available? If financial information is rarely used in your office decision-making, a new method of monitoring and analyzing finances may be needed.

MAKING CERTAIN ABOUT: BUDGETING

If you have responded
"Uncertain" to Question:

- 6 THEN Review your budget to determine whether it includes: assets, liabilities, program resources (monies, materials and services received by the office), goods (including space, materials) and personal services procurement, payroll information.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

BUDGETING

Accounting and budgeting are closely related yet very different. Accounting deals with past and current fiscal events; budgeting is concerned with the future fiscal needs of an office.

Before a budget can be prepared, the office should establish:

1. The organizational structure which defines lines of authority and responsibility;
2. Policies outlining office and division goals to serve as a basis for preparing a budget;
3. A system of forecasting which provides information necessary for preparing budgets; and,
4. Cost and data records suitable for estimating departmental expense, checking with past periods and comparing current performance with budgeting levels.

Once these activities have taken place, budgeting can commence.

Budgeting is a management tool which:

1. Helps to plan the work of an organization by establishing goals and objectives that the office hopes to achieve and by compiling and consolidating individual budgets submitted by the various division heads.
2. Compares the previous year's budget with the actual financial statement to determine whether improvement is needed in estimating this year's budget;
3. Estimates the costs of all programs by breaking each program into small steps or events;
4. Reviews the costs of planned goals and objectives to determine whether they are realistic, prior to committing the office to a certain course of action;
5. Provides an opportunity to evaluate alternative methods of achieving an objective via alternative cost planning;
6. Establishes a means of periodic appraisal of performance to ensure adequate budgetary control; and,

7. Guides executive decisions during the fiscal year.

The length of the budget period for a Defender Office may be outside of its control and in the hands of the governing board or the funding agency. If this is not the case, the Office should select a period that best fits defender operations. For example, an office may budget for one year in advance, progressively forecasting (i.e. adding a future month as each month passes and making the required adjustment) and maintaining a yearly budget. It should be noted, though, that the longer the budget reporting period, the greater the possibility of expenses getting out of control.

A comprehensive system consists of three types of budgets:

1. Operating budget: shows planned operations for a forthcoming period. There are two parts to this budget:
 - a. program budget, which describes the major programs the office plans to undertake (e.g. training staff, defended cases). This is useful to an executive examining the overall balance of various programs;
 - b. responsibility budget, which sets forth plans in terms of the person responsible for carrying them out. This is a control device, since it is a statement of expectations or standard performances against which actual performance can later be compared;
2. Cash budget: shows anticipated funding sources and uses of cash; and,
3. Capital budget: shows planned changes in fixed assets, a list of what management believes to be worthwhile projects for the acquisition of new capital assets (e.g. typewriters, desks) together with the estimated cost of each project.

The expense sections of the comprehensive budget system may be presented in either a natural method (e.g. salaries, rent, office supplies), or a functional method, which is classified by the activity or function for which expenses are disbursed (e.g. representation, research, publications).

To assist a defender office in the preparation of the budget, one method is outlined below depicting a budget request, followed by justification of the request with statistics of the past year and anticipated statistics for the coming year.

Basic Budget Request for Supervisory Personnel*

- A. Projected caseload based on analysis of type of case (including those cases now handled by appointed counsel because of overload?)
- B. Projected base unit (total office) costs, adjusted by:
 1. New positions
 - a. Number and type of positions required?
 - b. Full time or part time staff needed?
 2. Costs associated with new positions
 - a. Travel
 - b. Equipment and furnishings
 - c. Supplies, telephone
 3. Salary and price increases
 4. Equipment and furnishings (non-recurring costs)
 5. Other requested items (not in base costs)
 - a. Data processing services
 - b. New programs
- C. Established priorities of requested increase
 1. What are the most important items requested?
 2. What will be the level of service if:
 - a. Part of the request is approved?
 - b. All of the request is approved?
- D. Results anticipated if request is approved
 1. Improved service or no change
 2. Unit costs increased or decreased

In order to justify the above budget, the following procedures might be used:

- I. Obtaining Information for at least One Year Past
 - A. Case Data (by each office/location)
 1. Cases closed by type of case and class
 - a. Felony
 - b. Misdemeanor
 - c. Juvenile
 - d. Appeals
 2. Cases closed by type of closing
 - a. Dismissals
 - b. Negotiation
 - c. Trial to court
 - d. Trial to jury
 3. Cases pending by type of case
 4. Other services provided
 - a. Partial representation
 - b. Hearings not resulting in cases

*This material has been taken from James W. Ayers, "Preparation of a Budget for a Public Defender System", National College of Criminal Lawyers and Public Defenders, Defense Management Workshop, Washington, D.C., 1976.

B. Fiscal Data (by each office/location)

1. Expenses for each
 - a. Lawyer
 - b. Secretary
 - c. Investigator
 - d. Paralegal
 - e. Other staff
2. Expenses for other items
 - a. Telephone
 - b. Space rental
 - c. Printing, supplies
 - d. Travel
 - e. Equipment and furnishings
 - f. Other major expenses categories

II. Analyzing Data: Why? What? When?

- A. Compare actual case activity to explain variances
1. Case closings varied from estimate for year; why?
 - a. Change in rate of dismissals or negotiations?
 - b. Change in rate of trials
 - 1) to Court?
 - 2) to Jury?
 - c. Change in judicial manpower?
 - d. Change caused by appellate court decisions?
 - e. Change of prosecutor or prosecution policy?
 - f. Legislation expanding or restricting offenses?
 - g. Change of lawyer time available (vacancies, more staff, etc.)?
 - h. Change of arrest policies?
 - i. Change of police force strength?
 - j. Change of economic conditions?
 - k. Population shifts?
 - l. Social service programs expanded or reduced?
 - m. School programs/policies changed (juveniles)?
 - n. Faulty data used for making estimate?
 - o. Change of conflict of interest policy?
 - p. Change in rate of conflict of interest cases?
 - q. Limited intake of cases?
- B. Determine costs by type of cases closed
1. By major expense category
 - a. Personal services
 - b. Operating expenses
 - c. Travel
 2. Compare actual costs to estimated costs; differences because of:
 - a. Attorney turnover?
 - b. Change of time spent on cases?
 - 1) Change in use/availability of support staff?
 - 2) Preliminary hearings started or stopped?
 - 3) Jail visits increased/decreased (change of bond policy)?
 - 4) Trial/dismissal rates changed?

III. Evaluating Data Analysis and Applying to Current and Request Years

- A. Does data indicate permanent or temporary trends?
1. Are there definite caseload trends?
 - a. By type of case?
 - b. By type of closings?
 - c. Increase/decrease in "age" of pending cases?
 2. What is the ratio of pending cases to closed cases?
 - a. Increasing/decreasing?
 - b. Does the ratio vary by type of case?
 - c. Why is ratio changing?
 3. Can costs per case be controlled?
 4. Does change in lawyer time per case:
 - a. Indicate increase/decrease in quality of service?
 - b. Indicate that support staff time can be increased?
 - c. Indicate that equipment can be used effectively? If so, how many additional cases can be handled?
 5. What are the quality of service indicators?
 - a. Ratio of defendant appeals to closings?
 - b. Frequency of defender requested continuances?
 - c. High (85%, for example) loss record for original charge?
 6. How do the cases per lawyer compare to:
 - a. National staffing standards? Are standards applicable to the system?
 7. What is the rate of lawyer position vacancies?
 - a. Is the general level of experience increasing/decreasing?
 - b. What is the impact on case handling ability?
- B. Apply analysis/evaluation to current (approved) budget
1. How well does budget accommodate unit costs and case trends?
 - a. Have non-recurring actual costs been isolated and removed from base unit costs?
 - b. Was approved budget based on caseload data different from the analysis/evaluation trends?
 - c. Is supplemental funding necessary? For what items?
 - d. Is case limiting required?
 2. How do fiscal year-to-date data compare with:
 - a. Projections for the year
 - b. Projections based on analysis/evaluation?

The advice of a management consultant or a state planner should be sought to devise a budget which fits the specific needs of your office.

TOPIC: COMMUNITY EDUCATION

QUESTION: Does your office contribute to the community's knowledge about your role in the adversary process?

COMMENTARY

The role of the defender in the community is often misunderstood. As the National Advisory Commission has commented: "The public defender's dilemma is that the more he fulfills his duty to represent the indigent - usually unpopular - accused with the maximum possible zeal, vigor and professional skill, the more public irritation (and even wrath) he may engender, and the greater the danger that pressure may mount to curb his effectiveness." While recognizing that the effective representation of clients is the paramount goal, the defender must establish a reputation for integrity and concern for the community, not as an apologist for his/her performance of an unpopular function, but as an interpreter and re-interpreter of a free society's own mandate concerning its constitutional guarantees. s/he will "not only give strength to the foundations and structure of his own office, but will do much to enhance that of the judicial process as a whole."

TOPIC: COMMUNITY EDUCATION

QUESTION: Does your office contribute to the community's knowledge about your role in the adversary process?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Does your office respond to requests from the community for information?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you participate in information programs which cover all sectors of the community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you provide appropriate written information to the community concerning the activities of your office?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you initiate activities which involve the defenders with the community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you know the key community leaders in your community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Do you maintain an ongoing relationship with community organizations which promotes information-sharing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do written office policies/procedures exist concerning the office's role in community educational activities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Are office policies regarding community educational activities followed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: COMMUNITY EDUCATION

If you have responded
"Uncertain" to Question:

- 1 THEN Review incoming mail file over a six-month period for requests coming from the community for information or letters requesting a closer relationship with the defender office. Trace the manner in which these letters were acted upon, and the nature of the action taken. Question defenders about requests they receive orally, and their responses.
- 2 THEN Review your daily calendar for the previous year and the calendar of each defender to determine the number of times your office has been represented in community-based information programs (e.g. fraternal groups, citizens awareness councils). Check whether the activities have been spread throughout the spectrum of political, judicial, social and economic groups.
- 3 THEN Are brochures, posters, cards or the like available from your office? Is their format, language and style appropriate to the community you try to reach? Is there a regular distribution plan for this material? Has this plan been evaluated for its value to the community? Has it been followed?
- 4 THEN Ask the defenders which activities, if any, they have initiated with the community over the previous year. Do you have a planned program for such activities?
- 5 THEN List those community leaders/organizations with which you are in contact. Ask this of the local Legal Aid Society and compare lists. Or check your list against "community organizations" or "community services" booklets (distributed frequently by charitable organizations). Do you have a list on file in your office?
- 6 THEN Ask defenders to list those agencies with which they have an ongoing relationship, and the last time contact was made with each. Call all or a sample of these agencies to uncover whether more frequent contact is desired.
- 7,8 THEN Review existing policy statements on community education activities for their comprehensiveness, clarity and precision. Determine whether

MAKING CERTAIN ABOUT: COMMUNITY EDUCATION

specified procedures exist which follow these policies and whether appropriate manpower and resources have been deployed. Then question relevant staff on: (a) their understanding of what the policies are; and (b) the role each employee plays in implementing these policies. Ask each employee to outline his/her mode of operation under typical circumstances. If written policies/procedures do not exist, consider their addition to your office manual.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:

COMMUNITY EDUCATION

In order for a public defender office to receive the backing of its local community, it must make efforts to acquaint the community with its service and its plans for the future. An office should be actively seeking the support of the community as well as contributing to its awareness of the criminal justice system.

Establish realistic goals of community awareness for your office towards which you will direct effort. For example, you may decide that your office should be:

1. Distributing information on the defender office; or
2. Actively seeking community support.

Once you have pinpointed office goals, you must determine a strategy by which these goals can be accomplished. Since a strategy entails the development of a careful plan or method, thinking through strategy for any goal will take you through the following stages:

1. Discussions with key individuals in the criminal justice and general communities;
2. Establishment of policies for your office;
3. Creation of an appropriate organizational structure to carry out your plans;
4. Assignment of administrative responsibilities;
5. Development of a set of procedures to be followed by staff; and,
6. The monitoring of the progress of the plan to ensure that goals are met and that policies and procedures are implemented.

A reasonable timetable should be set, with checkpoints to ensure that plans are being followed. Adequate resources (i.e. time, manpower, and money) should be allocated.

Depending upon the specific goals chosen for your office, discussions should be opened with the appropriate individuals: staff personnel in the "information" goal, and community agencies in the "support goal. You should also discuss your ideas with your governing or advisory board members in order to hear their suggestions and gain their support.

After these discussions and ideas have been translated into policy statements (or goals), the existing organizational structure and administrative system should be reviewed. Can you accomplish the new goals within the existing structure? For example, do you want to establish a separate information division and reassign one or more staff to this function? In some offices the entire organizational structure and administrative system will have to be revised; in other offices it will suffice merely to add new responsibilities to staff. You may decide, for example, that each attorney will be responsible to appear before groups on a rotating basis.

A set of procedures should be established which follow your policies and are integrated with your organizational and administrative structure. Procedures used in implementing this policy may include:

1. Maintaining a card file on existing community groups, both friends and enemies of the defender concerning when a defender last spoke;
2. Checking periodically with the community group to see whether one wants a defender to speak at a meeting;
3. Responding to requests for speeches from community groups by assigning attorneys on a rotating basis;
4. Maintaining a list of speaking engagements to community groups.

In the case of distributing information, procedures may include:

1. Creating information (e.g., yellow page advertisement, history of defender office, services available);
2. Distributing information;
3. Mailing information brochures to community groups;
4. Getting feedback on effectiveness of the defender office in this role; and,
5. Maintaining relationships with interested community groups.

Your last responsibility to your "awareness" goals involves ensuring that goals are being met. Techniques should be established which allow you, or a designated staff member to

determine whether or not the community is being made aware of the role of the defender office and the criminal justice system. For the "community support" goal, you may want to check, on a quarterly basis:

1. Whether your attorneys are aware of office policy;
2. Which community groups have been addressed by office personnel, and which have been omitted; and
3. What benefit groups feel they gained from defender speakers and whether the groups feel the speakers were well-prepared and well-informed.

For the "information" goal, you may want to review, on a semi-annual basis:

1. Whether information distributed is current;
2. The number of requests received for information; and
3. The distribution system and possible gaps.

Organizing your office for "community education" requires systematic planning, implementation, and review. The process should be similar in each defender office; the specifics of the goals and strategies chosen, however, will vary considerably.

TOPIC: SYSTEM IMPROVEMENT

QUESTION: Does your office try to improve the criminal justice system?

COMMENTARY

The basic foundation of our society in general, and the criminal justice system in particular, rests upon the rule of law. The underlying assumption is that if each of the components of the criminal justice system understands and acts according to its well-defined role, this "due process" will result in fairness and justice. In a few states this assumption is embodied in statute: that the public defender "shall consult and cooperate with professional bodies and groups with respect to the causes of criminal conduct, the development of effective means of reducing and discouraging the commission of crime, the rehabilitation and correction of persons charged and convicted of crime, and the administration of criminal justice and the administration and conduct of the office of the public defender." (Maryland Annotated Code, Article 27A, Section 5 (g) Supp. 1975).

The defender has an obligation in both the courtroom and the community to see that each role in the criminal justice system is appropriately performed. Mutual participation by all components of the criminal justice system in training programs and community criminal justice efforts can make a significant contribution to the improvement of the quality of justice in the community as a whole.

TOPIC: SYSTEM IMPROVEMENT

QUESTION: Does your office try to improve the criminal justice system?

