

STANDARDS  
&  
EVALUATION DESIGN  
FOR  
APPELLATE  
DEFENDER OFFICES

72439



NATIONAL LEGAL  
AID & DEFENDER  
ASSOCIATION

The development of these Standards and Evaluation Design for Appellate Defender Offices has been undertaken by the National Legal Aid and Defender Association pursuant to a contract with the Administrator for the Courts of the State of Washington. The opinions expressed herein do not necessarily reflect the official position of the National Legal Aid and Defender Association, the Administrator for the Courts of the State of Washington, or the Law Enforcement Assistance Administration of the United States Department of Justice which has granted funding for this project.

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ACQUISITIONS

STANDARDS  
and  
EVALUATION DESIGN  
for  
APPELLATE DEFENDER OFFICES

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Finally, we acknowledge the outstanding cooperation of the advisory committee and the more than one hundred appellate defenders who commented on the various drafts of this manual. We hope that this will be of assistance to the men and women who have dedicated their careers to the representation of indigent criminal defendants on appeal.

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## INTRODUCTION

### Background

This volume of Standards for appellate defender offices with an evaluation design has been prepared by the National Legal Aid and Defender Association (NLADA) under a contract with the Administrator of the Courts of the State of Washington. The funds for this project were provided through the Fundamental Court Improvement Program of the Law Enforcement Assistance Administration (LEAA). The project was greatly assisted by an advisory board consisting of appellate defenders, appellate court judges, an appellate court clerk, and an ex-offender. Originally it was anticipated that three volumes would be produced by this project: a manual for the evaluation of appellate defender offices by outside evaluators; a "self-evaluation" manual; and an actual evaluation of the appellate division of the Seattle/King County Public Defender.

Early in the project it became clear that before any evaluation manual could be developed it was necessary to establish a set of generally agreed upon standards for the delivery of appellate defender services. These standards - found in Appendix A - were initially drafted by NLADA staff and circulated to the advisory board. At the annual NLADA conference in Albuquerque, New Mexico in November, 1979, the advisory board met to go over the draft Standards line-by-line, section-by-section. The advisory board was joined by approximately twenty other appellate defenders.

Based on the Albuquerque meeting, a new draft of the Standards was widely circulated. Inasmuch as there was substantial controversy in Albuquerque over caseloads and staffing ratios, a questionnaire was sent to appellate defenders to determine appropriate caseloads and staffing ratios. The Albuquerque draft, as subsequently modified in minor particulars, forms the nucleus for the final Standards. The section on Weighted Caseloads and Staffing Ratios was adopted by the Advisory Committee at its second (and last) meeting on July 11, 1980 in Chicago. The Evaluation Manual itself was written by Dr. Roberta Rovner-Pieczenik, a nationally known expert in the field of criminal justice evaluation. Dr. Pieczenik took the Standards and essentially put them into the evaluation format. The only exception to this being the section on Weighted Cases and Staffing Ratios. This section was written by project staff after the Chicago meeting.

Due to the time necessary to develop the Standards, it was determined that two evaluation designs could not be produced. A decision was made to undertake the Seattle evaluation using the material developed by Dr. Pieczenik recognizing that it was intended as a self-evaluation design. Inasmuch as the Seattle evaluation by outside evaluators using the "self-evaluation" manual went quite well, it is not clear whether a second evaluation manual is necessary.

The evaluation of the appellate division of the Seattle/ King County Public Defender was undertaken the week of April 20, 1980 by a team of experienced individuals (see page 6). The final report was completed and released on July 18, 1980.

### Comments on Substantive Material

While there was unanimity among the Advisory Committee and staff on the very large majority of the Standards, there was substantial controversy over several provisions. In such instances the project director retained final authority on the determination of the Standards. It must be emphasized, however, that every provision in the Standards had the support of the majority of the advisory committee.

It is hoped that the evaluation design and standards sections can stand on their own. In order to clarify several sections, however, the following commentary has been written by the project director.

### Timeliness

There was disagreement on how to deal with the problem of the inability to file timely briefs. A majority of the advisory committee and field responses indicated that briefs are not, as a rule, filed within the time set by court rule or statute. The standard requiring that at least seventy-five percent of the briefs be filed within the time set by statute was objected to by many defenders, asserting that in their jurisdiction it was "impossible" due to timing or workload to file briefs on time. The advisory committee concluded that the inability to file briefs on time was due to one or more of three factors:

- (1) the time limit set by the rule was unreasonably short;
- (2) the defender was handling too great a caseload; and/or
- (3) there were management problems within the office which made it difficult to file timely briefs.

In any of these situations the proper response should not be to file late briefs. The better response is to seek a modification of the rule; a reduction of case assignments; or a revision in management practices.

#### Case Weighting and Staffing Ratios

While the idea of setting case weights and staffing ratios was initially quite controversial, ultimately there was substantial agreement on the standards. Originally it was feared that any numerical staffing ratio would result in that number being set as a goal in labor/management negotiations. At the first advisory committee meeting there was some thought that no precise numbers be set. In response to this suggestion a survey was sent to the field to ascertain (1) whether a precise number would be helpful and (2) what the precise number should be. The overwhelming number of respondents (better than 85%) wanted numerical standards. There was also general agreement on the number of "cases" which could be handled each year. The number varied between twenty and thirty "cases" per year per attorney.

At the second advisory committee meeting there was general agreement that determining staffing ratios by "cases" was not appropriate because there was no standard definition of that term. For that reason the committee developed a weighted work unit system based on an average brief in chief being one work unit. While there was some concern that funding sources would confuse work units with "cases", the committee concluded that under the recommended standard that the numbers were appropriate.

### Client Contact

There was substantial debate on the question of whether it was necessary for the appellate attorney to personally visit and interview the client. While everyone agreed that in a perfect world it would be best to see the client, many offices pointed to the great distances required to see a defendant and the cost in both time and money. The majority of the advisory committee rejected this rationale as a basis for not seeing clients and supported the mandatory visitation provision of the standards. The committee also considered and rejected the procedure of sending one "duty attorney" to an institution to see all clients being represented by the office, even though that specific attorney would not be handling the case him/herself.

Even the best appellate defender will lose the majority of his/her cases. With that in mind and considering that in most instances counsel has been assigned without the defendant even knowing the attorney, it is appropriate for the appellate defender to establish and maintain client confidence. This is particularly true in systems in which the defender is representing a significant number of institution residents. Dissatisfaction with an appellate defender based on rumor and speculation can spread quite rapidly and cause major problems for the defender. For this reason it is advisable that every defendant is seen by the actual attorney handling the case at the point at which the attorney has read the court record and transcript but before the brief has been finalized. Evaluations of appellate defender offices in Wisconsin, California, and Seattle



demonstrate a direct correlation between the degree of client satisfaction and client personal contact and very little relationship between client satisfaction and case success.

There are substantive reasons for visiting the defendant. In any case there might well be issues not disclosed by the court record which present viable post-conviction issues. This is particularly true on the issue of ineffective representation by trial counsel. Most often this is not an issue which will be apparent from the face of the transcript, but will require development through client interview, investigation, and perhaps a post-conviction evidentiary hearing. Indeed, an argument might well be made that the failure of an appellate attorney to personally interview the defendant might constitute ineffective representation by appellate counsel.

## Use of This Manual

This Self-Evaluation Manual should allow the appellate defender office to assess: (1) the quality of representation it is providing its clients, (2) internal office management, and (3) the role the office is playing in the legal community. The performance expectations are based upon standards of the National Legal Aid and Defender Association (Appendix A). The Manual is intended for use by the chief public defender, head of the appellate division/ office, or administrative attorneys who desire to evaluate the quality of client representation given by the office as well as some of the office's management functions. The Manual is intended to:

- Highlight important defender issues;
- Specify those activities against which an office's performance should be evaluated; and
- Suggest the data which might be gathered and reviewed for evaluation purposes.

The Manual is written from the perspective that an appellate office should provide its clients with the same high quality representation that is available to the individual who retains private counsel. It is intended to be used as a diagnostic tool, rather than a handbook which offers technical assistance.

The Manual consists of a series of 23 topics on which an appellate defender office can evaluate itself. The format for each topic is similar: an introductory question indicating the topic, its importance, and a series of questions upon which an office should assess its performance.

- When the answer to a question under any topic is an unqualified yes, no follow-up is needed;
- When the answer to a question under any topic is a qualified yes, some follow-up is needed and questions are suggested;
- When the answer to a question under any topic is No, the follow-up questions suggested should be answered in depth.

This Manual does not presuppose that any negative responses to questions indicate problems in the appellate defender office itself; politics and finances can always be counted upon as contributing causes. However, the Manual's approach does insist that the appellate defender be (1) aware of the problems which may exist in his/her office, and (2) be actively involved in taking the steps necessary to resolve them.

The data suggested for review purposes, provided in list fashion before every topic, should be used at the evaluator's discretion. The factual, statistical, observational, and interview data should be reviewed as complementary in nature, each type of data offering a different perspective (and validation) on the questions asked. It is expected that the appellate defender should be able to answer all the questions asked.

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TOPIC: ELIGIBILITY

QUESTION: Are services being provided to all eligible defendants?

Yes No

1. Do written office policies/procedures exist for determining eligibility?

If yes: Are they known by the staff?  
Are they followed by the staff?  
Are they fairly applied by the staff?  
Are the decisions made by the staff reviewed?

If not: How is eligibility determined?  
Are there any mechanisms for insuring consistency among staff?  
Why are written procedures lacking?  
What problems does this lack cause?

2. Do written eligibility standards exist?

If yes: Is there a clear distinction between eligible and ineligible?  
Is there a form for establishing eligibility (e.g. application, affidavit)?  
Easy to complete?  
Easy to use?

If not: How is eligibility determined?  
What exists in place of standards?  
Why are standards lacking?  
What problems does this lack cause?

3. Do office policies, procedures, and/or standards stress general ability to retain private counsel without substantial hardship to self and family (vs. specific level of income or fixed assets) as a primary eligibility criterion?

If yes: Is this criterion valuable in screening defendants?

If not: What is used in its place?  
Is it an appropriate substitute?

4. Do written office policies/procedures exist for assisting persons deemed ineligible for representation in obtaining counsel?

Yes No

If yes: Are they clear?  
Do they encourage such assistance?  
Are they used frequently?  
Are they easy to use?  
Are they being used only by certain staff?  
Are the decisions made by staff reviewed?

If not: How are ineligible defendants handled?  
Is there any follow-up to insure that  
ineligibles do get counsel?

5. Is the eligibility determination made outside of your office?

If yes: Does redress exist for persons deemed  
ineligible for free counsel?  
Is the office involved in setting/  
reviewing standards?  
Does the office monitor the decisions  
made?

6. Do written office policies/procedures exist for  
assisting persons deemed ineligible for  
representation in obtaining the necessary forms for  
filing motions in state and federal courts?

If yes: Are they clear?  
Do they encourage assistance?  
Are they used frequently?

If not: How are the ineligible defendants  
handled?  
Is there any follow-up to insure that  
ineligibles obtain the needed forms?

7. Does any mechanism exist which would enable the  
office to know whether non-client (e.g. incarcerated  
offenders) with an arguable legal basis for  
representation are provided such representation  
when it is in their best interests?

If yes: Is it routinely followed?  
Is it appropriate for uncovering such  
cases?