SELF-EVALUATION CHECKLIST

	Yes	No	Uncertain
1. Are police duties which affect your clients being performed in accordance with basic constitutional rights?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Are the activities of the prosecutor which affect your clients being performed in accordance with basic constitutional rights?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Are the duties of jail personnel which affect your clients being performed in accordance with basic constitutional rights?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Are the duties of judges which affect your clients being performed in accordance with basic constitutional rights?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are duties of prison personnel which affect your clients being performed in accordance with basic constitutional rights?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Are you actively promoting the proper functioning of institutional performance where it affects your clients' best interests (e.g. legislative reform)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do you promote an understanding among the private bar and other criminal justice personnel of the role of the defender?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Does your office work with other segments of the criminal justice system to improve the quality of the administration of justice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Do written office policies/procedures exist which specify the office's role in improving the criminal justice system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Are office policies regarding the role your office should play in improving the criminal justice system followed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MAKING CERTAIN ABOUT: SYSTEM IMPROVEMENT

If you responded
"Uncertain" to Question:

- 1 THEN For a period of two weeks, instruct the defenders to ask each new client to describe exactly what occurred at the time of arrest, later at booking, and up to the time when the defender contacted the client. Focus on what the police did and said to the client, and potential abuse of constitutional rights.
- 2 THEN Ask the defenders whether any prosecution activities which bear on open cases have abused a client's constitutional rights. Ask each defender to question each client contacted during any one week period on the nature of the contact s/he, family, or friends have had with the prosecutor or his/her agents.
- 3 THEN Ask the defenders to question all of their presently jailed clients (25 pre-adjudication and 25 post-sentence) about the nature of the contact they have had with the jail personnel, and any "improper" actions which affected them.
- 4 THEN Observe a large number of judges in different courts where your cases are heard. Evaluate their performance as it relates to the defenders and their clients in terms of its apparent legality, propriety, and fairness. Compare the performance of judges when dealing with clients of the private attorney. Select one or two different charged offenses and review the entire court docket for a one week to one month period, tabulating statistics for defender, appointed counsel and private counsel on: (a) bail set; (b) whether misdemeanor or felony; (c) method of disposition; (d) disposition; (e) sentence; and (f) prior record of convictions of defendants. Compare results. Ask those probation officers with whom you have frequent contact to describe their power to influence any judge's sentencing decision, and whether their influence is equal for clients of both the defender and private attorney.
- 5 THEN Ask the defenders to question all of their presently incarcerated clients (25 in all) about the nature of the contact they have had with the jail personnel, and any "improper" actions which affected them.

MAKING CERTAIN ABOUT: SYSTEM IMPROVEMENT

- 6 THEN Ask the defenders to list situations in law enforcement, the jails, courts and prisons which do not comply with the law or reduce the ability of attorneys to perform their duties according to accepted professional/ethical standards. Have key individuals involved in these institutions been contacted recently by the defenders to discuss the situation? Are appropriate law suits being prepared? Have the efforts of supportive community groups been marshalled? Have you appeared before legislative bodies or promoted legislative change?
- 7,8 THEN Review your daily calendar and that of your staff for frequency of participation in activities which would promote an understanding of the defender function as well as system improvement: training of criminal justice personnel; speeches before and seminars with criminal justice personnel; participation in Bar activities; membership on committees focusing on criminal justice matters; and membership on coordination groups.
- 9,10 THEN Review, for comprehensiveness, existing policy statements on efforts to improve the criminal justice system. Determine whether specified procedures exist which follow these policies and whether appropriate manpower and resources have been deployed. Then question relevant staff on (a) their understanding of what the policies are, and (b) the role each employee plays in implementing these policies. Give each employee a series of hypothetical situations to ascertain his/her mode of operation. If written policies/procedures do not exist, consider their addition to your office manual.

SUGGESTIONS FOR ORGANIZING THE OFFICE FOR:
IMPROVING THE CRIMINAL JUSTICE SYSTEM

It is the responsibility of the defender organization to strive to improve the criminal justice system within your jurisdiction. If your office is not actively promoting system improvement, it is time to adopt this as an office goal.

You should begin by determining whether, and in what areas, your office is formally restricted from attempts to improve the system. Review state laws, local court rules, and/or the contract under which your office is providing representation. You may decide that change is needed in one or all of these areas. Efforts in drafting new legislation, or renegotiating the scope of your contractual activities may be appropriate.

If your office is not restricted formally from improving the criminal justice system, establish realistic goals for your office towards which you will begin to direct effort. For example, you may decide that your office should be:

- a. Actively participating in criminal justice group meetings; or
- b. Actively promoting law reform.

Once you have pinpointed office goals, you must determine a strategy by which these goals can be accomplished. Since a strategy entails the development of a careful plan or method, thinking through strategy for any goal will take you through the following stages:

1. Discussions with key individuals in the criminal justice and general communities;
2. Establishment of policies for your office;
3. Creation of an appropriate organizational structure to carry out your plans;
4. Assignment of administrative responsibilities;
5. Development of a set of procedures to be followed by staff; and,

6. The monitoring of the progress of the plan to ensure that goals are met and that policies and procedures are implemented.

A reasonable timetable should be set, with checkpoints to ensure that plans are being followed. Adequate resources (i.e. time, manpower, and money) should be allocated.

Depending upon the specific goals chosen for your office, discussions should be opened with the appropriate individuals: criminal justice groups, in the "community" goal; staff attorneys in the "law reform" goal. You should also discuss your ideas with your governing or advisory board members in order to hear their suggestions and gain their support.

After these discussions and ideas have been translated into policy statements (or goals), the existing organizational structure and administrative system should be reviewed. Can you accomplish the new goals within the existing structure? For example:

1. Do you want to deploy specific individuals to participate in criminal justice group meetings?; or
2. Do you want to establish a legal reform division and reassign one or more attorneys to this function?

In some offices the entire organizational structure and administrative system will have to be revised; in other offices it will suffice merely to add new responsibilities to staff. You may decide, for example, that each attorney will be responsible for his/her clients own legal reform attempts.

A set of procedures should then be established which follow from your policies and are integrated with the organizational and administrative structure. In the service of implementing the legal reform policy, procedures may include:

1. Testifying in legislative hearings;
2. Applying for grants to improve defender offices;
3. Compiling and presenting suits against police, courts and corrections;
4. Publishing in professional journals;
5. Teaching in criminal justice or law reform programs.
6. Communicating with other criminal justice system representatives to seek backing for desired changes to system; and,
7. Promoting law reform activities.

"Community" goal procedures may include:

1. Participating in professional programs with other criminal justice system representatives; and
2. Seeking improvements through general community group meetings.

Your last responsibility while implementing "system improvement" goals concerns ensuring that the goals are being met. Techniques should be established which allow you, or your designated staff, to determine whether or no the criminal justice system needs improvement. For the "law reform" goal, you may want to check, on a quarterly basis:

1. With the defenders, to list situations in law enforcement, the jails, courts and prisons which do not comply with the law or reduce the ability of attorneys to perform their duties according to accepted professional/ethical standards; and
2. Existing policy statements on efforts to improve the criminal justice system for their comprehensiveness, clarity, and precision.

For the "community awareness" goal, you may want to review, on a semi-annual basis:

1. The daily calendar for the previous year, and the calendar of each defender to determine the number of times your office has been represented in community-based information programs (e.g., fraternal groups, citizens' awareness councils); and
2. Whether brochures, posters, cards or the like are available from your office. Is their format, language and style appropriate to the community you try to reach? Is there a regular distribution plan for this material.

Organizing your office for "system improvement" requires systematic planning, implementation, and review. The process should be similar in each defender office; the specifics of the goals and strategies chosen, however, will vary considerably.

APPENDIX A

Standards Relating to the Provision
of Defense Services

American Bar Association Project on
Minimum Standards for Criminal Justice

Standards Relating to
Providing Defense Services

Part 1. General Principles

1.1 Objective.

The objective of the bar should be to ensure the provision of competent counsel to all persons who need representation in criminal proceedings and to educate the public to the importance of this objective.

1.2 Systems.

Counsel should be provided in a systematic manner in accordance with a widely publicized plan employing a defender or assigned counsel system or a combination of these.

1.3 Local options.

By statute each jurisdiction should require the appropriate local subdivision to adopt a plan for the provision of counsel. The statute should permit the local subdivision to choose from the full range of systems a method of providing counsel which is suited to its needs and consistent with these standards and should allow local subdivisions to act jointly in establishing such a plan.

1.4 Professional independence.

The plan should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. One means for assuring this independence, regardless of the type of system adopted, is to place the ultimate authority and responsibility for the operation of the plan in a board of trustees. Where an assigned counsel system is selected, it should be governed by such a board. The board should have the power to establish general policy for the operation of the plan, consistent with these standards and in keeping with the standards of professional conduct. The board should be precluded from interfering in the conduct of particular cases.

1.5 Supporting services.

The plan should provide for investigatory, expert and other services necessary to an adequate defense. These should include

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 process, including determinations on pretrial release, competency to stand trial and disposition following conviction.

Part II. Assigned Counsel Systems

2.1 Systematic assignment.

An assigned counsel plan should provide for a systematic and publicized method of distributing assignments. Except where there is need for an immediate assignment for temporary representation, assignments should not be made to lawyers merely because they happen to be present in court at the time the assignment is made. A lawyer should never be assigned for reasons personal to the person making assignments. If the volume of assignments is substantial, the plan should be administered by a competent staff able to advise and assist assigned counsel.

2.2 Eligibility to serve.

Assignments should be distributed as widely as possible among the qualified members of the bar. Every lawyer licensed to practice law in the jurisdiction, experienced and active in trial practice, and familiar with the practice and procedure of the criminal courts should be included in the roster of attorneys from which assignments are made.

2.3 Rotation of assignments.

As nearly as possible assignments should be made in an orderly way to avoid the appearance of patronage and to ensure fair distribution of assignments among all whose names appear on the roster of eligible lawyers. Ordinarily assignments should be made in the sequence that the names appear on the roster of eligible lawyers. Where the nature of the charges or other circumstances require, a lawyer may be selected because of his special qualifications to serve in the case, without regard to the established sequence.

2.4 Compensation.

Assigned counsel should be compensated for time and service necessarily performed in the discretion of the court within limits specified by the applicable statute. In establishing the limits and in the exercise of discretion the objective should be to provide reasonable compensation in accordance with prevailing standards.

Part III. Defender Systems

3.1 Career service.

A defender plan should be designed to create a career service. Selection of the chief defender and staff should be made on the basis of merit and should be free from political, racial, religious, ethnic and other considerations extraneous to professional competence. The tenure of the defender and his staff should be protected similarly. The defender and staff should be compensated at a rate commensurate with their experience and skill, sufficient to attract career personnel, and comparable to that provided for their counterparts in prosecutorial offices.

3.2 Restrictions on private practice.

Insofar as local conditions permit, the defender office should be staffed with full-time personnel. All full-time personnel should be prohibited from engaging in the private practice of law, and part-time personnel should be prohibited from engaging in the private practice of law in criminal cases.

3.3 Facilities; library.

Every defender office should be located in a place convenient to the courts and be furnished in a manner appropriate to the dignity of the legal profession. A library of sufficient size, considering the needs of the office and the accessibility of other libraries, and other necessary facilities and equipment should be provided.

Part IV. Types of Proceedings

4.1 Criminal cases.

Counsel should be provided in all criminal proceedings for offenses punishable by loss of liberty, except those types of offenses for which such punishment is not likely to be imposed, regardless of their denomination as felonies, misdemeanors, or otherwise.

4.2 Collateral proceedings.

Counsel should be provided in all proceedings arising from the initiation of a criminal action against the accused, including extradition, mental competency, post-conviction and other proceedings which are adversary in nature, regardless of the designation of the court in which they occur or classification of the proceedings as civil in nature.

Part V. Stage of Proceedings

5.1 Initial provision of counsel; notice.

Counsel should be provided to the accused as soon as feasible after he is taken into custody, when he appears before a committing magistrate, or when he is formally charged, whichever occurs earliest. The authorities should have the responsibility to notify the defender or the official responsible for assigning counsel whenever a person is in custody and he requests counsel or he is without counsel.

5.2 Duration of representation.

Counsel should be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. Counsel initially appointed should continue to represent the defendant through all stages of the proceedings unless a new appointment is made because geographical considerations or other factors make it necessary.

5.3 Withdrawal of counsel.

Once appointed, counsel should not request leave to withdraw unless compelled to do so because of serious illness or other incapacity to render competent representation in the case, or unless contemporaneous or announced future conduct of the accused is such as to seriously compromise the lawyer's professional integrity. If leave to withdraw is granted, or if the defendant for substantial grounds asks that counsel be replaced, successor counsel should be appointed. Counsel should not seek to withdraw because he believes that the contentions of his client lack merit, but should present for consideration such points as the client desires to be raised provided he can do so without compromising professional standards.

Part VI. Eligibility for Assistance

6.1 Eligibility.

Counsel should be provided to any person who is financially unable to obtain adequate representation without substantial hardship to himself or his family. Counsel should not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted or is capable of posting bond.

6.2 Partial eligibility.

The ability to pay part of the cost of adequate representation should not preclude eligibility. The provision of counsel may be made on the condition that the funds available for the purpose be contributed to the system pursuant to an established method of collection.

6.3 Determination of eligibility.

A preliminary and tentative determination of eligibility should be made as soon as feasible after a person is taken into custody. The formal determination of eligibility should be made by the judge or an officer of the court selected by him. A questionnaire should be used to determine the nature and extent of the financial resources available for obtaining representation. If at any subsequent stage of the proceedings new information concerning eligibility becomes available, eligibility should be redetermined.

6.4 Reimbursement.

Reimbursement of counsel or the organization or governmental unit providing counsel should not be required, except on the ground of fraud in obtaining the determination of eligibility.

Part VII. Offer and Waiver

7.1 Explaining the availability of a lawyer.

When a person is taken into custody or otherwise deprived of his freedom he should immediately be warned of his right to the assistance of a lawyer. This warning should be followed at the earliest opportunity by the formal offer of counsel, preferably by a lawyer, but if that is not feasible, by a judge or magistrate. The offer should be made in words easily understood, and it should be stated expressly that one who is unable to pay for adequate representation is entitled to have it provided without cost to him. At the earliest opportunity a person in custody should be effectively placed in communication with a lawyer. For this purpose he should be provided access to a telephone, the telephone number of the defender or person responsible for assigning counsel, and any other means necessary to place him in communication with a lawyer.

7.2 Waiver.

The accused's failure to request counsel or his announced intention to plead guilty should not of itself be construed to constitute a waiver. An accused should not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry into the accused's comprehension of that offer and his capacity to make the choice intelligently and understandingly has been

made. No waiver should be found to have been made where it appears that the accused is unable to make an intelligent and understanding choice because of his mental condition, age, education, experience, the nature or complexity of the case, or other factors.

7.3 Acceptance of waiver.

No waiver of counsel should be accepted unless it is in writing and of record. If a person who has not seen a lawyer indicates his intention to waive the assistance of counsel, a lawyer should be provided to consult with him. No waiver should be accepted unless he has at least once conferred with a lawyer. If a waiver is accepted, the offer should be renewed at each subsequent stage of the proceedings at which the defendant appears without counsel.

American Bar Association Project
on
Standards for Criminal Justice

The Defense Function

Part I. General Standards

1.1 Role of defense counsel; function of standards.

- (a) Counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite entity consisting of the judge (and jury, where appropriate), counsel for the prosecution, and counsel for the accused.
- (b) The basic duty the lawyer for the accused owes to the administration of justice is to serve as the accused's counselor and advocate, with courage, devotion and to the utmost of his learning and ability, and according to the law.
- (c) The defense lawyer, in common with all members of the bar, is subject to standards of conduct stated in statutes, rules, decisions of courts, and codes, canons or other standards of professional conduct. He has no duty to execute any directive of the accused which does not comport with law or such standards; he is the professional representative of the accused, not his alter ego.
- (d) It is unprofessional conduct for a lawyer intentionally to misrepresent matters of fact or law to the court.
- (e) It is the duty of every lawyer to know the standards of professional conduct as defined in codes and canons of the legal profession and in this report, to the end that his performance will at all times be guided by appropriate standards. The functions and duties of defense counsel are governed by such standards whether he is assigned or privately retained.
- (f) In this report the term "unprofessional conduct" denotes conduct which it is recommended be made subject to disciplinary sanctions. Where other terms are used, the standard is intended as a guide to honorable professional conduct and performance. These standards are intended as guides for conduct of lawyers and as the basis for disciplinary action, not as criteria for judicial evaluation of the effectiveness of counsel to determine the validity of a conviction; they may or may not be relevant in such judicial evaluation of the effectiveness of counsel,

depending upon all the circumstances.