If not: Is this a known problem in the  
jurisdiction?  
Is the office taking measures to assess  
and/or lessen the problem?

## ELIGIBILITY

### FACTUAL DATA TO GATHER AND ASSESS

- Relevant policies/procedures
- Relevant forms for determining eligibility
- Policies, procedures, and forms when decision is not made by office staff
- Data on eligibility decisions made when decision is not made by office staff

### STATISTICAL DATA TO GATHER AND ASSESS

- No. defendants seeking assistance
- No. defendants given assistance
- % defendants given assistance/turned down by office
- Reasons for "turn down" by office
- Reasons for "turn down" if decision made outside of office
- No. appeals filed without assistance of counsel

### Suggestions on Eligibility Standards

Your office should have written standards of eligibility for persons applying for the services of the appellate defender. It may be assumed that defendants who were found to be indigent at the time of trial and who have been sentenced to a correctional institution remain indigent.

The eligibility standards should be established in such a manner that the defendant's eligibility can be easily determined from an application, affidavit, or similar instrument.

Your standards should generally reflect the individual's ability to retain counsel in the private market given the individual's other financial obligations. These standards should not be artificially geared to a level of income or assets not related to the cost of obtaining adequate representation privately.

Procedures should be adopted for assisting persons who are found to be ineligible by your standards. These procedures should include assistance in obtaining retained counsel and, if appropriate, informing the client of the procedures for review of the eligibility decision either by a court or appellate court.

Your office should should also assist non-clients in seeking appropriate post-conviction remedies, including seeking counsel on appeal, obtaining the necessary forms for filing motions in state and federal courts, and explaining to prison inmates the law as it relates to the facts of each case. You should take whatever steps are necessary to ensure that non-clients are provided appropriate representation either by your office or by other counsel.



TOPIC: SCOPE OF SERVICES

QUESTION: Is the scope of services provided sufficient to insure full appellate representation?

Yes No

1. Do written office policies/procedures exist which insure that no defendant is without legal representation between trial and appeal, while awaiting the assignment of counsel by the court?

If yes: Are they known by the staff?  
Are they followed by the staff?  
Are they reasonable for assuring representation?  
Has the office played a role in helping the court develop procedures?

If not: Why are such procedures lacking?  
What problems does this lack cause?  
What has the appellate defender done to lessen the problems?

2. Have attempts been made to expand the office's scope of services?

If yes: Have these attempts been successful?

If not: What are some of the limiting factors which have prevented expansion?

3. Does a mechanism exist at the court level which enables the defendant to become aware of the availability of counsel while awaiting assignment by the court?

If yes: Is the mechanism appropriate?  
What is the role of the appellate office in monitoring its use?

If not: Should the appellate defendant take a more active role in developing a mechanism?

4. Do written office policies/procedures exist for seeking the release of defendants on appellate bond?

Yes No

If yes: Are they known by staff?  
Are they followed by staff?  
Do they encourage the filing of a motion?  
Is the decision not to seek release reviewed?  
Is the review perfunctory?

If not: Why are such procedures lacking?  
What problems does this cause?  
What has the appellate defender done to lessen the problem?

5. Do written office policies/procedures exist for filing motions?

If yes: Are they clear?  
Do they encourage the filing of motions?  
Are they filed equally by staff?  
Are the decisions made by staff reviewed?

If not: Why are they lacking?  
What problems does this lack cause?  
What has the A.D. done to lessen the problems?

6. Do written office procedures exist for providing representation in interlocutory (pre-judgment) appeals?

If yes: Are they known by staff?  
Are they followed by staff?  
Do they encourage such representation

If not: Why are they lacking?  
What problems does this lack cause?  
What has the A.D. done to lessen the problems?

7. Does the office make known to trial attorneys that it is available for interlocutory appeals?

If yes: Does the mechanism work?  
Is the mechanism used periodically for the benefit of new trial attorneys?

If not: Why is there a lack?  
What problems does it cause?  
What has the A.D. done to lessen the problems?

Yes No

8. Do written office policies/procedures exist for assisting prison inmates seeking redress of institutional grievances?

If yes: Do they encourage assistance?  
Are they known by staff?  
Are they followed by staff?

If not: Why is there a lack?  
What problems does it cause?  
What has the A.D. done to lessen the problems?

9. Does a mechanism exist which enables any request (regarding individual case or institutional grievance) to prison inmates to reach the appellate office?

If yes: Is the mechanism cumbersome?  
Is it known by inmates?  
Does it encourage such requests?

If not: Why is there a lack?  
What problems does it cause?  
What has the A.D. done to lessen the problems?

10. Do written office policies/procedures exist which enable the appellate staff to explain the law to prison inmates as it relates to the facts of a case?

If yes: Are they known by staff?  
Are they used by staff?  
Do they encourage staff work?

If not: Why is there a lack?  
What problems does it cause?  
What has the A.D. done to lessen the problems?

11. Does a mechanism exist which enables the office to become aware of the need for the filing of amicus curiae briefs?

If yes: Does it encourage the filing of such briefs?

If not: Why is there a lack?  
What problems does it cause?  
What has the A.D. done to lessen the problems.

12. Do written office policies/procedures exist for filing amicus curiae briefs in state court?

Yes No

If yes: Are they known by staff?  
Does it encourage filing?  
Is the relation known between briefs  
filed and case outcome?

If not: Why is there a lack?  
What problems does it cause?  
What has the A.D. done to lessen the  
problems?

#### FACTUAL DATA TO GATHER AND ASSESS

- Nature of work done with clients prior to court appointment
- Relevant policies/procedures
- Nature of assistance sought from prison inmates
- Manner in which requests from inmates were handled
- Frequency of staff/inmate interaction (non-case related)--Reasons for rejected motions for: continuances, transcripts, discovery of new materials not in the record, new trial
- Reasons for successful/unsuccessful filings of motions seeking release pending appeal

#### STATISTICAL DATA TO GATHER AND ASSESS

- No. cases handled prior to office appointment
- % cases handled prior to appointment
- No. motions filed seeking release pending appeal--% cases for which motions filed (in relation to those held pending appeal)
- % successful vs. unsuccessful filing
- % cases motions filed for transcript continuation
- % cases motions filed for discovery of materials not in record
- % cases motions filed for new trial
- % successful continuance motions
- % successful motions for transcript
- % successful motions for discovery of new materials
- % successful motions for new trial
- No. interlocutory appeals on a jurisdictional issue
- % interlocutory appeals vs. request from trial attorneys
- % successful interlocutory appeals for: jurisdictional issue venue issue
- No. requests from inmates
- % requests from inmates successfully acted upon
- No. amicus curiae briefs filed

#### Suggestions on Scope Standards

Your office should cooperate with the trial courts, appellate courts, trial defenders and private attorneys to ensure that no defendant is without legal representation between trial and appeal, or while awaiting the assignment of counsel by the court. Such cooperation should include:

1. The development of rules or procedures for ensuring that no hiatus in counsel exists.
2. Working with the appropriate courts in developing procedures such as to ensure continuity of representation.

Your office should also have a clearly articulated policy for seeking the release of defendants on appellate bond. This should include the filing of appropriate motions seeking release pending appeal when the granting of such motion is reasonably possible.

Clearly articulated policy regarding the filing of motions in the appellate court should include providing the client with the most complete and effective representation in the appellate court through the appropriate motion practice.

You may provide representation in interlocutory (pre-judgment) appeals, and you should make the availability of your office known to attorneys providing representation to criminal defendants at trial.

Your office should have the discretion to assist prison inmates and others seeking redress of institution grievances. This discretion should be extended to provide representation to such persons in appropriate litigation challenging the conditions of such confinement.

Amicus curiae briefs should be filed in state appellate courts when issues are raised in cases litigated by other counsel and when the following two conditions can be met:

1. Such cases will have a significant impact on a large number of persons.
2. The briefs filed by counsel can be effectively argued by such amicus briefs.

#### TOPIC: TIMELINESS

QUESTION: Are appeals filed in a timely manner?

Yes No

1. Do written office policies/procedures exist for filing appeals in a timely manner?

If yes: Are they known by staff?  
Are they followed by staff?

If not: Why are such procedures lacking?  
What problems does this cause?  
How has the A.D. handled the problems?

Yes No

2. Do written office policies/procedures exist for requesting extensions of time?

If yes: Are they known by staff?  
Are they followed by staff?

If not: Why are such procedures lacking?  
What problems does this cause?  
How has the A.D. handled the problems?

3. Does the appellate defender cooperate with trial public defenders to ensure that all appeals desired by criminal defendants are pursued in a timely fashion?

If yes: What form does the cooperation take?  
Could more be done?  
Should more be done?

If not: Why are such procedures lacking?  
What problems does this cause?  
How has the A.D. handled the problems?

4. Does the appellate defender cooperate with private attorneys to ensure that all appeals desired by criminal defendants are pursued in a timely fashion?

If yes: What form does the cooperation take?  
Could more be done?  
Should more be done?

If not: Why are such procedures lacking?  
What problems does this cause?  
How has the A.D. handled the problems?

5. Does the appellate defender cooperate with the trial courts to ensure that all appeals desired by criminal defendants are pursued in a timely fashion?

If yes: What form does the cooperation take?  
Could more be done?  
Should more be done?

If not: Why are such procedures lacking?  
What problems does this cause?  
How has the A.D. handled the problems?

Yes No

6. Does the appellate defender know whether the appeals process in the court adversely affects their clients?

If yes: Which aspects of the process are adverse?  
Have steps been taken to change the process (e.g. developing new court rules)?  
Have the steps been vigorous?  
Have the steps been reasonable, given jurisdictional peculiarities?

If not: Why are such procedures lacking?  
What problems does this cause?  
How has the A.D. handled the problems?

7. Do written office policies/procedures exist which specify that cases in which the defendants is incarcerated pending appeal should receive priority handling?

If yes: Are they known by staff?  
Are they followed by staff?

If not: Why are they lacking?  
What problems does this cause?  
What has the A.D. done to lessen the problem?

8. Is it easy for the appellate office to promptly acquire a complete record for appeal?

If yes: No follow-up needed

If not: Why isn't it easy?  
Has the office taken any steps to reduce the difficulty?  
Have the steps been at all successful?  
Have the steps been vigorous?  
Have the steps been reasonable, given jurisdictional peculiarities?

9. Are the merits of every case determined only after the complete record has been reviewed?

If yes: No follow-up required

If not: In what situations are the merits considered prior to receipt of complete record?  
How frequently does this occur?  
Can the situation be altered?  
Should the situation be altered?

### FACTUAL DATA TO GATHER AND ASSESS

- Policies and procedures on:
  - Filing appeals
  - Priority Status for Inmates
- Court rules for filing appeals
- Reasons briefs filed late
- Comparability amount staff in % of late filings

### STATISTICAL DATA TO GATHER AND ASSESS

- % briefs not filed within time limit set by statute or court rule
- % late filings which were beyond control of appellate office
- % late filings which are "appropriate," given jurisdictional peculiarities
- No. briefs for which extensions are requested
- % briefs for which extensions are requested
- % briefs for which requested extensions are granted
- No. cases in which defendant is incarcerated pending appeal
- % cases incarcerated pending appeal (vs. total caseload)
- % cases with indication of priority handling of incarcerated defendants pending appeal

### Suggestions on Timeliness Standards

(See "Commentary" in Introduction)

At least 75 percent of all briefs filed by your office should be filed within the time limit set by statute or court rule without extension. It is suggested that the filing limit be at least sixty days following the filing of the verbatim record of proceedings. In cases which are not filed within this time limitation, your office should have established procedures for requesting extensions of time in a timely and efficient manner. If the time set by rule is unreasonably short, the defender should seek a change in the time period and not, if possible, continue to file tardy briefs.

In order to save time, it is essential to cooperate with the trial courts, trial public defenders, and private attorneys to ensure that all appeals desired by criminal defendants are timely pursued. You should further directly assist defendants in filing the necessary jurisdictional documents to perfect appeals in a timely manner.

All steps should be taken to reduce the delays and time necessary for the processing of appeals which adversely affect the client. This should include the development of appropriate appellate court rules which minimize the unnecessary procedures for perfection and prosecution of an appeal.

Your office should cooperate with the courts and court reporters to ensure the prompt completion of the appropriate record on appeal. The merit of any case should not be determined without the careful review of the record and a personal interview with the client. The cases in which the defendant is incarcerated only on the basis of the conviction under appeal should be handled in a priority manner.



TOPIC: CONFLICT OF INTEREST CASES

QUESTION: Are conflict of interest cases being assigned to outside counsel?

1. Does the appellate defender office have a written definition of "conflict of interest" cases?

If yes: Is it clearly articulated?  
Is it easily applied to a case?

If not: How are such cases determined?  
Is there a mechanism for ensuring consistency of staff determination?  
Why is a definition lacking?  
What problems does the lack cause?

2. Does the office have written policies/procedures for identifying conflict of interest cases?

If yes: Are they known to the staff?  
Are they followed by the staff?  
Are the decisions made by the staff reviewed?

If not: How are such cases determined?  
Why are procedures lacking?  
What problems does the lack cause?  
How has the A.D. handled the problems?

3. Does the mechanism for identifying conflict of interest cases ensure a prompt review of such cases?

If yes: No follow-up needed

If not: Where does the problem lie?  
How can the problem be corrected?

4. Does the mechanism for identifying conflict of interest cases ensure that outside counsel can be obtained in a timely manner?

If yes: No follow-up

If not: Where does the problem lie?  
How can the problem be corrected?

5. Are all cases involving a conflict of interest reassigned to attorneys outside the office?

If yes: No follow-up needed

Yes No

If not: Where does the problem lie?  
How can the problem be corrected?

6. Does the appellate office request the assignment of outside counsel when asked to represent co-defendants (without extraordinary circumstances warranting joint representation)?

If yes: No follow-up needed

If not: Where does the problem lie?  
How can the problem be corrected?

7. Does the appellate office request the assignment of outside counsel when the defendant was represented by the same defender agency and the ineffectiveness of counsel is arguable?

If yes: No follow-up needed

If not: Where does the problem lie?  
How can the problem be corrected?

8. Does the appellate office request the assignment of outside counsel when two or more defendants who have had consistent defenses assert for the first time, after conviction, that one or more of the clients were more culpable than the others?

If yes: No follow-up needed

If not: Where does the problem lie?  
How can the problem be corrected?

9. Does the appellate office request the assignment of outside counsel when an appellate attorney, in a post-conviction evidentiary hearing, needs to interview another client of that office in order to substantiate information provided by the first client?

If yes: No follow-up needed

If not: Where does the problem lie?  
How can the problem be corrected?

10. Does the appellate office request the assignment of outside counsel when an appellate attorney, in the pursuit of an appeal or post-conviction hearing for a client, finds it necessary to assert that another client in the office committed perjury at trial?

Yes No

If yes: No follow-up needed

If not: Where does the problem lie?  
How can the problem be corrected?

#### FACTUAL DATA TO GATHER AND ASSESS

- Relevant policies/procedures
- Relevant definition of "conflict of interest"
- Reasons given for outside assignment of counsel

#### STATISTICAL DATA TO GATHER AND ASSESS

- No. cases where outside assignment of counsel is requested
- % cases where the request of outside assignment of counsel is granted
- Average time interval between request for outside assignment of counsel and when assignment is made

#### Suggestions on Conflict of Interest Cases

Your office should adopt a procedure for ensuring a prompt review of each case to make a timely decision as to whether a conflict of interest is probable. As soon as a case is identified as meeting the definition of "conflict of interest case," the case should be immediately assigned to counsel outside the defender office. This procedure should be adequate to obtain independent counsel in a timely manner.

Your office procedures should include a written definition of situations which constitute a conflict of interest, requiring the assignment of outside counsel. These situations should include:

- (1) When the appellate defender is appointed to provide representation to co-defendants, absent extraordinary circumstances warranting joint representation and the consent of all clients involved.
- (2) When the defendant was represented by the trial division of your defender agency and it is asserted by the client or appears arguable to the appellate attorney that trial counsel provided ineffective representation.
- (3) In separate trials when two or more clients have entered pleas of guilty or have advanced defenses at trial which were not inconsistent, but assert for the first time after conviction that one or more of the clients were more culpable than others.

- (4) When it is necessary for you to interview or examine in a post-conviction evidentiary hearing another client in your office in an effort to substantiate information provided by the first client.
- (5) When, in the pursuit of an appeal or post-conviction hearing, it is necessary to assert for the first time that another client in your office committed perjury at trial.

TOPIC: STAFFING

QUESTION: Does the selection of the Chief Defender ensure quality of services?

Yes No

1. Did the Chief Defender have administrative experience prior to being selected?

If yes: Was the nature of the experience relevant?  
Was the extensiveness of the experience appropriate?

If not: Why was this not considered important?  
Has this lack caused any problems in administering the office?  
Have any problems caused by this lack been minimized through A.D. strategies?  
What steps were taken to train the Chief Defender in administrative skills?

2. Was the Chief Defender rated highly on the following abilities prior to being selected?

- (a) supervisory ability
- (b) hiring ability
- (c) ability to delegate authority

If yes: No follow-up needed

If not: Why was this not considered important?  
Has this lack caused any problems in administering the office?  
Have any problems caused by this lack been minimized through A.D. strategies?  
What steps were taken to train the Chief Defender in administrative skills?

Yes No

3. Did the Chief Defender have substantive appellate skills prior to being selected?

If yes: What was the extent of prior appellate litigation?  
What was the nature of prior appellate litigation?  
What was the complexity of prior appellate litigation?

If not: Why was this not considered important?  
Has this lack caused any problems in administering the office?  
Have any problems caused by this lack been minimized through A.D. strategies?  
What steps were taken to train the Chief Defender in administrative skills?

4. Was the Chief Defender rated highly on the following abilities prior to being selected?

- (a) knowledge of criminal law
- (b) ability to prepare written arguments
- (c) ability to present oral arguments

If yes: No follow-up needed

If not: Why was this not considered important?  
Has this lack caused any problems in administering the office?  
Have any problems caused by this lack been minimized through A.D. strategies?  
What steps were taken to train the Chief Defender in administering the office?

5. Did the Chief Defender have substantive criminal defense work prior to being selected?

If yes: What was the extent of prior defense work?  
What was the complexity of prior defense work?

Yes No

If not: Why was this not considered important?  
Has this lack caused any problems in administering the office?  
Have any problems caused by this lack been minimized through A.D. strategies?  
What steps were taken to train the Chief Defender in administrative skills?

6. Did the Chief Defender have executive organizational experience prior to being selected?

If yes: Was he/she involved in policy planning?  
Was he/she involved in developing strategies to accomplish plans?  
Was he/she involved in implementing plans?  
Was he/she involved in reviewing group and individual performance?

7. Was the Chief Defender rated highly on the following personal attributes?

- (a) ability to communicate easily?
- (b) leadership qualities?
- (c) sense of equity in working with staff?
- (d) ability to interact with clients?
- (e) ability to interact with public, in general?

If yes: No follow-up needed

If not: Was he/she involved in policy planning?  
Was he/she involved in developing strategies to accomplish plans?  
Was he/she involved in implementing plans?  
Was he/she involved in reviewing group and individual performance?

8. Did the Chief Defender's background indicate a commitment to the provision of quality defense representation for indigent individuals?

If yes: No follow-up needed

Yes No

If not: Was he/she involved in policy planning?  
Was he/she involved in developing strategies to accomplish plans?  
Was he/she involved in implementing plans?  
Was he/she involved in reviewing group and individual performance?

9. Did the political affiliation of the Chief Defender play an unimportant role in his/her selection?

If yes: No follow-up needed

If not: What was the nature of the role of political affiliation?  
How was the political affiliation ascertained?  
How did it provide an "edge" to incumbent?  
Has political affiliation caused any problems in administering the office?  
Have these problems been minimized by the A.D.?

10. Does the Chief Defender rate highly on:

- (a) planning ability
- (b) strategic ability
- (c) implementation ability
- (d) supervisory ability (general)
- (e) hiring ability
- (f) communication ability (in-house)
- (g) communication ability (extra-office)
- (h) knowledge of criminal law
- (i) ability to edit other's briefs
- (j) ability to supervise presentation of orals by others

Yes No

11. Did staff members have experience in representing criminal defendants in trial court prior to appointment in appellate office?

If yes: What was the extent of the experience?  
What was the nature of the experience?

If not: Why was this not considered important?  
Has this lack caused any problems in staff performance?  
Have any problems caused been minimized by strategies of the A.D.?

12. Did staff members have experience in legal writing prior to appointment in the appellate office?

If yes: What was the extent of the experience?  
What was the nature of the experience?

If not: Why was this not considered important?  
Has this lack caused any problems in staff performance?  
Have any problems caused been minimized by strategies of the A.D.?

13. Did staff members have any clerkships or similar positions in the appellate court prior to appointment in the appellate office?

If yes: What was the extent of the experience?  
What was the nature of the experience?

If not: Why was this not considered important?  
Has this lack caused any problems in staff performance?  
Have any problems caused been minimized by strategies of the A.D.?

14. Did staff members have experience in oral presentations (excluding trial court) prior to appointment in the appellate office?

If yes: What was the extent of the experience?  
What was the nature of the experience?

If not: Why was this not considered important?  
Has this lack caused any problems in staff performance?  
Have any problems caused been minimized by strategies of the A.D.?



Yes No

15. Did staff members have experience working within an office setting prior to appointment in the appellate office?

If yes: What was the extent of the experience?  
What was the nature of the experience?

If not: Why was this not considered important?  
Has this lack caused any problems in staff performance?  
Have any problems caused been minimized by strategies of the A.D.?

16. Did staff members exhibit personal skills that would be important in working in an appellate office prior to their appointment?

If yes: What was the extent of the experience?  
What was the nature of the experience?

If not: Why was this not considered important?  
Has this lack caused any problems in staff performance?  
Have any problems caused been minimized by strategies of the A.D.?

17. Did staff members have experience working with clients (i.e., defendants) prior to appointment to the appellate office?

If yes: What was the extent of the experience?  
What was the nature of the experience?

If not: Why was this not considered important?  
Has this lack caused any problems in staff performance?  
Have any problems caused been minimized by strategies of the A.D.?

18. Did staff members have experience working with court personnel prior to appointment to the appellate office?

If yes: What was the extent of the experience?  
What was the nature of the experience?