1.2 Delays; punctuality.

- (a) Defense counsel should avoid unnecessary delay in the disposition of cases. He should be punctual in attendance upon court and in the submission of all motions, briefs, and other papers. He should emphasize to his client and all witnesses the importance of punctuality in attendance in court.
- (b) It is unprofessional conduct for defense counsel to misrepresent facts or otherwise mislead the court in order to obtain a continuance.
- (c) It is unprofessional conduct for defense counsel intentionally to use procedural devices for delay for which there is no legitimate basis.
- (d) A lawyer should not accept more employment than he can discharge within the spirit of the constitutional mandate for speedy trial and the limits of his capacity to give each client effective representation. It is unprofessional conduct to accept employment for the purpose of delaying trial.

1.3 Public statements.

- (a) The lawyer representing an accused should avoid personal publicity connected with the case before trial, during trial and thereafter.
- (b) The lawyer should comply with the ABA Standards on Fair Trial and Free Press.

1.4 Advisory councils on professional conduct.

- (a) In every jurisdiction an advisory body of lawyers selected for their experience, integrity and standing at the trial bar should be established as an advisory council on problems of professional conduct in criminal cases. This council should provide prompt and confidential guidance and advice to lawyers seeking assistance in the application of standards of professional conduct in criminal cases.
- (b) Communications between a lawyer and such an advisory council should have the same privilege for protection of the client's confidences as exist between lawyer and client. The council should be bound by statute or rule of court in the same manner as a lawyer is bound not to reveal any disclosure of the client except (i) if the client challenges the effectiveness of the lawyer's conduct of the case and

the lawyer relies on the guidance received from the council; and (ii) if the lawyer's conduct is called into question in an authoritative disciplinary inquiry or proceeding.

1.5 Trial lawyer's duty to administration of criminal justice.

- (a) The bars should encourage through every available means the widest possible participation in the defense of criminal cases by experienced trial lawyers. Lawyers active in general trial practice should be encouraged to qualify themselves for participation in criminal cases both by formal training and through experience as associate counsel.
- (b) All qualified trial lawyers should stand ready to undertake the defense of an accused regardless of public hostility toward the accused or personal distaste for the offense charged or the person of the defendant.
- (c) Qualified trial lawyers should not assert or announce a general unwillingness to appear in criminal cases; law firms should encourage partners and associates to appear in criminal cases.

1.6 Client interests paramount.

Whether privately engaged, judicially appointed or serving as part of a legal aid system, the duties of a lawyer to his client are to represent his legitimate interests, and considerations of personal and professional advantage should not influence his advice or performance.

Part II. Access to Counsel

2.1 Communication.

Every jurisdiction should guarantee by statute or rule of court the right of an accused person to prompt and effective communication with a lawyer and should require that reasonable access to a telephone or other facilities be provided for that purpose.

2.2 Referral service for criminal cases.

- (a) To assist persons who wish to retain counsel privately and who do not know a lawyer or how to engage one, every jurisdiction should have a referral service for criminal cases. The referral service should maintain a list of lawyers willing and qualified to undertake the defense of a criminal case; it should be so organized that it can provide prompt service at all times.
- (b) The availability of the referral service should be

publicized. In addition, notices containing the essential information about the referral service and how to contact it should be posted conspicuously in police stations, jails and wherever else it is likely to give effective notice.

2.3 Prohibited referrals.

- (a) It is unprofessional conduct for a lawyer to compensate others for referring criminal cases to him.
- (b) It is unprofessional conduct for a lawyer to accept referrals by agreement or as a regular practice from law enforcement personnel, bondsmen or court personnel.
- (c) It is unprofessional conduct to accept referrals of criminal cases regularly except from an authorized referral agency or a lawyer referring a case in the ordinary course of practice.
- (d) Regulations and licensing requirements governing the conduct of law enforcement personnel, bondsmen, court personnel and others in similar positions should prohibit their referring an accused to any particular lawyer and should require them, when asked to suggest the name of an attorney, to direct the accused to the referral service or to the local bar association if no referral service exists.

Part III. Lawyer-Client Relationship

3.1 Establishment of relationship.

- (a) Defense counsel should seek to establish a relationship of trust and confidence with the accused. The lawyer should explain the necessity of full disclosure of all facts known to the client for an effective defense, and he should explain the obligation of confidentiality which makes privileged the accused's disclosures relating to the case.
- (b) The conduct of the defense of a criminal case requires trained professional skill and judgment; therefore, the technical and professional decisions must rest with the lawyer without impinging on the right of the accused to make the ultimate decisions on certain specified matters, as delineated in section 5.2.
- (c) To insure the privacy essential for confidential communication between lawyer and client, adequate facilities should be available for private discussions between counsel and accused in jails, prisons, court houses and other places where accused persons must confer with counsel.

- (d) Personnel of jails, prisons and custodial institutions should be prohibited by law or administrative regulations from examining or otherwise interfering with any communication or correspondence between a client and his lawyer relating to legal action arising out of charges or incarceration.

3.2 Interviewing the client.

- (a) As soon as practicable the lawyer should seek to determine all relevant facts known to the accused. In so doing, the lawyer should probe for all legally relevant information without seeking to influence the direction of the client's responses.
- (b) It is unprofessional conduct for the lawyer to instruct the client or to intimate to him in any way that he should not be candid in revealing facts so as to afford the lawyer free rein to take action which would be precluded by the lawyer's knowing of such facts.

3.3 Fees.

- (a) In determining the amount of the fee in a criminal case it is proper to consider the time and effort required, the responsibility assumed by counsel, the novelty and difficulty of the questions involved, the skill requisite to proper representation, the likelihood that other employment will be precluded, the fee customarily charged in the locality for similar services, the gravity of the charge, the experience, reputation and ability of the lawyer and the capacity of the client to pay the fee.
- (b) It is unprofessional conduct for a lawyer to imply that compensation of the lawyer is for anything other than professional services rendered by him or by others for him.
- (c) It is unprofessional conduct for a lawyer to overreach his client in setting the fee.
- (d) It is unprofessional conduct for a lawyer to divide his fee with a layman. He may share a fee with another lawyer only on the basis of their respective services and responsibility in the case.
- (e) It is unprofessional conduct to undertake the defense of a criminal case on the understanding that the fee is contingent in any degree on the outcome of the case.

3.4 Obtaining literary rights from the accused.

It is unprofessional conduct for a lawyer consulted by or

representing an accused to negotiate with the accused to secure, either as part of his compensation or as a condition of the employment, right to publish books, plays, articles, interviews or pictures relating to the case.

3.5 Conflict of interest.

- (a) At the earliest feasible opportunity defense counsel should disclose to the defendant any interest in or connection with the case or any other matter that might be relevant to the defendant's selection of a lawyer to represent him.
- (b) Except for preliminary matters such as initial hearings or applications for bail, a lawyer or lawyers who are associated in practice should not undertake to defend more than one defendant in the same criminal case if the duty to one of the defendants may conflict with the duty to another. The potential for conflict of interest in representing multiple defendants is so grave that ordinarily a lawyer should decline to act for more than one of several co-defendants except in unusual situations when, after careful investigation, it is clear that no conflict is likely to develop and when the several defendants give an informed consent to such multiple representation.
- (c) In accepting payment of fees by one person for the defense of another, a lawyer should be careful to determine that he will not be confronted with a conflict of loyalty since his entire loyalty is due the accused. When the fee is paid or guaranteed by a person other than the accused, there should be an explicit understanding that the lawyer's entire loyalty is to the accused who is his client and that the person who pays the fee has no control of the case.
- (d) It is unprofessional conduct for a lawyer to defend a criminal case in which the lawyer's partner or other professional associate is the prosecutor or has participated in or supervised the prosecution at any stage.

3.6 Prompt action to protect the accused.

- (a) Many important rights of the accused can be protected and preserved only by prompt legal action. The lawyer should inform the accused of his rights forthwith and take all necessary action to vindicate such rights. He should consider all procedural steps which in good faith may be taken, including, for example, motions seeking pretrial release of the accused, obtaining psychiatric examination of the accused when a need appears, moving for a change of venue or continuance, moving to suppress illegally obtained evidence, moving for severance from jointly charged defendants, or seeking dismissal of the charges.

- (b) A lawyer should not act as surety on a bail bond either for the accused or others.

3.7 Advice and service on anticipated unlawful conduct.

- (a) It is a lawyer's duty to advise his client to comply with the law but he may advise concerning the meaning, scope and validity of a law.
- (b) It is unprofessional conduct for a lawyer to counsel his client in or knowingly assist his client to engage in conduct which the lawyer believes to be illegal.
- (c) It is unprofessional conduct for a lawyer to agree in advance of the commission of a crime that he will serve as counsel for the defendant, except as part of a bona fied effort to determine the validity, scope, meaning or application of the law, or where the defense is incident to a general retainer for legal services to a person or enterprise engaged in legitimate activity.
- (d) Except as provided in section 7.7, a lawyer may reveal the expressed intention of his client to commit a crime and the information necessary to prevent the crime; and he must do so if the contemplated crime is one which would seriously endanger the life or safety of any person or corrupt the processes of the courts and the lawyer believes such action on his part is necessary to prevent it.

3.8 Duty to keep client informed.

The lawyer has a duty to keep his client informed of the developments in the case and the progress of preparing the defense.

3.9 Obligations to client and duty to court.

Once a lawyer has undertaken the representation of an accused his duties and obligations are the same whether he is privately retained, appointed by the court, or serving in a legal aid or defender system.

Part IV. Investigation and Preparation

4.1 Duty to investigate.

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to guilt and degree of guilt or penalty. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or his stated desire to plead guilty.

4.2 Illegal investigation.

It is unprofessional conduct for a lawyer to use illegal means to obtain evidence or information or to employ, instruct or encourage others to do so.

4.3 Relations with prospective witnesses.

- (a) It is unprofessional conduct to compensate a witness, other than an expert, for giving testimony, but it is not improper to reimburse a witness for the reasonable expenses of attendance upon court, including transportation and loss of income, provided there is no attempt to conceal the fact of reimbursement.
- (b) In interviewing a prospective witness it is proper but not mandatory for the lawyer or his investigator to caution the witness concerning possible self-incrimination and his need for counsel.
- (c) A lawyer should not obstruct communication between prospective witnesses and the prosecutor. It is unprofessional conduct to advise a person, other than a client, to refuse to give information to the prosecutor or counsel for co-defendants.
- (d) Unless the lawyer for the accused is prepared to forego impeachment of a witness by the lawyer's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present his impeaching testimony, the lawyer should avoid interviewing a prospective witness except in the presence of a third person.

4.4 Relations with expert witnesses.

- (a) A lawyer who engages an expert for an opinion should respect the independence of the expert and should not seek to dictate the formation of the expert's opinion on the subject. To the extent necessary, the lawyer should explain to the expert his role in the trial as an impartial witness called to aid the fact-finders and the manner in which the examination of witnesses is conducted.
- (b) It is unprofessional conduct for a lawyer to pay an excessive fee for the purpose of influencing the expert's testimony or to fix the amount of the fee contingent upon the testimony he will give or the result in the case.

4.5 Compliance with discovery procedure.

The lawyer should comply in good faith with discovery procedures under the applicable law.

Part V. Control and Direction of Litigation

5.1 Advising the defendant.

- (a) After informing himself fully on the facts and the law, the lawyer should advise the accused with complete candor concerning all aspects of the case, including his candid estimate of the probable outcome.
- (b) It is unprofessional conduct for a lawyer intentionally to understate or overstate the risks, hazards or prospects of the case to exert undue influence on the accused's decision as to his plea.
- (c) The lawyer should caution his client to avoid communication about the case with witnesses, except with the approval of the lawyer, to avoid any contact with jurors or prospective jurors, and to avoid either the reality or the appearance of any other improper activity.

5.2 Control and direction of the case.

- (a) Certain decisions relating to the conduct of the case are ultimately for the accused and others are ultimately for defense counsel. The decisions which are to be made by the accused after full consultation with counsel are: (i) what plea to enter; (ii) whether to waive jury trial; (iii) whether to testify in his own behalf.
- (b) The decisions on what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and all other strategic and tactical decisions are the exclusive province of the lawyer after consultation with his client.
- (c) If a disagreement on significant matters of tactics or strategy arises between the lawyer and his client, the lawyer should make a record of the circumstances, his advice and reasons, and the conclusion reached. The record should be made in a manner which protects the confidentiality of the lawyer-client relation.

5.3 Guilty plea when accused denies guilt.

If the accused discloses to the lawyer facts which negate guilt and the lawyer's investigation does not reveal a conflict with the facts disclosed but the accused persists in entering a plea of guilty, the lawyer may not properly participate in presenting a guilty plea, without disclosure to the court.

Part VI. Disposition Without Trial

6.1 Duty to explore disposition without trial.

- (a) Whenever the nature and circumstances of the case permit, the lawyer for the accused should explore the possibility of an early diversion of the case from the criminal process through the use of other community agencies.
- (b) When the lawyer concludes, on the basis of full investigation and study, that under controlling law and the evidence a conviction is probable, he should so advise the accused and seek his consent to engage in plea discussions with the prosecutor, if such appears desirable.
- (c) Ordinarily the lawyer should secure his client's consent before engaging in plea discussions with the prosecutor.

6.2 Conduct of discussions.

- (a) In conducting discussions with the prosecutor the lawyer should keep the accused advised of developments at all times and all proposals made by the prosecutor should be communicated promptly to the accused.
- (b) It is unprofessional conduct for a lawyer knowingly to make false statements concerning the evidence in the course of plea discussions with the prosecutor.
- (c) It is unprofessional conduct for a lawyer to seek or accept concessions favorable to one client by any agreement which is detrimental to the legitimate interests of any other client.

Part VII. Trial

7.1 Courtroom decorum.

- (a) As an officer of the court the lawyer should support the authority of the court and the dignity of the trial courtroom by strict adherence to the rules of decorum and by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses and jurors.
- (b) When court is in session defense counsel should address the court and should not address the prosecutor directly on any matter relating to the case.
- (c) It is unprofessional conduct for a lawyer to engage in behavior or tactics purposefully calculated to irritate or annoy the court or the prosecutor.

(d) The lawyer should comply promptly with all orders and directives of the court, but he has a duty to have the record reflect adverse rulings or judicial conduct which he considers prejudicial to his client's legitimate interests. He has a right to make respectful requests for reconsideration of adverse rulings.

(e) Lawyers should cooperate with courts and the organized bar in developing codes of decorum and professional etiquette for each jurisdiction.

7.2 Selection of jurors.

(a) The lawyer should prepare himself prior to trial to discharge effectively his function in the selection of the jury, including the raising of any appropriate issues concerning the method by which the jury panel was selected, and the exercise of both challenges for cause and peremptory challenges.

(b) In those cases where it appears necessary to conduct a pre-trial investigation of the background of jurors the lawyer should restrict himself to investigatory methods which will not harass or unnecessarily embarrass potential jurors or invade their privacy and, whenever possible, he should restrict his investigation to records and sources of information already in existence.

(c) In jurisdictions where counsel is permitted personally to question jurors on voir dire, the opportunity to question jurors should be used solely to obtain information for the intelligent exercise of challenges. A lawyer should not purposely use the voir dire to present factual matter which he knows will not be admissible at trial or to argue his case to the jury.

7.3 Relations with jury.

(a) It is unprofessional conduct for the lawyer to communicate privately with persons summoned for jury duty or impaneled as jurors concerning the case prior to or during the trial. The lawyer should avoid the reality or appearance of any such improper communications.