If not: Why was this not considered important?  
Has this lack caused any problems in staff performance?  
Have any problems caused been minimized by strategies of the A.D.?

Yes No

19. Did the political affiliation of staff play an unimportant role in their selection?

If yes: No follow-up needed

If not: Why was this not considered important?  
Has this lack caused any problems in staff performance?  
Have any problems caused been minimized by strategies of the A.D.?

#### FACTUAL DATA TO GATHER AND ASSESS

- Chief Defender's resume prior to appointment
- Chief Defender's personnel file
- Staff resumes prior to appointment
- Staff personnel files

#### Suggestions on Staffing Standards

In "stand alone" appellate defender offices, the chief appellate defender should be selected on the basis of merit by an independent committee or board consisting of both lawyers and non-lawyers. The chief defender's primary qualifications should be:

1. The demonstrated commitment to the provision of quality defense representation for eligible persons charged with or convicted of criminal conduct.
2. The demonstrated ability to properly administer a law office of similar size and responsibilities.
3. The demonstrated knowledge of the criminal law and the effective ability to provide actual representation.

The chief defender should be appointed for a specific term of years, and his salary should be equal to or greater than the highest paid attorney in the prosecutor's office. The chief defender should not be selected on the basis of political affiliation, and candidates should not be requested to provide information regarding political affiliation. During the chief defender's term, he or she should not be discharged except for cause shown.

In an office which provides representation both at the trial and appellate levels, a separate unit or section should be established to provide appellate representation. The chief of the appellate unit or section should be selected by, and serve at the pleasure of, the chief public defender. The chief of the office's appellate unit should have the following qualifications:

1. A demonstrated ability to properly administer the unit.
2. The demonstrated expertise in appellate litigation, particularly in criminal cases.
3. The demonstrated ability to prepare effective written arguments and to edit the briefs of other attorneys.
4. A demonstrated ability to interact appropriately with staff members, clients, and members of the public in general.

The salary of the chief of the appellate unit should be equal to or greater than the highest paid attorney providing appellate representation on behalf of the prosecution in your jurisdiction. The chief of the appellate unit should not be selected on the basis of political affiliation, and it should not be assumed that when a new chief defender takes office, that the head of the appellate unit should be changed.

#### TOPIC: TRAINING

QUESTION: Does the training given appellate defenders ensure quality of service?

Yes No

1. Does an established training program exist for entry level attorneys?

If yes: What is the nature of the program?  
Does it transmit needed appellate skills?  
Is it given to every attorney?

If not: Is there any substitute given for such training?  
Does this lack cause problems?  
Why is training not considered important?

2. Does training for entry level attorneys being prior to case representation (i.e. not "on the job" training)?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
How are these problems minimized by the A.D.?  
How made known to the A.D.?

Yes No

3. Does the established training program involve non-appellate staff?

If yes: Who is involved (nature of discipline)?  
What percent of the training do they do?

If not: Has staff expressed any need or concern for this?  
Has such involvement been explored by the A.D.? Conclusions?

4. Does the office have an ongoing legal education program for its attorneys?

If yes: What is the nature of the program?  
Do all attorneys participate?  
Does it transmit the needed skills and information?

If not: Is there any substitute given for such training?  
Does this lack cause problems?  
How are these problems made known to the A.D.?  
How are these problems handled by the A.D.?

5. Do attorneys attend national programs which are of particular relevance to appellate defenders?

If yes: Which programs are favored?  
How many staff attend per year?  
Is attendance equitable among staff?

If not: Why not?  
What has the A.D. done to alter this situation?

6. Is training given in the rudiments of good brief preparation?

If yes: What form does it take?  
Is it extensive enough to ensure good brief preparation?

If not: Why not?  
Does this lack cause problems?  
How are the problems handled by the A.D.?

Yes No

7. Is training given in the rudiments of oral arguments?

If yes: What form does it take (e.g. observance of others, practice)?  
Is it extensive enough to ensure good oral presentation?

If not: Why not?  
Does lack cause problems?  
How are the problems handled by the A.D.?  
Is he/she aware of the problems?

#### FACTUAL DATA TO GATHER AND ASSESS

- Training program materials
- Staff personnel files
- Staff workbooks/notes (if any)

#### STATISTICAL DATA TO GATHER AND ASSESS

- No. days (or weeks) spent in training, per year, per staff attorney
- Amt. money expended by office for training
- % budget of office spent for training

#### Suggestions on Training Standards

Your office should have an established training program for entry-level attorneys which should begin prior to the attorney actually providing representation in any case. "On the job" training, based upon what the attorney will learn from individual cases, is not adequate. Training should involve appellate defender staff, trial attorneys, court personnel, and others.

You should have ongoing continuing legal education programs for attorneys, and specially designed ongoing training for all members of the staff, including the most senior attorneys. National programs which are of particular relevance to appellate defenders should be utilized, and you should work with funding sources to ensure funding for both in state and out-of-state continuing legal education programs.

Each member of your staff should understand the rudiments of appellate arguments, including the fact that no oral argument is to be read. A form book should be developed describing the formal and informal appellate strategies utilized by your office. This handbook should include "practices of the courts" and appellate procedures including when and how they are most effectively used. The form book should be part of the training program as well as an important reference manual.

TOPIC: CASELOAD

QUESTION: Does the appellate defender office caseload ensure quality appellate service?

Yes No

1. Do written caseload standards exist for the appellate defender office?

If yes: What are they?  
Who was involved in their development?  
When were they last reviewed?

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Have steps been taken to resolve the problem?

2. Does the office caseload ensure quality staff representation?

If yes: No follow-up needed

If not: What is the caseload overload?  
In which aspect of representation does the quality of work suffer?  
Is the A.D. aware of the problems?  
Have steps been taken to resolve the problems?  
What are they?

3. Does the office case ensure efficient staff performance?

If yes: No follow-up needed

If not: Where do the inefficiencies enter?  
Is the A.D. aware of the problems?  
Have steps been taken to resolve the problems?  
What are they?

4. Do written workload standards exist for each appellate attorney?

If yes: What are they?  
Are they similar for each attorney in the office?  
Are they fair to each attorney in the office?

Yes No

If not: Do imbalances in workload result?  
Does the quality of the work suffer?  
Is the A.D. aware of the problem?  
Have steps been taken to resolve the problems?  
What are they?

5. Does the workload of each appellate attorney ensure quality representation for all clients?

If yes: No follow-up needed

If not: Is the A.D. aware of the problem?  
Have steps been taken to resolve the problem?  
What are they?

6. Were the caseload standards for the office developed by assessing the time needed to handle different case types?

If yes: No follow-up needed

If not: Have accurate time records ever been kept for cases handled?  
If not, why not?  
Would a time assessment be of help?

7. Has the office determined the actual time needed to handle different types of cases?

If yes: Are they accurate?  
Are they periodically reviewed?

If not: Have time records ever been kept?  
If not, why not?

8. Does a written policy/procedure exist which prevents the office from exceeding its caseload standards (or expectations)?

If yes: Has it ever been invoked?  
Does it work?  
Who developed it?  
Does the court know about it?

If not: What problems does this cause?  
Is the A.D. aware of the problems?  
Have any steps been taken to minimize the problems?  
What are they? Effective?

9. Does the office have a weighted caseload system which ensures the fair distribution of cases among staff?

Yes No

If yes: Has it ever been invoked?  
Does it work?  
Who developed it?  
Does the court know about it?

If not: Does any other system exist to ensure fairness?  
Does the lack of this system cause problems?  
Is the A.D. aware of the problems?  
Have any steps been taken to minimize the problems?  
What are they?

10. Does a written policy/procedure exist which enables a potential client to receive legal assistance when his/her cases exceed existing caseload standards?

If yes: Has it ever been invoked?  
Does it work?  
Who developed it?  
Does the court know about it?

If not: What problems does this cause?  
Is the A.D. aware of the problems?  
Have any steps been taken to minimize the problems?  
What are they? Effective?

#### FACTUAL DATA TO GATHER AND ASSESS

- Policy/procedure re: referrals, caseload, workload
- Time expectations/case type (if any)
- Referral sources when caseload standards are exceeded
- Time records per attorney

#### STATISTICAL DATA TO GATHER AND ASSESS

- No. appeals handled by each attorney per year
- No. appeals handled by office per year
- No. case types handled by each attorney per year
- No. cases refused service for caseload reasons
- No. referrals made
- % cases refused service (vs. given service)

#### Suggestions on Caseload Standards

In order to assure that effective representation is being provided by your office and that adequate information is provided to the funding source upon which to base an appropriate budget, it is essential that you develop caseload standards which accurately reflect the amount of casework which can be done by your existing staff. The caseload for each particular jurisdiction should refer to national standards based on time records developed by your office based upon the specific nature of the cases which you handle.



Accurate records must be kept for a period of time, to determine the actual time necessitated by the wide variety of cases handled by your office in each jurisdiction, including death penalty cases, lengthy or complex cases, cases which do not involve a formal appeal to the appellate court, and other types of varied cases.

Clearly-articulated policies should be developed to prevent your office from exceeding its caseload standards. These policies should be discussed in advance with your funding authority and the appointing courts to ensure no misunderstanding regarding your obligations. The caseload standards and procedures should be reduced to writing and be readily available prior to any emergency developing regarding excessive caseload. Equally important is the adaptation of a weighted caseload system for all cases entering your office to ensure a fair distribution of cases and accurate information on caseloads.

#### TOPIC: CASE WEIGHTING AND STAFFING RATIOS

QUESTION: Does the appellate office maintain a system for determining the number of weighted cases that can annually be handled by each attorney or the equivalent?

Yes No

1. Has the office identified the various factors which determine how much time it will require for an attorney to provide representation in the cases handled by the unit?

If yes: How were the factors identified?

If not: How are cases assigned to staff members?  
Is a distinction made among cases or procedures?

2. Has the office developed a system for weighting the cases and procedures undertaken by the office?

If yes: How was the system devised?  
Does it accurately reflect the amount of time required to complete that case?

If not: Why not?  
How is attorney's workload and caseload determined?  
What are the consequences of the lack of a system?

Yes No

3. Has the office determined how many weighted cases can annually be handled by a full time appellate attorney or the equivalent?

If yes: How was the system devised?  
Does it accurately reflect the number of weighted cases in which one full time appellate attorney can provide effective representation in one year?  
How is the weighted caseload system used by the office?

If not: Why not?  
How is an appropriate annual caseload for attorneys determined?  
What are the consequences of the failure of the office to have weighted staffing ratios?

4. Has provision been made for a reduction in supervisory attorneys' caseload to allow for review of other attorneys' work?

If yes: How was this determined?

If not: Why not?  
What time is utilized to supervise other attorneys?  
What are the consequences of the failure to reduce caseload for supervisory time?

5. Does the office have ratios for the number of secretaries, investigators and law students per attorney?

If yes: What are the ratios?  
How were they determined?  
Is supervision of law students adequate?

If not: Why not?  
How is the number of support staff determined?

6. Are independent social workers available to offices which seek reduction of sentences?

If yes: Are such services adequate?

If not: How does the office demonstrate to the court that a sentence should be reduced?

Suggestions for Case Weighting  
and Staff Ratios

(See "Commentary" in Introduction)

An appellate unit should determine those factors which determine how much time it will take an attorney to provide effective representation.