(b) The lawyer should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

(c) After verdict, the lawyer should not make comments concerning an adverse verdict or ask questions of a juror for the purpose of harassing or embarrassing the jury in any way which will tend to influence judgment in future jury service. If the lawyer has reasonable ground to believe that the

verdict may be subject to legal challenge, he may properly, if no statute or rule prohibits such course, communicate with jurors for that limited purpose, upon notice to opposing counsel and the court.

7.4 Opening statement.

In his opening statement a lawyer should confine his remarks to a brief statement of the issues in the case and evidence he intends to offer which he believes in good faith will be available and admissible. It is unprofessional conduct to allude to any evidence unless there is a good faith and reasonable basis for believing such evidence will be tendered and admitted in evidence.

7.5 Presentation of evidence.

(a) It is unprofessional conduct for a lawyer knowingly to offer false evidence, whether by documents, tangible evidence, or the testimony of witnesses.

(b) It is unprofessional conduct for a lawyer knowingly and for the purpose of bringing inadmissible matter to the attention of the judge or jury to offer inadmissible evidence, ask legally objectionable questions, or make other impermissible comments or arguments in the presence of the judge or jury.

(c) It is unprofessional conduct to permit any tangible evidence to be displayed in the view of the judge or jury which would tend to prejudice fair consideration of the case by the judge or jury until such time as a good faith tender of such evidence is made.

(d) It is unprofessional conduct to tender tangible evidence in the presence of the judge or jury if it would tend to prejudice fair consideration of the case unless there is a reasonable basis for its admission in evidence. When there is any doubt about the admissibility of such evidence it should be tendered by an offer of proof and a ruling obtained.

7.6 Examination of witnesses.

(a) The interrogation of all witnesses should be conducted fairly, objectively and with due regard for the dignity and legitimate privacy of the witness, and without seeking to intimidate or humiliate the witness unnecessarily. Proper cross-examination can be conducted without violating rules of decorum.

(b) A lawyer's belief that the witness is telling the truth does not necessarily preclude appropriate cross-examination in all circumstances, but may affect the method and scope

of cross-examination. He should not misuse the power of cross-examination or impeachment by employing it to discredit or undermine a witness if he knows the witness is testifying truthfully.

- (c) It is unprofessional conduct for a lawyer to call a witness who he knows will claim a valid privilege not to testify, for the purpose of impressing upon the jury the fact of the claim of privilege.
- (d) It is unprofessional conduct to ask a question which implies the existence of a factual predicate which the examiner cannot support by evidence.

7.7 Testimony by the defendant.

- (a) If the defendant has admitted to his lawyer facts which establish guilt and the lawyer's independent investigation established that the admissions are true but the defendant insists on his right to trial, the lawyer must advise his client against taking the witness stand to testify falsely.
- (b) If, before trial, the defendant insists that he will take the stand to testify falsely, the lawyer must withdraw from the case, if that is feasible, seeking leave of the court if necessary.
- (c) If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during the trial and the defendant insists upon testifying falsely in his own behalf, the lawyer may not lend his aid to the perjury. Before the defendant takes the stand in these circumstances, the lawyer should make a record of the fact that the defendant is taking the stand against the advice of counsel in some appropriate manner without revealing the fact to the court. The lawyer must confine his examination to identifying the witness as the defendant and permitting him to make his statement to the trier or the triers of the facts; the lawyer may not engage in direct examination of the defendant as a witness in the conventional manner and may not later argue the defendant's known false version of facts to the jury as worthy of belief and he may not recite or rely upon the false testimony in his closing argument.

7.8 Argument to the jury.

- (a) In closing argument to the jury the lawyer may argue all reasonable inferences from the evidence in the record. It is unprofessional conduct for a lawyer intentionally to misstate the evidence or mislead the jury as to the inferences it may draw.

- (b) It is unprofessional conduct for a lawyer to express his personal belief or opinion in his client's innocence or his personal belief or opinion in the truth or falsity of any testimony or evidence, or to attribute the crime to another person unless such an inference is warranted by the evidence.
- (c) A lawyer should not make arguments calculated to inflame the passions or prejudices of the jury.
- (d) A lawyer should refrain from argument which would divert the jury from its duty to decide the case on the evidence by injecting issues broader than the guilt or innocence of the accused under the controlling law or by making predictions of the consequences of the jury's verdict.

7.9 Facts outside the record.

It is unprofessional conduct for a lawyer intentionally to refer to or argue on the basis of facts outside the record, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court can take judicial notice.

7.10 Post-trial motions.

The trial lawyer's responsibility includes presenting appropriate motions, after verdict and before sentence, to protect the defendant's rights.

Part VIII. After Conviction

8.1 Sentencing.

- (a) The lawyer for the accused should be familiar with the sentencing alternatives available to the court and should endeavor to learn its practices in exercising sentencing discretion. The consequences of the various dispositions available should be explained fully by the lawyer to his client.
- (b) Defense counsel should present to the court any ground which will assist in reaching a proper disposition favorable to the accused. If a presentence report or summary is made available to the defense lawyer, he should seek to verify the information contained in it and should be prepared to supplement or challenge it if necessary. If there is no presentence report or if it is not disclosed, he should submit to the court and the prosecutor all favorable information relevant to sentencing and in an appropriate case be prepared to suggest a program of rehabilitation based on his exploration of employment,

educational and other opportunities made available by community services.

- (c) Counsel should alert the accused to his right of allocution, if any, and to the possible dangers of making a judicial confession in the course of allocution which might tend to prejudice his appeal.

8.2 Appeal.

- (a) After conviction, the lawyer should explain to the defendant the meaning and consequences of the court's judgment and his right of appeal. The lawyer should give the defendant his professional judgment as to whether there are meritorious grounds for appeal and as to the probable results of an appeal. He should also explain to the defendant the advantages and disadvantages of an appeal. The decision whether to appeal must be the defendant's own choice.
- (b) The lawyer should take whatever steps are necessary to protect the defendant's right of appeal.

8.3 Counsel on appeal.

- (a) Trial counsel, whether retained or appointed by the court, should conduct the appeal if the defendant elects to avail himself of that right unless new counsel is substituted by the defendant or the appropriate court.
- (b) Appellate counsel should not seek to withdraw from a case solely on the basis of his own determination that the appeal lacks merit.

8.4 Conduct of appeal.

- (a) Appellate counsel should be diligent in perfecting an appeal and expediting its prompt submission to the appellate court.
- (b) Appellate counsel should be scrupulously accurate in referring to the record and the authorities upon which he relies in his presentation to the court in his brief and on his oral argument.
- (c) It is unprofessional conduct for a lawyer intentionally to refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice.

8.5 Post-conviction remedies.

After a conviction is affirmed on appeal, appellate counsel

should determine whether there is any ground for relief under other post-conviction remedies. If there is a reasonable prospect of a favorable result he should explain to the defendant the advantages and disadvantages of taking such action. Appellate counsel is not obligated to represent the defendant in a post-conviction proceeding unless he has agreed to do so. In other respects the responsibility of a lawyer in a post-conviction proceeding should be guided generally by the standards governing the conduct of lawyers in criminal cases.

8.6 Challenges to the effectiveness of counsel.

- (a) If a lawyer, after investigation, is satisfied that another lawyer who served in an earlier phase of the case did not provide effective assistance, he should not hesitate to seek relief for the defendant on that ground.
- (b) If a lawyer, after investigation, is satisfied that another lawyer who served in an earlier phase of the case provided effective assistance, he should so advise his client and he may decline to proceed further.
- (c) A lawyer whose conduct of a criminal case is drawn into question is entitled to testify concerning the matters charged and is not precluded from disclosing the truth concerning the accusation, even though this involves revealing matters which were given in confidence.

National Advisory Commission
on
Criminal Justice Standards and Goals

The Defense

Standard 13.1: Availability of Publicly Financed Representation in Criminal Cases

Public representation should be made available to eligible defendants (as defined in Standard 13.2) in all criminal cases at their request, or the request of someone acting for them, beginning at the time the individual either is arrested or is requested to participate in an investigation that has focused upon him as a likely suspect. The representation should continue during trial court proceedings and through the exhaustion of all avenues of relief from conviction.

Defendants should be discouraged from conducting their own defense in criminal prosecutions. No defendant should be permitted to defend himself if there is a basis for believing that:

1. The defendant will not be able to deal effectively with the legal or factual issues likely to be raised;
2. The defendant's self-representation is likely to impede the reasonably expeditious processing of the case; or
3. The defendant's conduct is likely to be disruptive of the trial process.

Standard 13.2: Payment for Public Representation

An individual provided public representation should be required to pay any portion of the cost of the representation that he is able to pay at the time. Such payment should be no more than an amount that can be paid without causing substantial hardship to the individual or his family. Where any payment would cause substantial hardship to the individual or his family, such representation should be provided without cost.

The test for determining ability to pay should be a flexible one that considers such factors as amount of income, bank account, ownership of a home, a car, or other tangible or intangible property, the number of dependents, and the cost of subsistence for the defendant and those to whom he owes a legal duty of support. In applying this test, the following criteria and qualifications should govern:

1. Counsel should not be denied to any person merely because

his friends or relatives have resources adequate to retain counsel or because he has posted, or is capable of posting, bond.

2. Whether a private attorney would be interested in representing the defendant in his present economic circumstances should be considered.
3. The fact that an accused on bail has been able to continue employment following his arrest should not be determinative of his ability to employ private counsel.
4. The defendant's own assessment of his financial ability or inability to obtain representation without substantial hardship to himself or his family should be considered.

Standard 13.3: Initial Contact with Client

The first client contact and initial interview by the public defender, his attorney staff, or appointed counsel should be governed by the following:

1. The accused, or a relative, close friend, or other responsible person acting for him, may request representation at any stage of any criminal proceedings. Procedures should exist whereby the accused is informed of this right, and of the method for exercising it. Upon such request, the public defender or appointed counsel should contact the interviewee.
2. If at the initial appearance, no request for publicly provided defense services has been made, and it appears to the judicial officer that the accused has not made an informed waiver of counsel and is eligible for public representation, an order should be entered by the judicial officer referring the case to the public defender, or to appointed counsel. The public defender or appointed counsel should contact the accused as soon as possible following entry of such an order.
3. Where, pursuant to court order or a request by or on behalf of an accused, a publicly provided attorney interviews an accused and it appears that the accused is financially ineligible for public defender services, the attorney should help the accused obtain competent private counsel in accordance with established bar procedures and should continue to render all necessary public defender services until private counsel assumes responsibility for full representation of the accused.

Standard 13.4: Public Representation of Convicted Offenders

Counsel should be available at the penitentiary to advise any inmate desiring to appeal or collaterally attack his conviction. An attorney also should be provided to represent: an indigent inmate of any detention facility at any proceeding affecting his detention or early release; an indigent parolee at any parole revocation hearing; and an indigent probationer at any proceeding affecting his probationary status.

Standard 13.5: Method of Delivering Defense Services

Services of a full-time public defender organization, and a coordinated assigned counsel system involving substantial participation of the private bar, should be available in each jurisdiction to supply attorney services to indigents accused of crime. Cases should be divided between the public defender and assigned counsel in a manner that will encourage significant participation by the private bar in the criminal justice system.

Standard 13.6: Financing of Defense Services

Defender services should be organized and administered in a manner consistent with the needs of the local jurisdiction. Financing of defender services should be provided by the State, Administration and organization should be provided locally, regionally, or statewide.

Standard 13.7: Defender to be Full Time and Adequately Compensated

The office of public defender should be a full-time occupation. State or local units of government should create regional public defenders serving more than one local unit of government if this is necessary to create a caseload of sufficient size to justify a full-time public defender. The public defender should be compensated at a rate not less than that of the presiding judge of the trial court of general jurisdiction.

Standard 13.8: Selection of Public Defenders

The method employed to select public defenders should insure that the public defender is as independent as any private counsel who undertakes the defense of a fee-paying criminally accused person. The most appropriate selection method is nomination by a selection board and appointment by the Governor. If a jurisdiction has a Judicial Nominating Commission as described in Standard 7.1, that commission also should choose public defenders. If no such commission exists, a similar body should be created for the selection of public defenders.

An updated list of qualified potential nominees should be maintained. The commission should draw names from this list and submit them to the Governor. The commission should select a minimum of three persons to fill a public defender vacancy unless the commission is convinced there are not three qualified nominees. This list should be sent to the Governor within 30 days of a public defender vacancy, and the Governor should select the defender from this list. If the Governor does not appoint a defender within 30 days, the power of appointment should shift to the commission.

A public defender should serve for a term of not less than four years and should be permitted to be reappointed.

A public defender should be subject to disciplinary or removal procedures for permanent physical or mental disability seriously interfering with the performance of his duties, willful misconduct in office, willful and persistent failure to perform public defender duties, habitual intemperance, or conduct prejudicial to the administration of justice. Power to discipline a public defender should be placed in the judicial conduct commission provided in Standard 7.4.

Standard 13.9: Performance of Public Defender Function

Policy should be established for and supervision maintained over a defender office by the public defender. It should be the responsibility of the public defender to insure that the duties of the office are discharged with diligence and competence.

The public defender should seek to maintain his office and the performance of its function free from political pressures that may interfere with his ability to provide effective defense services. He should assume a role of leadership in the general community, interpreting his function to the public and seeking to hold and maintain their support of and respect for this function.

The relationship between the law enforcement component of the criminal justice system and the public defender should be characterized by professionalism, mutual respect, and integrity. It should not be characterized by demonstrations of negative personal feelings on one hand or excessive familiarity on the other. Specifically, the following guidelines should be followed:

1. The relations between public defender attorneys and prosecution attorneys should be on the same high level of professionalism that is expected between responsible members of the bar in other situations.
2. The public defender must negate the appearance of impropriety by avoiding excessive and unnecessary camaraderie in and around the courthouse and in his relations with law enforcement officials, remaining

at all times aware of his image as seen by his client and community.

3. The public defender should be prepared to take positive action, when invited to do so, to assist the police and other law enforcement components in understanding and developing their proper roles in the criminal justice system, and to assist them in developing their own professionalism. In the course of this educational process he should assist in resolving possible areas of misunderstanding.
4. He should maintain a close professional relationship with his fellow members of the legal community and organized bar, keeping in mind at all times that this group offers the most potential support for his office in the community and that, in the final analysis, he is one of them. Specifically:
 - a. He must be aware of their potential concern that he will preempt the field of criminal law, accepting as clients all accused persons without regard to their ability or willingness to retain private counsel. He must avoid both the appearance and fact of competing with the private bar.
 - b. He must, while in no way compromising his representation of his own clients, remain sensitive to the calendaring problems that beset civil cases as a result of criminal case overloads, and cooperate in resolving these.
 - c. He must maintain the bar's faith in the defender system by affording vigorous and effective representation to his own clients.
 - d. He must maintain dialogue between his office and the private bar, never forgetting that the bar more than any other group has the potential to assist in keeping his office free from the effects of political pressures and influences.

Standard 13.10: Selection and Retention of Attorney Staff Members

Hiring, retention, and promotion policies regarding public defender staff attorneys should be based upon merit. Staff attorneys, however, should not have civil service status.

Standard 13.11: Salaries for Defender Attorneys

Salaries through the first 5 years of service for public defender staff attorneys should be comparable to those of attorney associates in local private law firms.

Standard 13.12: Workload of Public Defenders

The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.

For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for postjudgment review is a separate case. If the public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his office might reasonably be expected to lead to inadequate representation in cases handled by him, he should bring this to the attention of the court. If the court accepts such assertions, the court should direct the public defender to refuse to accept or retain additional cases for representation by his office.