These factors should include: the length of the court transcripts, whether the defendant has been sentenced to death, whether the case involved the propriety of a sentence or plea of guilty, the nature of post-conviction procedures in the trial court, whether a brief is filed and whether subsequent briefs or petitions are filed to seek review. In addition, time should be set aside for attorney supervision.

By determining the amount of time each factor requires, an appellant office can develop a weighted system to assign a standard work-unit value to each case. While there will be variation by jurisdiction, the recommended weighted caseload system is as follows.

1. A brief-in-chief or Anders brief filed in a case in which the court transcripts are 500 pages or less shall be one work-unit, except as otherwise provided herein.
2. In cases in which the defendant has not been sentenced to death, one additional work-unit shall be added for each additional 500 pages of court transcript.
3. In cases in which the defendant has been sentenced to death the preparation of the brief shall constitute ten (10) work units and the procedures specified in paragraphs 6, 7, and 8, infra. shall constitute ten times the work-units specified in those subparagraphs.
4. A brief involving only the validity of a guilty plea or only the propriety of a sentence in which there was neither a trial nor substantial evidentiary hearing shall constitute one-half work-unit.
5. A case which is closed by the appellate unit with the submission of neither a brief nor post-conviction motion shall constitute between one-quarter and one-half work-units, depending on the length of the record reviewed and work done on the case.

6. A case which is closed by the appellate unit after the disposition of a post-conviction motion or writ but without the submission of an appellate court brief shall constitute between one-half and one work-unit depending on the length of the record reviewed, the nature of the post-conviction hearing, and whether a trial court brief was submitted.
7. A case in which an evidentiary post-conviction hearing is conducted by the appellate unit and in which an appellate court brief is submitted shall constitute between one and one-half and two work-units.
8. The preparation of a reply brief or a petition for review or certiorari in a state court shall constitute one-quarter work-unit. A petition for writ of certiorari filed in the Supreme Court of the United States shall be one-half work-unit.

TOPIC: LIBRARY AND RESOURCES

QUESTION: Does the appellate office contain the appropriate library/materials needed to ensure quality appellate services?

Yes No

1. Is each attorney in the appellate defender office provided with:
  - (a) One complete set of state statutes and court rules?
  - (b) One set of statutes annotated, covering statutes and rules governing criminal and appellate law and procedure?
  - (c) Those sections of the state digest and/or state legal encyclopedia covering criminal law?
  - (d) A directory of all attorneys, judges and prosecutors in the jurisdiction?
  - (e) The Harvard Citator or its equivalent?
  - (f) A dictionary and thesaurus?

Yes No

If not:

Why not?

In what ways does this diminish quality of representation given?

In what ways is this inefficient in case handling?

Is the A.D. aware of the problems?

Have steps been taken to alleviate the problems?

2. Is the appellate defender office provided with a complete set of:

- (a) United States Supreme Court decisions?
- (b) All published state appellate court decisions?
- (c) Federal Reporter, Second Series?
- (d) State Statutes, Annotated?
- (e) State Digest?
- (f) State legal encyclopedia?
- (g) Law reviews published in the state?
- (h) Either Am. Jur. or C.J.S.?
- (i) Pattern criminal jury instructions for the state?
- (j) Federal Digest?
- (k) State Shepards Citations?
- (l) Current A.B.A. Standards for Criminal Justice?
- (m) Current prison and probation regulations for that jurisdiction?
- (n) One additional set of all published state appellate court decisions since 1960 for every ten lawyers?
- (o) The Criminal Law Reporter?
- (p) Legal dictionary?

If yes:

No follow-up needed

Yes No

If not: Why not?  
In what ways does this diminish quality of representation given?  
In what ways is this inefficient in case handling?  
Is the A.D. aware of the problems?

3. Is the appellate defender office provided with one standard treatise on:

- (a) Criminal substantive law?
- (b) Criminal procedure?
- (c) Criminal evidence?

If yes: No follow-up needed

If not: Why not?  
In what ways does this diminish quality of representation?  
In what ways is this inefficient in case handling?  
Is the A.D. aware of the problems?  
Have steps been taken to alleviate the problems

4. Has priority been given to expanding the law library beyond its current collection?

If yes: What is sought?  
How is it becoming a reality

If not: Is there any need?  
Is the A.D. aware of the need?

5. Do appellate staff use non-office libraries when such materials as the following are needed:

- (a) Regional and State reporters?
- (b) Federal Supplement?
- (c) All major law reviews?
- (d) Such standard references as A.L.R. or Words and Phrases?

If yes: Which libraries are used?  
How frequently are they used?  
What procedures have been worked out for their use?  
Could this be handled more conveniently than currently?

Yes No

If not: Is there any need?  
Is the A.D. aware of the need?  
What is being done to alleviate the problem?

6. Does the office have a required procedure for indexing its own briefs?

If yes: Is it used?  
Is it used by all attorneys?  
Are the briefs easily accessible?

If not: Is there a need?  
Is the A.D. aware of the need?

7. Does the office have a required procedure for cataloging motions/research done by the office?

If yes: Is it used?  
Is it used by all attorneys?  
Are the briefs easily accessible?

If not: Is there a need?  
Is the A.D. aware of the need?

8. Has the appellate defender determined the feasibility of using automated research equipment to do legal research?

If yes: Any recommendations forthcoming?  
What was the nature of the study?  
Have any recommendations been acted upon?

If not: Is there any need?  
Is the A.D. aware of the need?

9. Does the appellate office have automated research equipment to do legal research?

If yes: Is it located for easy access?  
Does its use disrupt ongoing research?  
Is it utilized by all staff?  
Is it cost efficient (and how determined)?

#### FACTUAL DATA TO GATHER AND ASSESS

- Library materials
- Staff (individual) libraries
- Relevant policies/procedures
- Location of equipment

### Suggestions on Library/Resource Standards

Each attorney in your office should be provided with:

1. One complete set of state statutes and court rules.
2. One set of statutes annotated, covering those statutes and rules governing criminal and appellate law and procedure.
3. Those sections of the state digest and/or state legal encyclopedia covering criminal law.
4. A directory of all attorneys, judges, and prosecutors in the jurisdiction.
5. A dictionary.

At a minimum, you should have an in-house library with the following materials available to each defender (the complete sets):

1. U.S. Supreme Court Decisions.
2. State Appellate Court Decisions.
3. Federal Reporter, Second Series.
4. State Statutes Annotated.
5. State Digest.
6. State Legal Encyclopedia.
7. Law reviews published in your state.
8. Either Am. Jur. or C.J.S.
9. Pattern criminal jury instructions for the state.
10. Federal Digest.
11. State and Federal Shepard's Citation.
12. Current A.B.A. Standards for Criminal Justice.
13. Current prison, parole, and probation regulations for your jurisdiction.

One set of all published state appellate court decisions since 1960 for every ten attorneys should be provided, as well as the current Criminal Law Reporter, a legal dictionary, and one standard treatise on:



1. Criminal substantive law.
2. Criminal procedure.
3. Criminal evidence.

Priority should be given to expanding your law library beyond its minimum collection.

Complete law libraries which contain regional and state reporters, Federal Supplement, all major law reviews, and such standard references as A.L.R. and Words should be located and utilized.

An index of briefs should be kept by each appellate defender allowing other staff members and other researchers to have access to briefs completed by your office. A procedure should be established requiring the cataloging of briefs and of motions/research done by your office.

#### TOPIC: CASE ASSIGNMENT

QUESTION: Does the system of assigning cases to individual attorneys result in quality representation?

Yes No

1. Does the appellate defender office have written policies/procedures for the assignment of cases to the lawyers within the office?

If yes: Is assignment made at the time the case enters the office?  
Is the assignment made at the time of receipt of complete trial record and transcripts?  
Is the assignment system efficient?

If not: What substitutes for such procedures?  
Does the lack cause any problems?  
Is the A.D. aware of the problems?  
Is anything being done to minimize the problems? What?

2. Is the assignment of a case within the discretion of the Chief Defender?

If yes: No follow-up needed

If not: Who controls the assignment process?  
Does the system work fairly?  
Is the system efficient?

Yes No

3. Is the assignment of a case to a lawyer within the office based on the following factors?

- (a) attorney workload and schedule?
- (b) attorney ability to provide high quality work in the specific case?
- (c) attorney's and office's prior contact with client?

If yes: Does the system work?

If not: What factors are used in case assignment?  
Does the current system/factor work efficiently? Well?

4. Does the appellate defender office have written policies/procedures for the reassignment of cases to lawyers within the office (excluding conflict of interest cases)?

If yes: Does the system work well?

If not: Is such a system needed?  
Is there a substitute in the office?  
Does the lack cause any problems?  
Is the A.D. aware of the problems?  
Is anything being done to minimize the problems? What?

5. Do reasons for case assignment include, at a minimum:

- (a) absence from the office or termination of first attorney?
- (b) excess workload of first attorney which would deny client of prompt case handling?
- (c) irreconcilable conflict between first attorney and client which prevents a normal attorney/client relationship (and not a pattern for the client)?

If yes: No follow-up needed

If not: What reasons are used?  
Are they sufficient? Appropriate?

Yes No

6. Does the appellate defender office have written policies/procedures for monitoring the movement of cases?

If yes: Are they sufficient?  
Are they efficient?

If not: What problems does this cause?  
Is the A.D. aware of the problems?  
Have steps been taken to minimize the problems?

7. Do appellate defender policies/procedures for monitoring the movement of cases allow him/ her to determine:

- (a) inappropriate delays in individual cases?
- (b) inappropriate delays in attorney performance in meeting time frames?
- (c) systematic delays which can be identified and corrected?
- (d) future case assignments?
- (e) future office caseload?

If yes: No follow-up needed

If not: What problems does this cause?  
Is the A.D. aware of the problems?  
Have steps been taken to minimize the problems?

8. Does the monitoring of the movement of cases occur on a monthly basis?

If yes: No follow-up needed

If not: What is the monitoring schedule?  
Does it cause any problems?  
Is the A.D. aware of the problems?  
Have steps been taken to minimize the problems?

9. Is a specific supervisory attorney assigned the responsibility of monitoring caseload?

If yes: No follow-up needed

Yes No

If not: Why not?  
What is the monitoring schedule?  
Does it cause any problems?  
Is the A.D. aware of the problems?  
Have steps been taken to minimize the problems?

10. Does an attorney who transfers from the appellate division of a defender office to another division retain all appellate cases in which he/she has already interviewed a defendant or read the trial transcript?

If yes: No follow-up needed

If not: Why not?  
What is the monitoring schedule?  
Does it cause any problems?  
Is the A.D. aware of the problems?  
Have steps been taken to minimize the problems?

#### CASE ASSIGNMENT

##### FACTUAL DATA TO GATHER AND ASSESS

- Policies/procedures regarding:  
case assignment,  
case reassignment,  
caseload monitoring/review
- Review of procedures against assignments recently made
- Reasons for reassignments made

##### STATISTICAL DATA TO GATHER AND ASSESS

- No reassignments made

##### Suggestions on Case Assignment Standards

A procedure should be developed for the assignment of cases to the lawyers within your office. Such procedures may include either assignment at the time that the case is assigned to your office or when the complete trial record and transcript have been received.

Once a case is accepted, cases should not be reassigned to another attorney within your office unless:

1. The first attorney leaves the defender office permanently or for a significant period of time.
2. The attorney's ability to provide prompt and high quality representation is the specific case.
3. The attorney's and your office's previous contact with the client.