Standard 13.13: Community Relations

The public defender should be sensitive to all of the problems of his client community. He should be particularly sensitive to the difficulty often experienced by the members of that community in understanding his role. In response:

1. He should seek, by all possible and ethical means, to interpret the process of plea negotiation and the public defender's role in it to the client community.
2. He should, where possible, seek office locations that will not cause the public defender's office to be excessively identified with the judicial and law enforcement components of the criminal justice system, and should make every effort to have an office or offices within the neighborhoods from which clients predominantly come.
3. He should be available to schools and organizations to educate members of the community as to their rights and duties related to criminal justice.

Standard 13.14: Supporting Personnel and Facilities

Public defender offices should have adequate supportive services, including secretarial, investigation, and social work assistance.

In rural areas (and other areas where necessary), units of local government should combine to establish regional defenders' offices that will serve a sufficient population and caseload to justify a supporting organization that meets the requirements of this standard.

The budget of a public defender for operational expenses other than the costs of personnel should be substantially equivalent to, and certainly not less than, that provided for other components of the justice system with whom the public defender must interact, such as the courts, prosecution, the private bar, and the police. The budget should include:

1. Sufficient funds to provide quarters, facilities, copying equipment, and communications comparable to those available to private counsel handling a comparable law practice.
2. Funds to provide tape recording, photographic and other investigative equipment of a sufficient quantity, quality, and versatility to permit preservation of evidence under all circumstances.
3. Funds for the employment of experts and specialists, such as psychiatrists, forensic pathologists, and other scientific experts in all cases in which they may be of assistance to the defense.
4. Sufficient funds or means of transportation to permit the office personnel to fulfill their travel needs in preparing cases for trial and in attending court or professional meetings.

Each defender lawyer should have his own office that will assure absolute privacy for consultation with clients.

The defender office should have immediate access to a library containing the following basic materials: the annotated laws of the State, the State code of criminal procedure, the municipal code, the United States Code Annotated, the State appellate reports, the U.S. Supreme Court reports, citators governing all reports and statutes in the library, digests for State and Federal cases, a legal reference work digesting State law, a form book of approved jury charges, legal treatises on evidence and criminal law, criminal law and U.S. Supreme Court case reporters published weekly, loose leaf services related to criminal law, and, if available, an index to the State appellate brief bank. In smaller offices, a secretary who has substantial experience with legal work should be assigned as librarian, under the direction of one of the senior lawyers. In large offices, a staff attorney should be responsible for the library.

Standard 13.15: Providing Assigned Counsel

The public defender office should have responsibility for compiling and maintaining a panel of attorneys from which a trial judge may select an attorney to appoint to a particular defendant. The trial court should have the right to add to the panel attorneys not placed on it by the public defender. The public defender's office also should provide initial and inservice training to lawyers on the panel and support services for appointed lawyers, and it should monitor the performance of appointed attorneys.

Standard 13.16: Training and Education of Defenders

The training of public defenders and assigned counsel panel members should be systematic and comprehensive. Defenders should receive training at least equal to that received by the prosecutor and the judge. An intensive entry-level training program should be established at State and national levels to assure that all attorneys, prior to representing the indigent accused, have the basic defense skills necessary to provide effective representation.

A defender training program should be established at the national level to conduct intensive training programs aimed at imparting basic defense skills to new defenders and other lawyers engaged in criminal defense work.

Each State should establish its own defender training program to instruct new defenders and assigned panel members in substantive law procedure and practice.

Every defender office should establish its own orientation program for new staff attorneys and for new panel members participating in provision of defense services by assigned counsel.

Inservice training and continuing legal education programs should be established on a systematic basis at the State and local level for public defenders, their staff attorneys, and lawyers on assigned counsel panels as well as for other interested lawyers.

Preliminary Draft Recommendations from the National Study Commission on Defense Services Draft Report and Guidelines for the Defense of Eligible Persons, Volume II

1. Nature of Cases Requiring the Assistance of Counsel

a. Effective representation should be provided to every eligible person in every proceeding the purpose of which is to establish the culpability of or status of such person, pursuant to a factfinding process, as a prerequisite to intrusions of the government in order to:

- (1) Impose sanctions resulting in a loss of liberty, or
- (2) Impose other legal disabilities.

b. Effective representation should be provided to every eligible person who is subject to loss of liberty or legal disability imposed by government, and who seeks to redress the deprivation by government of any right, privilege or immunity guaranteed by law.

2. Time of Entry

Effective representation for every eligible person should be available either when (a) the individual is arrested, (b) the person believes he is under suspicion of having committed or of participating in a crime, or (c) the person believes that a process will commence resulting in a loss of liberty or the imposition of a legal disability, whichever occurs earliest.

3. The Mechanics of Providing Early Representation

a. Legal representation should be available to every eligible person who (a) is arrested, (b) believes that he is under suspicion of a crime, or (c) believes that a process will commence resulting in a loss of liberty or the imposition of a legal disability. The defender office should respond to inquiries made by such a person or by any person acting in his behalf, whether or not the person is in the custody of law enforcement officials.

b. Where a publicly provided attorney interviews an accused and if it appears that the accused is financially ineligible for public defender services, the attorney should help the accused obtain competent private counsel and should continue to render all necessary defense services until private counsel assumes full responsibility for the case.

c. The defender office or assigned counsel program should provide sufficient personnel and communica-

tion facilities to enable it to provide emergency representation on a 24-hour basis.

d. The defender office or assigned counsel program should implement systematic procedures, including daily jail checks, to assure that prompt representation is available to all persons eligible for defender services.

e. The defender office or assigned counsel program should provide adequate facilities for interviewing prospective clients who have not been arrested or who are free on pre-trial release.

f. Upon initial contact with a prospective client, the defender or assigned counsel should: (1) Offer specific advice as to all relevant constitutional and statutory rights; (2) Elicit matters of defense and direct investigators to commence fact investigations; (3) Collect information relative to pretrial release; and (4) Make a preliminary determination of eligibility for publicly provided defense services.

g. The defender office or assigned counsel program should prepare and distribute an informational brochure describing in simple, cogent language or languages: (1) The rights of any person who may require the services of the defender; (2) The nature and availability of such services; and (3) The means for securing the services, including the phone number and address of the local defender office. Such brochures should be made available in all police stations, courthouses, and detention facilities, and should be posted in conspicuous places in those buildings. Where budgets permit or where local media provide free public announcements, the defender office should publicize its services in the media.

h. The procedures utilized in assuring early representation should, where necessary, be permitted as a limited exception to the procedure of providing continuous representation by a single attorney throughout the trial and sentencing. However, the defender office or assigned counsel program should implement systematic procedures for early case assignment and for informing the client of the name of the attorney who will represent him after the initial period.

i. It should be the *primary duty* of the law enforcement authority having custody of any person to: (1) Determine whether such person is represented by counsel, and if he is so represented, to contact his attorney immediately; and (2) Contact the defender office or assigned counsel program immediately upon determining that the detainee is not represented by counsel.

j. It should be the *secondary duty* of all employees of government who come into direct contact with any person to make inquiry into whether the primary duty of the custodial authority has been properly discharged. If not, this secondary duty extends, but is not limited, to prosecutors, parole and probation officers, personnel of pretrial release programs and their agents.

4. Financial Eligibility

a. Eligibility Criteria

Effective representation should be provided to anyone who is financially unable, without substantial hardship to himself or to his family, to obtain such representation. This determination should be made by ascertaining the liquid assets of the person which exceed the amount needed for the payment of current obligations and which are not needed for the support of the person or his family. Liquid assets include cash in hand, stocks and bonds, bank accounts and any other property which can be readily converted to cash. The person's home, car, household furnishings, clothing and any property declared exempt from attachment or execution by law, should not be considered. The eligibility determiner shall not consider whether or not the person has been released on bond, or the resources of a spouse, parent or other person. If the person's liquid assets are not sufficient to cover the anticipated cost of effective representation, the person should be eligible for public representation. The cost of representation, for purposes of determining eligibility, should include investigation, expert testimony, and/or other costs which may be related to providing effective representation.

b. Method of Determination

The financial eligibility of a client for public representation should be made initially by a defender subject to review by a court on a finding of ineligibility. Eligibility should be determined by means of an affidavit which should be considered privileged under the attorney-client relationship. The client should be notified that he may be required to reimburse the state or county for all or part of the cost of representation. A decision of ineligibility which is affirmed by a judge should be reviewable by an expedited interlocutory appeal. The defendant should be informed of this right to appeal and if he desires to exercise it, the clerk of the court should perfect the appeal. The record on appeal should include all evidence presented to the court on the issue of eligibility and the judge's findings of fact and conclusions of law denying eligibility.

5. Recoupment

a. Trial Court Proceedings

(1) The court should not require reimbursement unless at the conclusion of the proceedings it determines that the convicted defendant has the present ability to pay all or a portion of the costs of legal representation incurred in that proceeding without manifest hardship to the defendant or his family. At the conclusion of criminal proceedings in trial court, a judge other than the sentencing judge, upon application of the state or county prosecutor, may require a convicted defendant to make reimbursement to the state or county for all or a portion of the cost to the state or county of the legal representation rendered on the de-

fendant's behalf at public expense in the event that it determines that the defendant is presently able to do so.

(2) No order of reimbursement should be ordered, however, unless the defender at the time eligibility is first established notifies the defendant of the potential obligation to reimburse the state or county. The defender should be required to provide such notice.

b. Proceedings After Trial

Should the defendant obtain legal representation at state or county expense in connection with a criminal appeal, or in a matter ancillary to a criminal prosecution such as probation or parole revocation proceeding or a *habeas corpus* proceeding, the state or county may seek to obtain reimbursement from the defendant through application to a judge of the court of original jurisdiction other than the sentencing judge. No order of reimbursement, however, should be made unless the defendant has the present ability to pay and has been given notice of the potential obligation to reimburse.

c. Reimbursement Procedures

(1) The application for reimbursement by the state or county prosecution should be made to the court no later than thirty (30) days following termination of the proceedings in issue. Following the application, the defendant's attorney should file a statement of the costs of legal representation at public expense and the defendant should file a declaration of his financial status, all of which are to be utilized by the court in making the determination regarding reimbursement.

(2) In determining the amount of payment to be made and the method of payment, the court should take into account the financial resources of the defendant and the nature of the burden that payment or costs will impose. The resources of spouse, relatives and other persons should not be considered in making this determination.

(3) The court may order payment in installments, or in any manner which it believes reasonable and compatible with the defendant's financial ability. In no event shall the time for payment exceed five (5) years.

(4) The defendant should have the right to obtain a modification or termination of the reimbursement order at any time while it has force and effect, on the basis that the order works manifest hardship to the defendant or his family brought about by circumstances which have changed since the order for reimbursement was entered.

d. Execution of Recoupment

(1) The state or county may recover such reimbursement through execution of the judgment. The execution of the judgment shall be conducted and enforced in the same manner and subject to the same exemptions that are applicable to civil actions. The judgment should not be enforced by contempt.

(2) Amounts recovered under this section should be paid into the general fund of the state or county or other contributing agency.

c. False Statements made in Connection with Reimbursement Determination

(1) If, following a negative or partial determination of reimbursement, it is determined that the defendant made material false and misleading statements to the court regarding his ability to pay for the cost of the legal representation at state expense, and that the defendant has the ability to pay all or a portion of the costs of legal representation in conformity with the provisions of paragraph 6(d) above, the state or county prosecutor may file suit for reimbursement and may obtain an order of complete or partial reimbursement.

(2) Said suit shall be filed no later than one year from the reimbursement determination by the court.

(3) Any person who knowingly submits to the court a materially false financial statement in connection with a determination of reimbursement for legal representation at public expense shall be guilty of a misdemeanor punishable by a fine of \$500.00 and/or by imprisonment of not more than six months.

(4) No information or testimony compelled of the defendant under these provisions, or any information directly or indirectly derived from such information or testimony may be used against the defendant in any criminal case, except in a prosecution under these provisions.

6. Mixed Systems

a. Administrative Structure of Mixed Systems

Alternative:

The defender office should be completely independent from the coordinated assigned counsel system. The defender should not participate in the appointment, regulation, or termination of the members of the assigned counsel pool. If proper funding exists, and exclusive of conflicts, the defender should make the necessary supporting services available to assigned counsel.

Alternative:

In a mixed system, the employed defender should be the assigned counsel administrator who has the responsibility, in cooperation with the private bar, and with the guidance of a policy-making board, for establishing and maintaining the panel of private lawyers, for the training program, for evaluation, for handling fiscal matters, for record keeping and for providing support services.

b. Allocation of Cases to Defenders and Assigned Counsel

Alternative:

Outside of conflicts and overload cases, the defender office should be appointed in all eligible cases except where the private bar has a pool of attorneys interested in trying criminal cases and an assurance that they

will receive training and regulation. In such cases, they should receive a percentage of cases in addition to overload and conflict cases.

In those jurisdictions where the private bar has a pool of attorneys interested in trying criminal cases and an assurance that they will receive training and regulation, the percentage of cases that pool attorneys should handle will depend upon the number of qualified attorneys available for that pool, the size of the local defender office, the number of cases that the defender office can effectively handle, and the ability and enthusiasm of the local private bar.

Alternative:

In a mixed defender and assigned counsel system the percentage of cases handled by each component of the system will depend upon the number of cases which the defender staff can handle effectively, and upon the composition, size and enthusiasm of the panel of private lawyers.

Except for cases involving multiple defendants, conflicts of interest, or matters requiring special expertise, there should be no fixed rule distinguishing the type of cases handled by the defender staff or the assignments to the panel of private attorneys.

The method of assigning cases should be in accordance with a fair and well-promulgated plan, and all eligible persons should have counsel appointed to represent them pursuant to this plan. The administrator shall be responsible for developing, promulgating and implementing this plan.

7. Ad Hoc Assigned Counsel

Appointment of counsel on a random or ad hoc basis is explicitly rejected as an appropriate means of furnishing legal representation in criminal cases.

8. Assigned Counsel Systems

a. Administration of Assigned Counsel Systems

(1) Governing Body

An assigned counsel system should be operated under the auspices of a general governing body. The majority of the governing body should be composed of attorneys appointed by the bar association of the area to be served. The functions of the general governing body should include the following: designing the general scheme of the system; specifying the qualifications for the position of administrator of the system; defining the function of the administrator and authorizing sufficient staff to support that function; prescribing salaries and terms of employment; adopting appropriate rules or procedures for the operation of the governing body itself, as well as general guidelines for the operation of the system; acting as a selection committee for the appointment of an administrator, or, in the alternative, providing for a special selection committee; exercising general fiscal and organizational control of the system; seeking and maintaining proper funding of the system; insuring the independence of

the administrator and assigned counsel; and advancing and encouraging the public, the courts and the funding source to recognize the significance of the defense function as a vital and independent component of the justice system.

(2) The Administrator: Qualifications, Functions, and Terms of Employment

An assigned counsel system should be administered by a qualified attorney licensed to practice in the jurisdiction where the system functions. In addition, the qualifications of the administrator should include, but not be limited to, the following: extensive experience in the field of criminal defense; experience in administration; ability to work cooperatively with other elements of the criminal justice system while retaining an independence of attitude to promote and protect the proper rendering of defense services; ability to maintain proper relations with the members of the bar and bar organizations in the area which is served by the system; and where the assigned counsel system co-exists with a public defender system with a separate administrator, the administrator should be capable of maintaining a cooperative and working relationship with such sister service.

The functions of the administrator shall include, but not be limited to, the following: developing and executing operational policy and control of the system; assisting the governing body in discharging its responsibilities; further assisting the governing body in the development of the budget, planning and fiscal controls; acquiring such staff as is necessary to carry out the mission of the system; designing the internal operational, administrative and fiscal controls necessary for the ordeal disposition of case work under the system; further designing and implementing such training and continuing education programs as are needed; and developing means and access to such support services as are required.

The administrator should have the authority to select the attorneys who shall comprise the panel of attorneys performing the case work; to suspend or dismiss the panel members for cause, subject to the review of the governing body; to hire and discharge such staff as is necessary to operate the system; to monitor the quality of the services being rendered, and the responsibility to take appropriate measures to maintain a competent level of service; to approve expenditures for the acquisition of needed support services, e.g. investigation, experts, etc.; to approve the payment of attorney fee vouchers; to develop the details of operational policy; to undertake, at his discretion, client representation; and to accept donations on behalf of the system.

The following in terms of employment should apply to the assigned counsel administrator: the administrator should be salaried sufficiently to attract a capable person and on a basis at least equal to the office of the prosecutor in the jurisdiction in which the sys-

tem serves and should enjoy reasonable fringe benefits on a similarly comparable basis. The administrator and staff should be allowed reasonable expenses to participate in continuing educational programs, bar association affairs, and defender association affairs. The administrator should serve for a definite term of years, no less than three nor more than six, and be eligible for reappointment for successive terms; and should not be removed from office in the course of a given term without good cause being shown, and after being afforded the right to a hearing before the governing body.

(3) Internal Fiscal Control

It is the responsibility of the governing body of the assigned counsel system, with the assistance of the administrator, to develop a fee schedule which will reasonably and fairly compensate the panel attorneys who furnish services on such cases as are assigned the panel. It should be the responsibility of the administrator to assist in developing a preliminary budget for review and ultimate adoption by the governing body.

(4) The Panel

To establish an assigned counsel system, it is necessary to solicit and enlist those members of the bar in the area which the system serves. The administrator should act as the appointing authority, admitting qualified applicants to the panel.

The panel membership should include all attorneys in the area to be served who display a willingness to participate in the program, and manifest the ability to perform at a competent level relative to criminal defense work. Provision should also be made for attorneys who are willing to learn criminal defense work, or to become more proficient in such work, to be inducted into the program upon completion of an appropriate training regime.

Standards of performance and conduct should be developed and disseminated among all panel members and potential panel members. If these standards are disregarded or breached, such conduct should be cause for either admonishment, suspension or removal from the panel.

(5) Assignment of Cases

The methodology employed for the assignment of cases will depend in large part upon local procedures and conditions. However, the following goals should be established with respect to the number and types of case assignments: The cases must be distributed in an equitable way among the panel members to ensure balanced workloads, generally through a rotating system, with allowance for variance where required, the more serious and complex cases must be assigned to attorneys with a sufficient level of experience and competence to afford proper representation, and apprentice members of the panel should only be assigned cases which will not overwhelm their capabilities, yet they must be given the opportunity to expand their

experience in a gradual and controlled manner.

The design of the overall system for making assignments, both generally, and in special cases, should be the responsibility of the administration.

(6) Establishing and Maintaining Attorney-Client Relationships

It is generally not administratively feasible, nor necessarily desirable for the client or for the overall effectiveness of the system to allow the client to select a particular panel member. Exceptions, however, ought properly be recognized under certain circumstances.

A procedure should be established to receive and deal with client complaints.

(7) Support Services

Provision must be made to furnish prompt and thorough support services and facilities to aid in the preparation, defense and disposition of cases.

b. Personnel Evaluations Within Assigned Counsel Systems

(1) All evaluations of panel attorneys should be conducted by the system administrators with the results of the evaluations reported to the attorney upon request of the attorney or at the discretion of the administration.

(2) A system of performance evaluations based on personal monitoring by the administrator, augmented by regular inputs from judges, prosecutors, other defense lawyers and clients should be developed. Periodic review of the files of selected cases should be made by the administrator.

(3) The criteria of performance utilized in evaluations should be that of a skilled and knowledgeable lawyer competent in the practice of criminal law.

(4) A certification program for criminal law specialists should be considered.

(5) An accreditation program within the appropriate national professional organization should be developed to encourage compliance with national standards and promote the general improvement of defense services.

c. Assigned Counsel Fees

(1) Adequate Compensation

(a) Assigned counsel should be adequately compensated for services rendered. In addition to the compensation awarded to assigned counsel, funds should be made available in a budgetary allocation for the services of investigators, expert witnesses and other necessary services.

(b) The amount of assigned counsel fees should be related to the prevailing rates among the private bar for similar services. These rates should be periodically reviewed and adjusted accordingly.

(2) Fee Structure

Consideration should be given to developing a fee

structure and to the effect of that fee structure upon the quality of representation. Fee structures should be designed to compensate attorneys for effort, skill and time actually, properly and necessarily expended in assigned cases.

Fee schedules, whether provided by statute or policy, should be designated to allow hourly in-court and out-of-court rates up to a stated maximum for various classes of cases, with provisions for compensation in excess of the scheduled maxima) in extraordinary cases.

(3) Processing of Fee Vouchers

It should be the responsibility of the administrator to approve fee vouchers in accordance with the fee schedules up to the recommended maximum allowances contained in such schedules. Requests for fees exceeding the recommended maximum or appeals from the administrator's actions should be received by a panel of attorneys appointed by the governing board. A copy of all fee vouchers should be simultaneously filed with the court.

(4) Sources of Funding for Assigned Counsel Programs

While states generally have the primary obligation for funding defense services to the legally indigent, the Federal Government should provide assistance through long-term direct matching grants. Where local government has the primary responsibility by statute, similar assistance should be furnished by the state. Grants should be contingent upon achieving and maintaining services at a level of quality commensurate with national standards. Provision should allow for supplemental funding from non-government sources, if available.

(5) Administration of Assigned Counsel Systems Funds

The financial administration of assigned counsel system funds should be in the form of an open-ended budget whereby compensation could be paid in accordance with caseload and the nature and extent of services rendered.

d. Training Assigned Counsel

(1) A single person or organization should assume the responsibility for training. Where there is an administrator, that individual should have the responsibility.

(2) Training programs must take into consideration the experience and expertise of attorneys to be trained.

(3) While only experienced and able attorneys should receive appointments, provision should be made to properly qualify less experienced attorneys who demonstrate an interest in and a potential for becoming qualified criminal attorneys.

(4) Formal training programs stressing lectures, demonstrations, and supervised participant involved should be regularly scheduled. Joint sponsorship of

such programs by defender organizations, local bar groups, and/or national organizations should be encouraged.

(5) Training programs should not only be provided, but, in addition, reasonable attendance should be required of attorneys who receive appointments.

(6) If the operating budget is not sufficient, funds should be requested from outside sources to initiate formal training or to further develop formal training programs.

(7) In addition to the formal training programs suggested above, appointed counsel should be encouraged to, from time to time, attend other criminal law-related seminars.

(8) Use should be made of both audio and video tapes for training purposes. Further, a national organization should consider providing, as a service, such tapes to defender offices and bar associations concerned with training criminal defense attorneys who regularly accept appointments in criminal cases.

(9) In addition to formal training programs, those responsible for the adequacy of assigned counsel should further assist counsel by providing as many as possible of the following services: an apprenticeship program, initial handout or package of material given to assigned counsel, an evaluation procedure, a motion and briefbank, library availability, information on experts, a newsletter, access to other attorneys for consultation, and law student assistance.

9. Structure of Defender Systems

a. Defender System Funding

(1) Sources of Funding

(a) Federal Funding

Although the states have the primary obligation, the Federal Government should provide financial aid to the states to assist in establishing and maintaining organized defender systems for delivery of uniform, quality legal services to eligible persons in criminal and related cases. Such assistance should be in the form of direct matching grants, and contingent upon maintenance of quality services in accordance with national standards.

(b) State Funding

(i) State Financing

Each state should provide full and adequate funding for all defense services in its jurisdiction regardless of the level of government at which those services are administered.

(ii) Local Contributions Prohibited

Political subdivisions served by state funded defense systems should be prohibited from contributing to the local defender office.

(iii) State Reimbursements to Localities

In a jurisdiction where the state will not undertake full funding, the state should reimburse

local governments for defense expenses that exceed a specified cost per case, providing that the local services meet standards for accreditation.

(c) Regional Funding

Where defense services are organized and administered on the regional level and in the absence of full state funding, participating local governments should allocate the costs among themselves in an equitable manner. Alternative bases include, but are not limited to, population, caseload, or equal sharing.

(d) Private Funding

Private funding is not a stable source of funding and should not be relied upon except for capital expenditures such as library acquisitions and equipment. The defender should be empowered to seek and receive private funds.

(e) Pro Bono Services

The private bar should not be required to provide defense services either as the primary delivery agent or for conflict/overflow cases on a pro bono basis.

(2) Administration of Funds

(a) The defender system should be an independent agency and should prepare and present its budget directly to the appropriating authority. The budget should not be presented as part of the judicial or executive budgets nor should it be subject to diminution or alteration by any branch of government other than the appropriating authority. The defender commission should review and advise the defender on the budget before its submission and provide support for the budget request.

(b) The defender should operate under an annual (or biennial) lump sum appropriation and should not be funded on a case by case reimbursement basis.

(c) The defender office budget should include all necessary expenditures including but not limited to office space, expert witnesses, and investigative services. The government should not have the option of providing these services directly to the defender.

(b) Selecting the Defender-Director

(1) Special Selection Commission

A special selection commission should be created to appoint, and, to a limited extent, advise, the state defender director.

(2) Composition of Commission

The commission should consist of nine to thirteen members, depending upon the size of the community, the number of identifiable factions or components of the client population, and judgments as to which non-client groups should be represented.

Criteria for selection of commission members:

(a) The primary consideration in making up the composition of the special selection Commission should be that of ensuring the independence of the defender director.

(b) The members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics.

(c) No single branch of government should have a majority of votes on the Commission.

(d) Organizations concerned with the problems of the client community should be represented on this Commission.

(e) A majority of the Commission should be practicing attorneys.

(f) None of the members of the Commission should be judges or prosecutors.

(3) Staggered Terms

The Commission's members should serve staggered terms in order to ensure continuity and to avoid upheaval.

(4) Duties of the Commission

(a) The primary function of the Special Selection Commission is to select the Chief State Defender.

(b) The Commission should assist the State Defender Director in drawing up procedures for the selection of assistants or deputies.

(c) The Commission should receive possible client complaints, initiate statistical studies of case dispositions, and monitor the performance of the State Defender Director.

(d) The Commission should not interfere with the discretion, judgment and zealous advocacy of defender attorneys in specific cases.

(e) The Commission should prepare an annual report of the operations of the office of the defender.

(5) Meetings

The Commission should meet on a regular basis and should be presided over by a chairperson elected by its members.

(6) Expenses

The Commission should serve without pay, but should be reimbursed for traveling and other reasonable expenditures incurred as a result of membership.

(7) Meeting Procedures

A majority of members should constitute a quorum, and any resolution, policy adoption, or motion should require a vote of two-thirds of those present. However, selection of the Defender Director should require the vote of each member, due to the importance of the decision. There should be no voting by proxy.

(8) Qualifications of the Defender Director

The Defender Director should be a member of the bar of the state in which he is to serve. He should be selected on the basis of a non-partisan, merit procedure which ensures the selection of a person with the best available administrative and legal talent, regardless of political party affiliation, contributions, or other irrelevant criteria.

(9) Term of Office

The Defender Director's term of office should be from four to six years' duration and should be subject to renewal.

(10) Private Defender Agencies

(a) Criteria relating to the method of appointing the State Defender Director, the composition of the Special Selection Commission, the duties of the Commission, meetings, expenses, meeting procedures and qualifications of the Defender Director should apply equally to private defender agencies.

(b) Where a defender agency is established pursuant to contract, in order to maintain continuity and attract qualified personnel to the position of Defender Director, provision should be made, either by law or by contract, for the continuation of the defender service beyond the contract period.

(c) The scope of the services to be provided should be stated explicitly in the contract.

(d) Contracts for legal services should not be let on the basis of competitive bidding.

(e) The contract should specify the workload anticipated as it is related to the amount of funds being provided in order to provide a formula in the event that the anticipated workload is exceeded.

c. Level of Organization

(1) State Level Organization

(a) Centralized State Level Administration

First Alternative:

Delivery of defense services should be organized at the state level in order to ensure uniformity and equality of legal representation and supporting services provided, and to guarantee professional independence of the individual defender. This system should provide services by means of city, county, or multi-county programs, to every jurisdiction in the state.

Except in the case of pre-existing agencies, the planning and creation of local or regional defender offices should be undertaken by a state defender office which is responsible for providing all defender services, including trial level appellate and post-conviction services throughout the state.

The state defender should appoint deputy defenders to head the local and regional offices and should set general policy and guidelines regarding the operation of such offices and the handling of cases. The daily administration of the office and handling of individual cases should be the responsibility of the deputy defenders.

Second Alternative:

Independence of the appellate function from the trial function is essential. Whether the defender system is administered at a state or local level, it is necessary to establish a wholly separate defender system for appeals.

Third Alternative:

Local autonomy in defender systems is desirable. Whether funding is provided locally or by the state, defender offices should be locally administered.

(b) Pre-Existing Defender Agencies in a Statewide System

(i) The offices of the State Defender may contract with pre-existing qualified entities to provide services.

(ii) The State Defender shall be responsible for ensuring compliance by contracted programs with national standards.

(iii) Where the on-going program has determined to be in full compliance with national standards, it should be eligible to receive state funding for its program and the office of the state defender should provide any necessary back-up services.

(iv) Where the on-going defender or coordinated assigned counsel program does not comply with national standards, such jurisdiction should have 120 days in which to comply. If, upon reevaluation after that time, the program fails to meet national standards, the office of the State Defender should itself replace the prior program.

(c) Duties of State Defenders

(i) Evaluations

The office of the state defender should ensure that on-site evaluations of each defender office and of each jurisdiction or region which has retained its own defender or coordinated assigned counsel program be conducted not less than once a year.

The State Defender should make monitoring visits to offices around the state on a frequent basis.

The State Defender should contract with outside agencies periodically to have evaluations conducted.

(ii) Training

The office of the State Defender should provide initial training for all new defender staff attorneys and should conduct seminars for continuing education for the staff of all defender offices and coordinated assigned counsel programs in the state.

(d) Accreditation

An accreditation program within the appropriate national professional organization should be developed to encourage compliance with national standards and promote the general improvement of defense services.

(2) Regionalization of Defense Services

(a) In states which have not established the office of the state defender, local political subdivisions having a sufficient number of cases to occupy two more attorneys on a full-time basis should be required to establish an organized defender system. If a local political subdivision lacks a sufficient number of cases to

occupy the full-time services of at least two attorneys, it should be required to combine with other political subdivisions to establish a regional, organized defender system.

(b) Statewide regulations should be established in conformity with national standards governing the staff and budgetary requirements of local and regional defender offices, to ensure provision of uniform, quality legal services and to protect the independence of the office from political or judicial influence. Staffing requirements for regional offices should be related to travel time for attending court and jail facilities as well as to approved caseload standards.

d. Location of Defender Offices

(1) Location of Offices in a State Level Defender System

In a state level defender system, the principal office should ordinarily be located in the state capital, and other offices should be located with reference to population and caseload factors and access to trial and appellate courts and penal institutions.

(2) Location of Local Defender Offices

Local defender offices should be located near the appropriate courthouses, but never in such proximity that the defender becomes with the judicial and law enforcement components of the criminal justice system. Defender offices should maintain interview and waiting rooms in the courthouse.

(3) Branch Offices

Regional, metropolitan and single county defenders should establish branch offices whenever operational efficiency, defender's access to courts, or clients' access to defenders would be significantly enhanced thereby.

10. Internal Organization and Administration of Defender Systems

a. Task Allocation

(1) Task Allocation in Large Defender Offices

(a) Specialization

Defender organizations, in order to achieve more effective representation, increased cost effectiveness and improved client and staff satisfaction should analyze their operations for opportunities to achieve these goals through specialization. Specialization options should be considered for legal and support staff functions and tasks with the determination made for reasons of comparative advantage in performance of the task, consistent with an attorney's professional responsibility.