Procedures should be adopted for monitoring the flow and movement of cases to determine:

1. Any inappropriate delays in individual cases.
2. Any attorneys who are not handling cases in an appropriate time frame.
3. Any systematic delays which can be identified and corrected.
4. Assignment of cases and anticipating future caseloads.

Such monitoring should occur on a monthly basis and should be the responsibility of a specific supervisory attorney designated by the chief defender.

Attorneys who transfer from the appellate division of the defender office to another division should retain all appellate cases in which he/she has already interviewed the defendant or read the trial transcript.

#### TOPIC: CLIENT CONTACT

QUESTION: Does the office maintain personal client contact?

Yes No

1. Do written policies/procedures exist which address issue of client contact?

If yes: Are they known to the attorney?

If not: How are client-oriented issues resolved?  
Are there problems?  
Are these problems being resolved?

2. If case assignment is delayed (e.g., until the record is received) is the client informed?

If yes: Method of informing client?  
Is the procedure routinized?

If not: Why not?  
What problems does this cause?  
Are these problems being resolved?  
In what ways?

Yes No

3. Is each potential client given a contact person within the office if case assignment will be delayed?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Are these problems being resolved?  
In what ways?

4. Is each appellate defender client personally interviewed by the attorney who will be handling the case?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Are these problems being resolved?  
In what ways?

5. Are the procedures clear in terms of discussing the merits, strategy and ramifications of the proposed appeal with each client?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Are these problems being resolved?  
In what ways?

6. Are the procedures clear in terms of providing the client with the attorney's best professional judgment concerning whether the appeal should be pursued?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Are these problems being resolved?  
In what ways?

7. Are clients provided with information regarding process and procedures which will be taken in the matter and the anticipated time frame?

If yes: What form does the information take?

If not: Why not?  
What problems does this cause?  
Are these problems being resolved?  
In what ways?

Yes No

8. Are clients kept informed of the status of their case at each step in the appellate process?

If yes: By what mechanism?  
Is it routinized within the office?  
Is it formalized within the office?

If not: Why not?  
What problems does this cause?  
Are these problems being resolved?  
In what ways?

9. Are clients provided with a copy of each substantive document that has been filed by the attorney in the case?

If yes: By what mechanism?  
Is it routinized within the office?  
Is it formalized within the office?

If not: Why not?  
What problems does this cause?  
Are these problems being resolved?  
In what ways?

#### CLIENT CONTACT

#### FACTUAL DATA TO GATHER AND ASSESS

- Office policies/procedures on:  
client contact when incarcerated,  
client contact when free,  
forms of routinized contact
- Correspondence in case file
- Notations on case file
- Visit to correctional institution (and possible observation of interview)
- Prison regulations re: attorney contact
- Jail regulations re: attorney contact

#### STATISTICAL DATA TO GATHER AND ASSESS

- % cases receiving no personal interview, telephone interview or mail contact
- % cases receiving personal interview only
- % cases receiving telephone interview only
- % cases receiving mail "interview" only
- % mail from incarcerated clients which is opened/ censored (estimation)

## Suggestions on Client Contact Standards

(See "Commentary" in Introduction)

All of your clients should be personally interviewed by the attorney who will actually be handling the case. Written office procedures should be adopted which require each client to be seen by the attorney actually providing representation in that case. Such policy should include at least one visit, and such additional visits as are required by the particular facts and circumstances of the case. Your office should work out, in advance, procedures with those correctional institutions which will be visited by your staff to ensure the least possible delay and misunderstanding. The appellate defender should work with institutional officials to ensure that each correctional institution makes arrangements for a private interview room for attorney/client visits. An attorney should not be expected to interview a client in a general visiting room, a room divided by a screen or glass partition, or a room in which a listening device is installed. An attorney should not be expected to interview a client while the client is wearing handcuffs, leg irons, or chains. By working with the department of corrections and the superintendent of each institution, you should ensure an advance understanding of the facilities needed for private interview space.

When cases are not assigned to a specific attorney until the records are received, you should immediately inform the client of this fact and ensure that the client has a person within your office to contact prior to the receipt of the court record.

The appellate defender should have a clearly articulated policy of discussing the merits, strategy, and ramifications of the proposed appeal with each client prior to the perfection and completion thereof. These policies should include discussing any possible adverse consequences or strategy problems in pursuing such an appeal, even when there is an arguable issue to appeal. It is the obligation of your counsel to provide the client with his/her best professional judgment as to whether the appeal should be pursued in view of the legal merit of the appeal, any adverse collateral consequences, and strategic considerations.

The appellate defender should inform his or her client of the status of the case at each step in the appellate process. Any delays in the case should be explained, and general information should be provided to every client regarding the process and procedure which will be taken in the matter, as well as the anticipated time frame for such processing. The client should also be provided with each substantial document filed in the case both the prosecution and the defense. The appellate defender should respond in a timely manner to all correspondence from clients, provided that the client correspondence is of a reasonable number and at a reasonable interval.



All necessary steps should be taken to ensure that the attorney/client privilege is protected in all correspondence to and from an incarcerated individual. The appellate defender should work with the prison administration and the attorney general in the state to ensure that the appropriate law in that jurisdiction is followed in relation to the opening and/or censoring of attorney/client mail. The appellate defender should also inquire as to the possibility of gaining telephone contact with clients who are incarcerated when such brief telephone contact can further clients' interests.

#### TOPIC: TRIAL COUNSEL CONTACT

QUESTION: Do the appellate attorneys communicate with the trial counsel?

Yes No

1. Do written office policies/procedures exist regarding contact with trial counsel?

If yes: What areas do they cover?  
Are they known to the attorney?  
Do they encourage communication?

If not: Is there a substitute for them?  
What problems does this cause?  
Is the A.D. aware of these problems?  
Are the problems being resolved? How?

2. Are trial counsel informed in every case that the appellate defender unit has been assigned to provide appellate representation to the defendant?

If yes: No follow-up needed

If not: What problems does this cause?  
Is the A.D. aware of these problems?  
Are the problems being resolved? How?

3. Do written office policies/procedures exist regarding the screening of cases in which claims of "ineffectiveness of counsel" are raised?

If yes: What do they cover?  
Are they reasonable?  
Are they followed?

If not: Is there a substitute for them?  
What problems does this cause?  
Is the A.D. aware of these problems?  
Are the problems being resolved? How?

Yes No

4. Does the office insulate itself and its appellate attorneys against pressures not to raise the claim of "ineffectiveness of counsel"?

If yes: How is this accomplished?  
What pressures are brought?

If not: Is there a substitute for them?  
What problems does this cause?  
Is the A.D. aware of these problems?  
Are the problems being resolved? How?

5. Do written standards exist for determining "ineffectiveness of counsel"?

If yes: What do they cover?  
Are they appropriate?  
Are they followed?

If not: Is there a substitute for them?  
What problems does this cause?  
Is the A.D. aware of these problems?  
Are the problems being resolved? How?

6. Is the assistance of trial counsel encouraged in the handling of an appeals case?

If yes: In what way?  
How is this made known to trial counsel?  
How frequently is such aid given?  
Under what circumstances is it given?  
What is the nature of this aid?

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of these problems?  
Are the problems being resolved? How?

7. Is trial counsel sent a copy of the appellate brief?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of these problems?  
Are the problems being resolved? How?

### FACTUAL DATA TO GATHER AND ASSESS

- Office policies/procedures on:  
contact with trial counsel,  
screening cases for "ineffectiveness of counsel"
- Standards for "ineffectiveness" argument
- Case file correspondence
- Case file notations
- Nature of trial counsel contact
- Nature of aid given by trial counsel

### TRIAL COUNSEL CONTACT

### STATISTICAL DATA TO GATHER AND ASSESS

- % cases where trial counsel has been contacted re: appeals to  
take place
- % cases with more than contact for notification only
- % cases appeals (of all appeals taken) for ineffective  
representation
- % ineffective representation appeals in which counsel was  
contacted
- No. of appeals coming into office with claim of ineffective  
counsel
- No. of appeals withdrawn from and turned over to other  
attorneys (in mixed office)
- % cases in which trial counsel aids appellate attorney (estimate)
- % cases in which trial counsel received brief
- % cases in which trial counsel received opinion of the court

### Suggestions on Trial Counsel Contact Standards

Clearly articulated procedures should be developed by your office regarding contact with trial counsel which shall include, at a minimum, notifying trial counsel that your unit has been assigned to provide appellate representation to the defendant and should include such other general procedures as appear necessary within your jurisdiction. In any case in which you argue that trial counsel provided ineffective representation, the appellate counsel should give notice to the trial attorney of such asserted claim.

Your office should develop clearly articulated internal procedures for screening cases in which claims of ineffectiveness are raised. Cooperation should be encouraged with trial counsel, including the trial attorney providing assistance on appeal, provided, however, that appellate counsel is primarily responsible for the handling of such a case.

TOPIC: BRIEF PREPARATION

QUESTION: Are the appellate briefs prepared and filed in a professional manner?

Yes No

1. Do written office policies/procedures exist for providing an "issues conference" within the office prior to the actual commencement of the writing of the brief?

If yes: What is the nature of the conference (e.g., who is involved, for how long)?  
How is the decision made whether there is an arguable issue?  
How is the decision made regarding how many issues to pursue?  
How is the decision made regarding how to pursue the case (i.e., brief and/or oral argument)?

If not: Is there any mechanism for an initial discussion of issues?  
Does it suffice?  
Are there are problems cause by this lack?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems? What are they?

2. Do written office policies/procedures exist for reviewing and screening briefs and records filed by the office?

If yes: What do they cover?  
Are they always followed?  
Are they cursory or substantive reviews?  
Do they result in brief rewriting?

If not: What is the review/screening mechanism?

3. Do cases represented by the appellate staff conform to the court rules of the jurisdiction, including:

- (a) filing notice of appeal?
- (b) ordering clerks papers and exhibits?
- (c) ordering transcripts?

Yes No

- (d) filing and serving transcripts?
- (e) having transcripts?
- (f) filing briefs?
- (g) filing motion for reconsideration?
- (h) filing petition for review?

If yes: Do the rules facilitate good appellate practice?

If not: What is the nature of the problems?  
What is the magnitude of the problems?  
What is causing the problems?  
Are steps being taken to alleviate the problems?

4. Do briefs filed by the appellate attorneys appear professional, that is:

- (a) have a neat overall appearance?
- (b) have no typographical errors?
- (c) have no misspellings?

5. Do briefs filed by the appellate attorneys:

- (a) avoid blind citations (no supporting material)?
- (b) avoid run-on citations (listing many cases in support of a general position)?
- (c) use a consistent method of citation throughout?
- (d) use a method of citation which is used by the appellate courts in the state?
- (e) use the Harvard Citator as a reference?

If yes: No follow-up needed

If not: Does this cause a problem?  
What is the magnitude of this problem?  
Why does the problem exist?  
Is the A.D. aware of the problem?  
What steps are being taken to resolve the problem?

Yes No

6. Do briefs filed by the appellate attorneys:
- (a) have an orientation statement which either:
    - aids the court in understanding the discussion that follows,
    - states the legal issues involved,
    - previews the conclusion the brief will reach after discussion?
  - (b) have a complete and accurate statement of facts?