(b) Overall Responsibility and Initial Interview

The staff attorney should have the primary responsibility and final authority for managing, evaluating and coordinating all services provided to his client. The attorney should conduct the initial interview and

make an evaluation of the case prior to entry by specialists and supportive staff into the case.

(c) Use of Nonlawyer Specialists

Social workers, investigators, paralegal and paraprofessional staff should be employed to assist attorneys in performing tasks not requiring attorney credentials or experience and for tasks that support staff bring special skills and experience to performing.

(d) Continuity of Representation

The implementation of specialization by a defender office should not affect the ability of a staff attorney to represent a client from the beginning of the case through the sentencing stage as opposed to providing representation limited to particular stages of the client's case.

(e) Supervisory Ratio

Proper attorney supervision in a defender office requires one full-time supervisor for every ten staff lawyers, or one part-time supervisor for every five lawyers. The division of attorney personnel into functional sections.

(f) Administrative Assistant

Professional business management staff should be employed by defender offices to provide expertise in budget development and financial management, personnel and purchasing administration, data processing, statistics, recordkeeping and information systems, facilities management and other administration services if senior legal management, in the aggregate, are expending at least one manyear of effort for the above functions.

(g) Reassessment of Need for Special Position

Specialization should be piloted and evaluated to measure performance and cost effectiveness and related offsets due to fragmentation of tasks and increased management and coordinative requirements. Specialists and subspecialists should be functional in character and should not be used as a means for artificially raising salaries through specialist designation.

(h) Support Services for Assigned Counsel

Defender organizations should develop systems to provide appointed counsel with specialist and supportive service assistance in cases not involving or potentially involving a legal conflict, except where an assigned counsel plan provides specialty and supportive services through the plan administrator's office.

(2) Defender Programs in Rural Areas

Rural defender programs staffed by five or fewer attorneys should:

(a) in general, meet the standards prescribed for large and medium-sized defender offices.

(b) rotate attorneys so that each attorney becomes familiarized with each type of proceeding, type of case, and jurisdiction covered by the office.

(c) rotate routine administrative and public relations duties to ensure that each attorney is familiar with the operation of the programs and is known to the general public.

(d) have facilities and resources at least comparable to those of local full-time prosecutorial offices and on a par with facilities of a private law firm of comparable size.

(3) Appellate Defender Systems

(a) Relationship to Trial Counsel

Alternative:

The Appellate Defender System should be independent of and separate from the trial counsel.

(i) The office should be an organizationally independent office capable of formulating its own policies and standards.

(ii) Counsel on appeal should be different from trial counsel and capable of exercising independent review of the competence and performance of trial counsel.

(iii) An Appellate Defender should not have responsibility for any trial work while in an appellate division and should remain in an appellate division for a substantial period of time, so that continuous representation by the same defender can be given to a client throughout the appellate process.

Alternative:

The appellate function should be separate from the trial function, but in a state system for trials and appeals, it should be part of a single agency.

(b) Responsibility of the Appellate Defender Office to the Client

Where paraprofessionals and law students are utilized in the appellate process, the defender assigned to that client should establish a personal relationship with the client developed through personal interviews and continued contact.

(i) A copy of all pleadings filed for a client by the defender should be automatically forwarded to the client.

(ii) Because the client is not present at most appellate proceedings, the client should be informed automatically of the occurrence of all substantial hearings affecting his or her case and of all rulings and decisions significant to that case.

(iii) All such informative tasks in (i) and (ii) can and should be performed by administrative personnel to insure that such information is forwarded to the client.

(c) Relationship of Appellate Attorneys to Paraprofessionals and Law Students

The responsibility for handling a case on appeal is that of the staff attorney who must have direct responsibility for supervision of all paraprofessionals and law students who would have occasion to work on a case assigned to that attorney.

(d) Expert Witness

The Appellate Defender System should have available to it adequate resources for the hiring of expert witnesses and investigative services.

(e) Administrative Personnel

The Appellate Defender office should hire and train administrative personnel whose responsibility would be to maintain docket control cards, open files and accumulate all court records before the case is assigned to a defender and establish initial contact with the client to inform him of the appointment and what steps will follow in the process.

(f) Briefbank and Library Facilities

The Appellate Defender System should have available an adequate library and briefbank and access to a complete resource library.

(i) Adequate personnel should be available to operate the library and maintain and index a brief bank.

(ii) Individual staff attorneys should be provided with an annotated criminal code, court rules, and constitution and a subscription to the relevant advance sheets.

(iii) The Appellate Defender office should receive slip sheet copies of all opinions released by their jurisdictions appellate courts, which should be indexed and distributed by administrative personnel.

(4) Use of Law Students

(a) The primary responsibility for representing persons charged with crimes rests with this Nation's practicing bar. It is deplorable that law students are now filling gaps which should be filled by the practicing bar.

(b) Volunteer and compensated law students utilized as support (paraprofessional) personnel by a defender agency should be carefully supervised, given a broad range of experience, and, where appropriate, adequately compensated for their work.

(c) Law students functioning as subcounsel in a criminal matter should be thoroughly prepaid in criminal law and procedure, ethics, and court practice before being permitted to handle actual courtroom appearances.

(d) Law students may first-chair (handle the case as lead counsel) motions, hearings, and trials only after (a) he or she has been certified under a student practice rule; (b) the supervising defender has determined that the student is thoroughly prepared to handle the matter; (c) the supervising defender has determined that to the best of his knowledge and belief, the student will not bias either the court or the jury against the defendant;

(e) The client consents in writing to student representation.

(f) The consent of a trial judge for student trial

representation should not be required; such a requirement is undesirable.

(g) The requirement of close supervision necessitates that the supervising attorney have a complete understanding of the case a student is handling, has been available to the student prior to any court appearance for consultation and be physically present and immediately available for consultation during the time the student is presenting a matter in court.

(h) It is undesirable to have law students conducting initial substantive client interviews without the presence of a supervising attorney.

(i) Law students should not first-chair criminal cases in which the accused is charged with a serious crime. Serious crimes are defined as those charges involving complex legal, evidentiary, or tactical decisions with the likelihood of a substantial deprivation of liberty upon conviction.

(j) Before the start of any courtroom proceeding, both defender and client should indicate, on the court record, the client's consent to representation by the student.

(5) Representation of Inmates

The system of criminal justice which accords to the criminally accused defendant the full range of constitutional due process protections throughout the trial and appellate process, upon conviction, largely abdicates its responsibility to deliver representation to those who are confined in our penal institutions. Accordingly, each public defender office should make an assessment of the need for post-conviction representation of the criminally confined community in their jurisdiction, and, if indicated, establish a separate division of their office to deliver comprehensively that representation.

(a) In recognition of the breadth and scope of most prisoner's legal needs, the defender office should seek to utilize and incorporate existing community resources, including but not limited to, law students, paraprofessionals, jailhouse lawyers and volunteers, to assist it in delivering the required services. These individuals, however, must be carefully selected, properly trained and supervised, and their duties precisely defined.

(b) Since the legal claims of prisoners may require of defender staff attorneys many skills and/or substantive law knowledge not necessarily possessed by criminal law practitioners, this fact should be reflected in the program's hiring policies, training programs, law library content and internal office structure.

(c) The defender office may decide, due to lack of available resources, or lack of expertise, or for other reasons, to provide representation only in certain, specified kinds of cases. In this event, the defender should identify and coordinate with, alternative prison legal services programs and initiate an effective referral system for those cases beyond their scope.

b. Policy Issues Related to the Handling of Cases

(1) Defender-Client Relationships and Choice of Counsel in a Defender's Office

(a) Defender-Client Relationships

(i) Defenders should be mindful that their primary loyalty is to their clients. Defenders should seek to instill an attitude of trust and confidence in clients, and should scrupulously adhere to Canon Four's dictates regarding "The confidences and secrets of a client."

(ii) The defender should consult with his clients with sufficient frequency so that no client: (1) has doubts about the nature of his next court appearance; (2) misunderstands the defender's role in the plea-bargaining process; or (3) is called upon to make a decision on less than full information, or with less than adequate time to consider available choices.

(iii) Defender offices should devise means of obtaining feedback from clients in a systematic way, and should use information thus developed for tenure and promotion purposes and for enhancing the offices' sensitivity to client needs and generally improving the quality of representation.

(b) Choice of Counsel

(i) The initial assignment of particular cases to individual defender attorneys should be an internal function of the defender office. The Defender Director should discharge this function according to established office policy which takes into account (1) the desirability of permitting defendants some choice in the attorney selection process, and (2) the need for efficient functioning of the defender's office.

(ii) Whenever an attorney-client relationship has been established between a defender attorney and an accused, the defender office should not terminate or interfere with that relationship without strong cause, and the defender should stoutly resist any efforts by the court to terminate or interfere with that relationship.

(iii) Whenever it reasonably appears to a defender attorney that he is unable, for any reason, to furnish effective representation to a particular client, he should withdraw from the case with the consent of the client and the approval of the court, and should assist the accused in securing new counsel. The defender office should not seek to prevent the individual attorney's withdrawal under these circumstances.

(iv) Whenever a defender client requests that different counsel be assigned to his case, the Defender Director should investigate the grounds for the request and should assign new counsel to the client: if, (1) this constitutes the client's first such request; or (2) the investigation discloses that the defender attorney, for any reason, is unable to provide effective representation to the client. In all other cases the defender office should refuse to reassign the case, and should

inform the client of his right to petition the court for reassignment of counsel.

(v) Under no circumstances should the court attempt to assign particular cases to individual attorneys within a defender office.

(2) Stage v. Continuous Representation

Defender offices should provide for continuous and uninterrupted representation of eligible clients from initial appearance through sentencing up to but not including the appellate and post-conviction stages by the same individual attorney. Defender offices should urge changes in court structure and administration to reduce fragmentation and to facilitate continuous representation.

c. Defender Personnel Policies

(1) Recruitment and Hiring of Personnel in Defender Offices

(a) Defender systems and offices should actively recruit the best qualified attorneys available for staff positions by advertising on the local, statewide and national levels, and by formulating and promulgating hiring criteria and policies. Recruitment procedures should include special efforts to employ attorney candidates from minority groups which are substantially represented in the defender office's client populations.

(b) A national referral and placement service to facilitate nationwide public defender recruiting and placement should be instituted.

(c) Defender staff attorney appointments should be made by the Defender Director, should be based upon merit, and should be entirely free from political and other extraneous forces. Upon appointment, staff attorneys should be required to make a time commitment of from two to five years to defender service.

(d) Defender investigative staff should be systematically recruited, selected and supervised to ensure that the investigative function is properly discharged.

(2) Supervision, Evaluation, Promotion and Firing of Defender Personnel

(a) The professional performance of defender staff attorneys should be subject to systematic supervision, and evaluation efforts should be individualized, and should include monitoring time and caseload records, review and inspection of case files and transcripts, in-court observation and periodic conferences.

(b) Defender promotion policies should be tied to merit and performance criteria. Removal of staff attorneys should be only for cause, except during a fixed probationary period which an office may employ for newly hired attorneys.

(3) Defender Training

(a) The training of defenders should be systematic, comprehensive, and at least equal in scope to that received by prosecutors. Every defender office should provide an orientation program for new staff attorneys. Intensive, entry-level training should be provided at the state or local level and, to the extent possible, defender hiring practices should be coordinated to facilitate an entry-level training program which newly hired attorneys are not assigned to routine office duties.

(b) Inservice training programs for defender attorneys should be provided at the state and local level so that all attorneys are kept abreast of developments in criminal law, criminal procedure and the forensic sciences. Every defender office should maintain an adequate library and pleadings bank, and staff attorneys should have ready access to appellate slip opinions, digests, legal periodicals and relevant loose-leaf services.

(c) Every defender office should seek to enroll staff attorneys in National and statewide training programs and courses that have relevance to the development of trial advocacy skills.

(d) Defender offices should provide training for investigative staff.

(4) Full-Time Defenders and Minimum Office Size

(a) Defender Directors and staff attorneys should be full-time employees, prohibited from engaging in the private practice of law. Regional defender offices which combine counties or districts should be created where necessary to produce a caseload of sufficient size to justify full-time personnel.

(b) No defender office should have fewer than two full-time defenders. Where this cannot be accomplished by regionalization, it should be accomplished by merging the criminal and civil legal aid functions.

d. Statistics and Recordkeeping

(1) Every defender office should maintain a central filing and record system with daily retrieval of information concerning all open cases. The system should include, at a minimum, an alphabetical card index system with a card containing detailed and current information on every open case, and a pocket book or calendar which contains future court appearance activity.

(2) Every defender office head should receive, on a weekly or monthly basis, detailed caseload and dispositional data, broken down by type of case, by type of function, by type of disposition, and by individual attorney workload. Large offices should employ a statistician to facilitate the record keeping and information retrieval process.

(3) Individual defender attorneys should be required to keep time records, and these records should be periodically tabulated by type of case, by court, and by type of function in a manner that will enable the defender director to articulate, assess, and justify caseload limitations.

e. The Defender's Role in the Community and the Criminal Justice System

(1) Every defender office should strive to instill in its members a high standard of professionalism and a sense of professional competence and excellence.

(2) The relationship between defenders and prosecuting attorneys should be characterized by the same high level of professionalism that is expected between other responsible members of the litigating bar.

(3) Defenders should be especially sensitive to the image they project to clients, and should accordingly refrain from demonstrations of camaraderie in and around the courthouse, the police station and the detention facility with prosecuting attorneys and other law enforcement personnel.

(4) Defenders should consult regularly with members of the judiciary in order to promote understanding and resolution of problems. Defender attorneys should be subject to judicial influence and supervision only in the manner and to the same extent as are lawyers in private practice.

(5) The defender should strive to eliminate areas of conflict and to develop areas of mutual cooperation and understanding with his fellow members of the legal community and organized bar, recognizing that bar support can assist the defender in securing an appropriate budget, resisting political pressure, and instituting criminal justice system reforms.

(6) Defender attorneys should involve themselves in programs and committees of the bar, and should encourage, promote and participate in programs of continuing legal education.

(7) The defender should scrupulously decline to represent defendants who are ineligible for defender services as such eligibility is determined by controlling standards; provided, however, that this policy does not interfere with the provision of early representation. Adherence to this policy should minimize the economic impact of the defender upon the private bar and, therefore, avoid unnecessary conflict with this important source of potential support for the defender. Where the accused has been determined eligible for defender services, the defender should withdraw from the case in deference to private counsel only upon request of the accused.

(8) The defender should educate the community about the purpose and function of his office. He should develop and maintain relations with community organizations to promote understanding of defender operations and to assist in improving defender services. He should include police, judges, prosecutors and corrections personnel in defender training programs. The defender should make speakers available for school and community organizations and should encourage media coverage and issue regular press statements. Every defender office should have an

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official among whose responsibilities is press liaison. Each office should have a procedure by which media requests for information are channeled to the appropriate official.

11. Budget, Workload and Personnel Needs for Defender Offices

a. Projecting Future Personnel Needs

Alternative

(1-1) Defender office personnel needs should be projected by means of detailed resource planning. Such planning will require, at a minimum, detailed records on the flow of cases through the criminal justice process, and on the resources expended on each case at each step in the process.

(2) Data kept in the criminal justice system should be kept in a format that is intra-jurisdictionally compatible across all elements of the criminal justice system.

Alternative

(1-2) Defender office personnel needs should be projected by means of detailed resource planning. Such planning will require, at a minimum, detailed records on the flow of cases through the criminal justice process, and on the resources expended on each case at each step in the process. However, in jurisdictions which have not yet developed necessary input data to provide a scientific basis for accurately predicting future personnel needs, the caseload of a defender office should not exceed the following: Felonies per attorney per year: not more than 140; Misdemeanors (excluding traffic) per attorney per year: not more than 295; Juvenile Court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and Appeals per attorney per year: not more than 25. In offices lacking investigators, the maximum of felonies per attorney per year should be reduced to 97.