7. Do the briefs filed by the appellate attorneys refer to legal authority, including:

- (a) federal case authority?
- (b) state statutes?
- (c) previous cases?

If yes: No follow-up needed

If not: Does this cause a problem?  
What is the magnitude of this problem?  
Why does the problem exist?  
Is the A.D. aware of the problem?  
What steps are being taken to resolve the problem?

8. Do legal authorities referred to appear to support the case made in the brief?

If yes: No follow-up needed

If not: Does this cause a problem?  
What is the magnitude of this problem?  
Why does the problem exist?  
Is the A.D. aware of the problem?  
What steps are being taken to resolve the problem?

9. Do briefs filed by the appellate staff contain non-case reference materials, such as:

- (a) law review articles and notes?
- (b) treatises?
- (c) scientific works?

Yes No

(d) legal encyclopedia?

(e) official studies and reports?

If yes: Do they enhance the argument?

If not: Does this cause a problem?  
What is the magnitude of this problem?  
Why does the problem exist?  
Is the A.D. aware of the problem?  
What steps are being taken to resolve the problem?

10. Do the briefs address any conflict of authority in a manner which supports the case presented?

If yes: No follow-up needed

If not: Does this cause a problem?  
What is the magnitude of this problem?  
Why does the problem exist?  
Is the A.D. aware of the problem?  
What steps are being taken to resolve the problem?

11. Do the briefs handle the situation in which persuasive authority is lacking or unsatisfactory in a manner which supports the case?

If yes: No follow-up needed

If not: Does this cause a problem?  
What is the magnitude of this problem?  
Why does the problem exist?  
Is the A.D. aware of the problem?  
What steps are being taken to resolve the problem?

12. Do the briefs have a reasoning and a discussion of the facts which is generally persuasive?

If yes: No follow-up needed

If not: Does this cause a problem?  
What is the magnitude of this problem?  
Why does the problem exist?  
Is the A.D. aware of the problem?  
What steps are being taken to resolve the problem?

Yes No

13. Has the appellate staff read the former decisions of the appellate judges within your jurisdiction?

If yes: In what ways does it influence their work?

If not: Does this cause a problem?  
What is the magnitude of this problem?  
Why does the problem exist?  
Is the A.D. aware of the problem?  
What steps are being taken to resolve the problem?

14. Does the appellate staff know what legal approaches will influence the appellate judges?

If yes: What are they?  
Is this helpful to the office?

If not: Does this cause a problem?  
What is the magnitude of this problem?  
Why does the problem exist?  
Is the A.D. aware of the problem?  
What steps are being taken to resolve the problem?

15. Do written office policies/procedures exist for the filing of reply briefs?

If yes: What do they cover?  
Are they followed?

If not: Does this cause a problem?  
What is the magnitude of this problem?  
Why does the problem exist?  
Is the A.D. aware of the problem?  
What steps are being taken to resolve the problem?

16. Are the reply briefs that are filed limited to responding to issues raised by the prosecutor not previously identified or adequately argued in the brief-in-chief (i.e., no new issues)?

If yes: No follow-up needed

If not: Does this cause a problem?  
What is the magnitude of this problem?  
Why does the problem exist?  
Is the A.D. aware of the problem?  
What steps are being taken to resolve the problem?



### FACTUAL DATA TO GATHER AND ASSESS

- Relevant policies/procedures on:  
issues conference,  
screening and reviews before filing,
- Filing reply brief
- Briefs
- Reply briefs

### STATISTICAL DATA TO GATHER AND ASSESS

- % cases reworked following screening and review
- % incoming cases for which briefs are filed
- % incoming cases for which Anders brief is written
- No. of reply briefs filed
- % reply briefs filed

### Suggestions on Brief Preparation Standards

Procedures should be adopted for providing an "issues conference" between the attorney handling the case and some other members of the staff in which the issues raised in the case are appropriately discussed prior to the actual commencement of the writing of the brief in the case. You should adopt procedures for reviewing and screening the briefs that are filed by your office, which should include the careful review of the brief and record by at least one member of the staff other than the person who wrote the brief prior to the completion of the final draft of the brief. In offices of more than five attorneys, supervisory staff should be designated for this purpose.

All of the briefs which your office files should conform to the court rules of your jurisdiction. All of your briefs should have a professional, neat appearance without typographical errors or misspellings, and be generally comparable in appearance to the briefs filed by the best law firms in your state. The briefs should have a consistent method of citation, consistent with that used by the appellate courts in your state or circuit. Where no consistency is found in the appellate courts, the appellate defender should follow the prescribed form of citations. You should avoid the "blind" citation of cases--citation without discussion of the facts or reasoning of the case--and run-on citations listing many cases in support of one general or vague proposition.

All of the briefs you file should make appropriate use of legal authority, and be of the highest professional quality. Briefs filed by your office should utilize federal case authority and authority from other jurisdictions in support of positions for which no local authority exists or when local authority is contrary to the weight of recent decisions from other jurisdictions. These briefs should include non-case reference materials, such as law reviews, treatises, scientific works, and, where appropriate, legal encyclopedia.

A procedure should be adopted for the filing of reply briefs. These briefs should be limited to responding to issues raised by the prosecution, not theretofore identified or adequately argued in the brief-in-chief. In a reply brief, new materials should not generally be raised for the first time.

TOPIC: ORAL ARGUMENT

QUESTION: Are oral arguments being used effectively?

Yes No

1. Do written office policies/standards exist for determining when a waiver of oral argument is appropriate?

If yes: Are these related to court concerns?  
Are they appropriate for good representation?

If not: Is this a court which encourages oral arguments?  
How is the decision made whether to have an oral argument?

2. Do cases for which an oral argument is waived adhere to office policies/procedures for waivers?

If yes: No follow-up is needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Have any steps been taken to resolve these problems?

3. Is the appellate court not involved in (i.e. apply pressure) the office's decision regarding whether to request an oral argument in a particular case?

If yes: No follow-up is needed

If not: What is the nature of the role?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Have any steps been taken to resolve these problems?

4. Do written office policies/procedures exist which assist attorneys with the development and presentation of oral arguments?

If yes: Do they include the use of moot court arguments? Videotape?  
Are the procedures sufficient to ensure good oral argument?  
Are the procedures used routinely?  
Are the procedures used frequently?

If not: What is the nature of the role?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Have any steps been taken to resolve the problems?

5. Do written office policies/procedures exist for getting feedback on an attorney's presentation following oral argument?

If yes: Are they sufficient to ensure a good critique?  
Are they used routinely?  
Are they used frequently?

If not: What is the nature of the role?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Have any steps been taken to resolve the problems?

6. Do all appellate attorneys present oral arguments?

If yes: No follow-up needed

If not: How was the decision made?  
What is the nature of the role?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Have any steps been taken to resolve the problems?

7. Does the oral argument:

- (a) highlight the most important issues?
- (b) present issues succinctly?
- (c) present issues persuasively?

Yes No

8. Do appellate defenders present an oral argument for all cases in which the prosecution has decided to make such a presentation?

If yes: No follow-up needed

If not: What problems does this cause?  
Is the A.D. aware of these problems?  
Have any steps been taken to resolve these problems?

#### FACTUAL DATA TO GATHER AND ASSESS

- Policies/procedures on: waivers of oral argument, training in oral presentation, review of oral presentation
- Court policy re: oral argument and waivers
- Observation of oral argument
- Reasons for waiving oral argument

#### STATISTICAL DATA TO GATHER AND ASSESS

- % briefs filed for which oral argument is requested
  - % briefs filed with oral request which are turned down by court
  - % briefs filed which argued orally
- No. cases prosecutor presented orally which appellate attorney did not argue orally

#### Suggestions on Oral Argument Standards

In jurisdictions which allow or encourage waiver of oral argument on appeal, the appellate defender should have written standards for determining when such waiver is appropriate or requested. All attorneys who are going to provide oral argument before an appellate court should have adequately prepared their argument. Your office should adopt procedures for assisting attorneys with the development and presentation of oral argument, including the use of "moot court" arguments and video tape. The oral argument should highlight the most important issues, present the issues succinctly, as well as presenting the issues in a persuasive manner.

TOPIC: ANDERS CASES

QUESTION: Are Anders briefs filed when appropriate?

Yes No

1. Do written office policies/procedures exist for determining how the office will handle cases which fall under the criteria of Anders v. California, 386 U.S. 738 (1967)?

If yes: Are they known by staff?  
Are they used by staff?  
Do they present any problems for the staff?  
Do they present any problems for the court?  
Do they present any problems for the clients?  
Are the procedures adequate?

If not: Why not?  
Any substitute?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

2. Is the court aware of these policies/procedures?

If yes: Do they agree with them?

If not: Why not?  
Any substitute?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve these problems?

3. Do written office policies/procedures exist for communicating to clients the decision to file an Anders brief?

If yes: Are they adequate?

If not: Why not?  
Any substitutions?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve these problems?

Yes No

4. Do written standards exist for determining what cases have "no arguable merit"?

If yes: Do they include cases which are genuinely frivolous?  
Do they (wrongly) include cases which simply will not prevail upon appeal?  
Has the local court played a role in their development?  
Are their standards difficult to follow?

If not: What criteria are used?  
Are they consistently applied?  
Are they adequate?

5. Do office policies/procedures regarding the filing of an Anders brief match court rules/ policies?

If yes: No follow-up is needed

If not: Why not?  
Any substitutes?  
What problems does this cause?  
Is the A.D. aware of these problems?  
Are steps being taken to resolve the problems?

6. Is it office policy that Anders briefs shall never be filed?

If yes: Were representatives of the appellate court consulted when the decision was made?  
Were representatives of the prosecution consulted?  
Does it affect the reputation with the client community?

If not: No follow-up is needed

7. Are Anders briefs forbidden in cases in which the death penalty or life imprisonment has been imposed?

If not: Are you satisfied that given the magnitude of the sentence the defendant is afforded complete and effective appellate representation?

Yes No

8. Is appellate attorney discretion available in deciding to file an Anders brief?

If yes: What is the nature of the discretion?  
What is the magnitude of the discretion?  
Is there any review of the discretionary decision?

If not: Why not?  
Any substitute?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

9. Do written office policies/procedures exist for internal review of all cases in which an attorney decides that an Anders brief will be filed?

If yes: Does it include review by another member of the legal staff?

If not: Why not?  
Any substitutes?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve these problems?

10. For each case in which an Anders brief will be filed:

- (a) is the client notified prior to the filing?
- (b) is the client given an opportunity to withdraw the request for the appointment of counsel?
- (c) is the client given an opportunity to withdraw the appeal?
- (d) is advice given to the client on alternative course of action?
- (e) is the client given the opportunity to raise individual issues and present them to the appellate court in an appropriate manner?
- (f) is a copy of the Anders brief sent to the client?
- (g) is a copy of the court transcript sent to the client?

Yes No

11. Are clients for whom an Anders brief will be filed:
- (a) assisted in responding to the brief?
  - (b) assisted in contacting another agency or lawyer for assistance?
12. Do written office policies/procedures exist for internal review of all cases in which the appellate court has rejected an Anders brief?

If yes: Is the attorney handling the case consulted?  
Are the merits of the case reviewed?  
Is the adequacy of the office procedure for screening the cases discussed?  
Is the possibility of not continuing representation considered?

If not: Why not?  
Any substitute?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve these problems?