(2) Data kept in the criminal justice system should be kept in a format that is intra-jurisdictionally compatible across all elements of the criminal justice system.

b. Assessing and Solving Current Work Overloads

(1) Establishing Maximum Current Workload Levels

(a) The single most important objective for defender offices is to assure that all clients receive the effective assistance of counsel required by the sixth amendment to the constitution. This cannot be achieved by the ablest and most industrious lawyers when their workloads are excessive. Every defender office should establish maximum caseload standards for the office for individual attorneys. These standards should be approved by the defender's governing board.

(b) Caseload standards should reflect national

standards and guidelines. The determination by the defender office of whether the office caseload or the workload of an individual defender is excessive should take into consideration: (1) Objective statistical data; (2) Factors related to the local practice; and (3) An evaluation and comparison of the workloads experienced, competent private defense practitioners.

(2) Solving the Problem of Excessive Caseloads

(a) Defender office caseloads and individual defender attorney workloads should be continuously monitored, assessed and predicted so that, wherever possible, caseload problems can be anticipated in time for preventive action.

(b) Whenever the defender, having in mind the office's established workload standards, determines that the assumption of additional cases by the office might reasonably result in inadequate representation for some or all of the office's clients, the defender office should decline any additional cases until the situation is altered.

(c) The defender office, when faced with an excessive caseload, should diligently pursue all reasonable means of alleviating the problem, including: (1) declining additional cases and, as appropriate, seeking leave of court to withdraw from cases already assigned; (2) actively seeking the support of the judiciary, the governing board, the private bar, and the community in the resolution of the caseload problem; (3) seeking evaluative measures from the appropriate national organization as a means of independent documentation of the problem; (4) hiring assigned counsel to handle the additional cases; and (5) initiating legal causes of action.

Alternative

(d)-1 An individual attorney has the duty to keep the defender director advised of his workload in order to prevent an excessive workload situation.

Alternative

(d)-2 Individual attorneys in defender offices are entitled to be heard in the process of establishing caseload standards. If the office fails to establish standards, or if individual attorneys' workloads exceed established standards, an individual attorney who reasonably determines that the assumption of additional cases might reasonably result in inadequate representation for some or all of that attorney's clients should refuse to accept additional cases.

c. Defender Office Salaries

(1) The Defender Director's compensation should be set at a level which is commensurate with his qualifications and experience, and which recognizes the responsibility of the position. The director's compensation should be comparable with that paid to presiding judges, professionally appropriate when compared with the compensation of the private bar, and in no event less than that of chief prosecutor.

(2) The starting levels of compensation for staff attorneys should be adequate to attract qualified personnel. Salary levels thereafter shall be set to promote the Defender Director's policy on retention of legal staff and should in no event be less than that paid in the prosecutor's office. Compensation should be professionally appropriate when analyzed or compared with the compensation of the private bar.

(3) In order to attract and retain qualified support personnel, compensation should be comparable to that paid by the private bar and related positions in the private sector and in no event be less than that paid for similar positions in the court system and prosecution offices.

d. Nonpersonnel Needs in Defender Offices

(1) Budgets

(a) Defender offices should have a budget for operating expenses that will provide for a professional office, library and equipment comparable to a private law firm of similar size. The budget should be flexible so as to allow the defender to reallocate without prior approval of the funding agency.

(b) Defender office budgets should include funds for procurement of experts and consultants, ordering of minutes and transcripts on an expedited basis and for other services procurement. Defender offices should not be required to seek prior approval or post expenditure ratification except in those limited cases where the expenditure is extraordinary.

(c) Defender offices should have available up to five percent of their budget for administrative costs of payroll and financial management including audits, personnel and purchasing administration and data processing services. Smaller offices and project offices should be able to expend up to ten percent of their budget for these overhead expenditures.

(2) Office Space

Defender offices should be in nonpublic office space that offers ready access to the courts, detention centers and client-communities. The space should include separate offices for management, legal and social work staff, shared space for investigators, paraprofessionals and other support staff, secure space for confidential records, equipment and petty cash, and reasonable allocations of ancillary space related to staff size for reception and client waiting areas, conference rooms and library, mailroom and reproduction, supplies and storage. Separate toilet facilities should be provided for staff. Parking should be provided for staff that requires the use of an automobile for field tasks.

(3) Equipment Needs

(a) Defender offices should be equipped with quality communications systems including office telephone systems, beeper paging systems, telephone answering services and car phones.

(b) Defender offices should be equipped with

quality reproduction equipment which at high speed produces "printed pages" quality product. The equipment should include capability for automatic feeding, collating, reduction size of large originals, resolution of light originals, and two sided copying for book copying, forms reproduction, file reproduction and administrative document reproduction.

(c) Defender offices with appellate responsibility should be budgeted for implementation of word processing systems. Automatic typing systems which allow for corrections without retyping entire sections should be provided.

(d) Defender offices where data requirements warrant should have data processing facilities and services on lease or contract, designed for defender requirements. If the defender is included in a criminal justice information system, the system should be required to meet defender specifications regarding reporting frequency, data definition and format.

(4) Competitive Bidding for Budget Items

Defender offices should be exempt from governmental public bidding requirements for purchasing where the public bidding process cannot be completed for timely acquisition of service or equipment.

12. Diversion

a. Caution of Expansion of Diversion

Defender should seek to ensure that further expansion of diversion procedures be conditioned, or preceded by, systematic inquiry into (1) the impact of diversion on the defendant's constitutional and substantive rights, and (2) the impact of diversion on the defendant's lifestyle during and subsequent to the pendency of criminal charges.

b. Hearing on Denial or Termination

The decisions to grant or deny diversion and to terminate diversion once granted should be judicial decisions to be made under appropriate standards after a hearing at which the defendant is represented by counsel and during which all relevant facts are considered along with the recommendations of the prosecutor, the defense counsel, and other interested parties.

c. Counsel at All Stages

The defendant should have a right to the advice and assistance of counsel at all stages of the diversion process.

d. Initiative of Defendant

Inquiry into the potential eligibility of a defendant for diversion should be initiated only at the option of the defense.

e. Confidentiality

Diversion procedures should be accompanied by guarantees of absolute confidentiality for all statements made and information transmitted to decision-makers and counseling staff.

f. *Waiver of Rights*

The defendant should not be required to waive, as a precondition to participation in diversion, any right the waiver of which is not absolutely necessary to allow counseling procedures to be conducted.

g. *Diversion as a Dispositional Alternative*

Within the bounds of fact and law, the defense attorney should consider all available options, including diversion, in endeavoring to secure the best possible disposition for each individual client. The decision as to the disposition to be sought is one which must be made by the client, after the full and candid advice of the attorney. That advice should include, *inter alia*, the availability of Diversion, when applicable, and the attorney should be prepared to explain to the client all of the practical and legal ramifications of Diversion.

h. *Diversion With Rights Preserved*

Should the client elect to seek Diversion, the defense attorney must endeavor to protect those rights which the client wishes to exercise. To the extent that Diversion procedures and conditions conflict with those rights, the attorney should be prepared to challenge their legality and/or constitutionality.

i. *Diversion Support Staff for Defenders*

Defender offices should employ staff to gather and maintain information on all aspects of the available Diversion options and to assist defense counsel and defendants both in determining the suitability of any given program and in expediting the client's entry into a program when the client so desires.

13. Plea Bargaining

a. *The Defense Attorney's Interaction With the Defendant*

(1) *Counsel's Role*

Defense counsel should play an active role as counselor and advocate. The defense objective should be to obtain the most favorable result available to the accused within an existing system.

(2) *Early Representation*

Defense counsel should meet with the defendant as early as possible after initial contact is made. Counseling should take place in a setting affording privacy and dignity. At the first meeting, counsel should conduct a thorough interview and should explain the attorney-client relationship and any relevant court procedures.

(3) *Discussion of Possible Plea*

The attorney should communicate a determination to represent the client fully, including representation at any hearings or trial. At the first interview or shortly thereafter, the attorney should advise the client he will discuss the case with the prosecution as a part of his full preparation and presentation, whether for

trial or other disposition. A general reference to plea bargaining may also take place early in the contacts with the client. But any decision as to a guilty plea should follow—not precede—full preparation of the case.

(4) *Case Preparation*

Full investigation embraces, at a minimum, a full interview with the client, full discovery from the prosecution, interview of both prosecution and defense witnesses and examination of physical evidence, including the scene of the crime. All issues of law raised by the facts, procedures, charges or statutes involved in a case must be thoroughly explored.

(5) *Early Release From Jail*

Defense counsel should seek the earliest possible pre-trial release of an accused in order to avoid the pressures inherent to the fullest possible extent from economic or familial pressures objective or approaches by police or prosecution. Defense counsel's objective should be to mitigate the tendency of defendants in custody to plead guilty to an unfavorable disposition.

(6) *Informing the Client*

In discussing possible dispositions with an accused, the attorney should explore the broadest range of factors and alternatives. The factors to be discussed include the nature of the charges, the facts of the case, the state of the evidence and possible defenses. The objectives include reduction of charges in severity or number, recommendations as to sentencing and alternative dispositions. At each point, the client's needs and preferences should be ascertained by defense counsel.

(7) *The Client's Decision*

The decision of whether or not to plead guilty must be made by the accused after full consultation with the attorney. Counsel must advise the accused of the collateral consequences of a plea of guilty as well as its effect as a waiver of the right to trial by court or jury and the right to confront or present witnesses, as well as a waiver of the privilege against self-incrimination. The defendant should also be advised that it is he, not the attorney, who enters the plea of guilty and that judicial inquiry will be made into the voluntariness of that plea and may not seek to coerce a choice by threatening to withdraw from the case or by using other means to inhibit the client.

(8) *Maintaining Innocence While Pleading Guilty*

A defendant may choose to plead guilty while still maintaining innocence and defense counsel may not obstruct that choice. Counsel must assure that the defendant has made an informed choice in the light of the alternatives realistically available. Upon entry of such a plea, counsel has no obligation to disclose the defendant's claim of innocence, although the defendant remains under an obligation to answer questions truthfully.

b. *The Defense Attorney's Interaction With the Prosecutor*

(1) *Preparation for Plea Bargaining*

An attorney should not consider himself prepared for effective plea bargaining until he has:

(a) Thoroughly explored the factual and legal issues presented by a case;

(b) Considered various extra-legal issues that are likely to affect the choice between plea and trial;

(c) Developed background information about the defendant

(d) Determined the defendant's eligibility for and willingness to accept various correctional programs;

(e) Explored the various kinds of concessions that the defendant might offer to the prosecutors;

(f) Evaluated the kinds of concessions that the prosecutor might make available to the defendant; and

(g) Assessed the worth of these various concessions in light to the customary sentencing practices of the courts and the roles and practices of correctional authorities.

(2) *The Filing of Pretrial Motions*

A defense attorney should, with only limited and occasional exceptions, prepare and file the pretrial motions that would be necessary or desirable if his case were to go to trial before engaging in serious plea discussions with the prosecutor.

(3) *Conflicts of Interest in Plea Bargaining*

A defense attorney should not simultaneously represent both the defendant and another person who might be affected by the defendant's guilty plea or plea agreement.

(4) *Loyalty to the Individual Defendant*

Defense attorneys should view each case as an individual unit. Concessions for one client must never be sought at the expense of another.

(5) *The Irrelevance of Workload and Financial Considerations*

Neither the burden of a defense attorney's workload nor the amount of his financial compensation should play any part in his plea negotiation decisions. These decisions should be based solely on the best interest of each client.

(6) *The Use of "Collective Bargaining" Strategies*

Although extreme abuses of governmental power coupled with the effective consent of an attorney's client may sometimes justify coordinated action by these clients, it is improper to take all cases of a certain type to trial simply to improve a defense attorney's overall bargaining position.

(7) *The Maintenance of an Adversary Spirit in Plea Bargaining*

A defense attorney should approach the plea negotiation process in an adversary spirit, seeking the best

possible resolution of the case from his client's perspective. His relationships with prosecutors should be characterized by professionalism, mutual respect, and integrity.

(8) *The Timing of the Bargain*

Generalizations about when a defense attorney can most advantageously bargain with a prosecutor are likely to be inaccurate; the attorney must be alert to a variety of potentially relevant considerations.

(9) *Negotiating or "Lobbying" with Persons Other than the Prosecutor*

A defense attorney should consider the possibility of a legal challenge to the common practice of permitting police officers and complaining witnesses to control the prosecutor's exercise of his plea-negotiation discretion. In the absence of a successful legal challenge, it may be advisable to negotiate directly with these persons.

(10) *Submitting the Case for Decision on the Basis of a Preliminary Hearing Transcript, Stipulating the Facts, and Admitting to a Finding*

In appropriate cases, a defense attorney should consider the possibility of entering a not guilty plea and then submitting the case for decision on the basis of a preliminary hearing transcript, stipulating the facts, or admitting to a finding of guilty.

(11) *The Defense Attorney's Response to a Broken Prosecutorial Promise*

A defense attorney should take steps to reduce the danger of broken prosecutorial promises by memorializing certain plea agreements. When prosecutorial promises are nevertheless broken, the attorney should seek either recession of the agreement or specific performance as the interests of his client may dictate.

(12) *"Continuous" Versus "Stage" Representation*

To serve their clients effectively in plea negotiation, defender offices should be organized so that a single lawyer will represent the defendant from the initiation of the proceedings through sentencing.

(13) *Supervision of Plea Bargaining*

Senior attorneys in a defender office should monitor the plea agreements of staff attorneys and should actively encourage staff attorneys to seek advice on plea bargaining problems and practices.

(14) *Plea Agreement in Writing*

The defense attorney must seek to assure that both the prosecutor and defendant understand the terms of any plea bargaining. The defendant in particular must understand the nature of the charges to which he is pleading guilty and the minimum and maximum sentences accompanying them. (1) Whenever possible, plea agreements should be reduced to writing and signed by both prosecution and defense either in a

joint memorandum or by notations in their respective files. (2) Defense counsel should make careful notations routinely in his file of all plea negotiations. (3) The defense attorney's file should contain a form for the defendant's signature prior to entry of a guilty plea. The form should contain advice as to constitutional guarantees, the nature of the original charges and the nature of the plea agreement.

c. The Defense Attorney's Interaction With the Judge

(1) Judicial Participation in Plea Discussions

The judge should not initiate or participate in plea discussions.

(2) Judicial Ratification of Plea Agreements

The judge should have the power to ratify or reject any plea bargaining or to indicate the maximum sentence he would impose prior to entry of the plea.

(3) Withdrawal of Plea: Court's Failure to Honor Its Commitment

Should the court fail to honor its ratification of a plea bargain or its indicated maximum sentence, the defendant shall have the right to withdraw the plea of guilty and proceed to trial.

(4) Substitution of Judges

Upon retraction of a tentative plea agreement or the withdrawal of a conditional ratification or indicated maximum sentence, the judge shall upon the request of the defendant appoint a second judge to preside over the trial.

(5) Withdrawal of Plea: Court's Failure to Honor the Prosecutor's Recommendation

The defendant should have the right to withdraw any plea entered in reliance upon a recommendation by the prosecutor with which the judge does not concur.

(6) Inadmissible Information

The following categories of information should not be admissible against the defendant in a subsequent trial or other proceeding:

1. The fact that the defendant has engaged in plea negotiations.
2. The fact that the defendant has entered and subsequently withdrawn a plea of guilty.
3. Any statements made in the course of plea negotiations.

(7) Preparation for Bargaining With the Judge

The defense attorney must be fully prepared to present his client's case before seeking ratification of a bargain, requesting an indication of the maximum sentence, or otherwise discussing or entering the plea.

(8) Statements on the Record

The defense attorney should assure that all comments made by the court relevant to the disposition to be imposed upon the client's plea are preserved on the record in the presence of the defendant.

(9) Post-Conviction Remedies

The defense attorney must pursue all available remedies to enforce the plea agreement or obtain a withdrawal of the plea or to correct other deprivations of rights.

END