#### FACTUAL DATA TO GATHER AND ASSESS

- Policies/procedures on:  
filing Anders briefs,  
review of Anders briefs,  
review of court-rejected Anders briefs
- Case files (with Anders briefs)
- Court rules for Anders brief
- Anders briefs
- Court rules for "no arguable issues"

#### STATISTICAL DATA TO GATHER AND ASSESS

- No. Anders briefs filed
- % Anders briefs
- No. motions to dismiss (where defendant no longer wishes to pursue appeal)
- % Anders briefs filed for incarcerated and non-incarcerated clients
- No. Anders briefs filed in cases receiving death penalty
- No. Anders briefs filed in cases receiving life imprisonment
- No. additional pleadings filed by clients
- No. and % Anders briefs denied by court

Use questions 3-13 under Brief Preparation section to review merits of brief.



### Suggestions on Anders Cases

Procedures should be developed for determining how the office should handle cases which fall under the criteria of Anders vs. California, 386 U.S. 738 (1967), and how such decision should be communicated to the courts and the client. You should adopt an extremely strict standard in determining what cases have "no arguable merit." Such cases should be genuinely frivolous, and not simply cases which the appellate defender believes will not prevail on appeal. Your office may determine that Anders briefs should never be filed, but such decision should be made only after consideration of the ramifications of such decision, and consultation with representatives of the appellate court, and with representations of the prosecution. Appellate defenders should consider that filing merit briefs in every case may undermine the credibility of the appellate defender with the appellate courts. On the other hand, appellate defenders should consider that the filing of Anders briefs may compromise the office's reputation within the client community.

Anders briefs should not be filed in cases in which the death penalty or life imprisonment has been imposed. Your office should adopt an internal procedure for review of all cases in which it has been decided by the attorney handling the case that an Anders brief will be filed. Such internal review should include, at a minimum, a plenary review of the case by another member of your legal staff. In offices of more than five attorneys, supervisory staff should be designated for this purpose.

In each case in which a determination has been made that an Anders brief should be filed, the attorney should communicate this decision to the client prior to the filing of such brief, and shall give the client the opportunity to withdraw his request for the appointment of counsel or to withdraw the appeal. Such option should be given in a non-coercive manner, with the attorney making clear that an Anders brief will be filed as an alternative.

Clearly-articulated procedures should be adopted for dealing with clients who desire to raise individual issues in cases which the attorney believes to be without arguable merit. The procedures should be sufficient to ensure that the issue desired by the client is presented to the appellate court in an appropriate manner so as to receive the serious attention of the court. It is preferable to have counsel include the issue in the brief submitted, if at all possible.

The attorney should send a copy of the Anders brief to the defendant with instructions for responding thereto, and may assist the defendant in responding to the Anders brief or in contacting another agency or lawyer for such assistance. In any case in which the appellate court has rejected an Anders brief, the chief appellate attorney should review the handling of the case to determine whether the office procedure for screening the case was adequate, and whether it is appropriate for that attorney or the office to continue representation.

TOPIC: DISCRETIONARY APPEAL

QUESTION: Does the office efficiently process discretionary appeals?

Yes No

1. Do written office policies/procedures exist for determining how cases should be reviewed for discretionary appeal?

If yes: Are they known by staff?  
Are they used by staff?  
Do they cause problems for staff?  
Do they cause problems for clients?

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

2. Do written standards (criteria) exist for determining whether a discretionary appeal should be taken to a state court?

If yes: Are they appropriate?  
Are they clear?

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

3. Do written standards (criteria) exist for determining whether a discretionary appeal should be taken to federal court?

If yes: Are they known by staff?  
Are they used by staff?  
Do they cause problems for staff?  
Do they cause problems for clients?

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

Yes No

4. Do written standards exist to seek appropriate relief in trial court following conviction?

If yes: Are they known by staff?  
Are they used by staff?  
Do they cause problems for staff?  
Do they cause problems for clients?

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

5. Do written policies/procedures exist for informing the client of the availability of discretionary review following an unsuccessful appeal?

If yes: Do they give the client a chance to ask for a review?

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

6. Does the appellate attorney have the ultimate decision of whether a discretionary review will be pursued?

If yes: No follow-up is needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

7. Does the appellate attorney take cases to the federal court on discretionary review?

If yes: No follow-up is needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

Yes No

8. Do written policies/procedures exist for internal office review of an attorney's decision not to pursue a case after an unsuccessful first appeal?

If yes: What does the review cover? Who does it involve?  
Is it cursory or substantive?  
Is it routine?  
Has it resulted in changed decisions?

If not: Is there any mechanism?  
Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

9. Does the office pursue discretionary appeals and other procedures with diligence?

If yes: No follow-up is needed

If not: Why not?  
Is the amount of work required in the jurisdiction exorbitant?  
Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

#### FACTUAL DATA TO GATHER AND ASSESS

- Office policies/procedures re: discretionary appeal
- Office standards for state appeal
- Office standards for federal appeal
- Office standards for trial court relief
- Court rules and opinions with standards for further review
- State statutes re: defender's ability to petition

#### STATISTICAL DATA TO GATHER AND ASSESS

- No. unsuccessful first appeals
- No. successful first appeals
- % successful to unsuccessful appeals
- No. clients asking for discretionary review
- % clients asking for discretionary review
- No. petitions filed for further review in state court
- No. petitions filed for further review in federal court
- % petitions filed following unsuccessful first appeal
- No. petitions granted by court to both sides
- No. petitions denied by court to both sides

- No. writs of certiorari
- No. habeas corpus petitions filed in federal court
- No. petitions for relief filed in trial court following conviction
- No. cases in which attorney decision not to appeal is altered by internal review
- No. cases in which attorney decision to appeal is altered by internal review

### Suggestions on Discretionary Standards

Your office should have procedures for determining how cases should be reviewed and what standard should be applied when deciding whether a discretionary appeal to either state or federal court should be taken. The appellate defender should have the authority to seek discretionary review in any state appellate court, consistent with the appellate defender's professional judgement. All discretionary appeals should be pursued, unless review reveals an affirmative reason for not proceeding. When a client absconds no new appeal should be taken, but any pending appeal should be completed, unless it appears that the escape would prejudice the defendant in the case a new trial was granted. In all cases the court having jurisdiction over the case should be informed of the defendant's disappearance. In the event the attorney handling the case determines that such discretionary review should not be pursued, the case should be reviewed by an attorney other than the one who initially presented the case. In offices of five or more attorneys, supervisory staff should be designated for this purpose.

The appellate defender should have the discretion to seek review of any state court conviction in both the United States Supreme Court by writ of certiorari or appeal and in federal courts when such relief appears to be warranted in the attorney's best judgment. The appellate defender should have discretion to seek appropriate relief in trial courts following conviction. The unsuccessful pursuit of an appeal should not be a condition precedent to seeking relief in the trial court.

Following an unsuccessful first appeal, the defendant should be informed of the alternatives for discretionary review, and given the opportunity to articulate a desire to seek such review. In the event a competent client indicates that no further appeal should be pursued, no further action should be taken by the appellate defender. In the event the client desires to pursue a discretionary appeal or further discretionary review, the ultimate decision of whether such discretionary review should be pursued is the attorney's, and not the client's.

Every appellate defender in a state system should have the availability of review in the federal courts by habeas corpus. State appellate defenders should not be restricted to state courts.

TOPIC: RELATIONS WITH THE LEGAL COMMUNITY

QUESTION: Does the appellate office have good relations with the legal community?

Yes No

1. Has the appellate defender and staff established a regular line of communication with judges on the appellate court?

If yes: What is the mechanism?  
Is it routinized?  
How frequently is it used?  
What functions does it serve?

If not: Why not?  
What problems does it cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

2. Has the appellate defender and staff established a regular line of communication with the appellate court staff?

If yes: What is the mechanism?  
Is it routinized?  
How frequently is it used?  
What functions does it serve?

If not: Why not?  
What problems does it cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

3. Is the appellate office providing representation which is acceptable and appropriate to the court?

If yes: How do they know?  
Does the court have high expectations?

If not: Why not?  
What problems does it cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

Yes No

4. Do written office policies/procedures exist for the solution of court-related administrative matters which arise on an emergency basis?

If yes: Are they successful in avoiding confrontation with court staff?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

5. Does the appellate office have a cordial and professional relationship with the appellate prosecutor?

If yes: Has it aided in the solving of mutual problems?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

6. Does the appellate office work with trial attorneys to identify issues which might be raised at trial which reflect new or developing legal trends?

If yes: Through what mechanism?  
Is it successful?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

7. Does the appellate office work with the trial attorneys to identify issues which might be raised on appeal?

If yes: Through what mechanism?  
Is it successful?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

Yes No

8. Does the appellate office work to acquaint the bar with recent decisions which impact on the trial of cases?

If yes: Through what mechanism?  
Is it successful?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

9. Does the appellate office share the office's research facilities with attorneys who provide trial representation if needed materials are not available elsewhere?

If yes: Are they used frequently?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?  
Are adequate materials and office space available?

10. Does the appellate office know whether trial attorneys are referring potential clients to the office?

If yes: How is it known?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

11. Does the appellate office have on-going contact with the criminal defense bar in the jurisdiction?

If yes: Nature of the contact?  
Frequency of the contact?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?



Yes No

12. Does the appellate office have on-going contact with the private bar, generally, within the jurisdiction?

If yes: Nature of contact?  
Frequency of contact?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

13. Does the appellate office play an active role in the continuing education of the bar?

If yes: In what ways?  
How frequently?  
Can it be improved?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

14. Are the following facilities of the appellate office available to other public defenders and members of the private bar?

(a) library;

(b) brief bank;

(c) other research tools.

If yes: Are they used?  
By whom?  
How frequently?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps are being taken to resolve the problems?

#### FACTUAL DATA TO GATHER AND ASSESS

- Staff membership and participation in bar committees
- Appointment calendars-chief and staff
- Office policies/procedures re: resolution of emergency court matters

### Suggestions on Relations with the Legal Community

The appellate defender and your staff should establish regular lines of communication with judges on the appellate court to determine whether your office is providing representation in a manner acceptable and appropriate to the court. The appellate defender should establish procedures for the disposition of administrative matters which arise on an emergency basis, and to avoid confrontations with court staff.

The appellate defender should establish cordial, and professional, relationships with the appellate prosecutor so that mutual problems can be solved administratively or with a concerted effort.

The appellate defender should cooperate and work with attorneys who provide trial representation to:

1. Identify issues which might be raised at trial which reflect new or developing legal trends.
2. Properly preserve at trial issues which might be raised on appeal.
3. Acquaint the trial bar with recent decisions which impact on the trial of cases.
4. Share the appellate defender research facilities if such materials are not available elsewhere and the appellate defender has adequate materials and office space.

The appellate defender should have on-going contact with the criminal defense bar in the jurisdiction, as well as contact with the private bar generally within the jurisdiction. The appellate defender should also take an active role in the continuing legal education of the entire bar, and should work actively with the providers of continuing legal education to ensure participation.

Unless it would seriously disrupt the operation of your office, your library, brief bank, and research tools should be made available to other public defenders and members of the private bar.

### TOPIC: INTERNAL STRUCTURE

QUESTION: Does the appellate defender office exhibit an internal office structure which supports good management?

Yes No

1. Does the appellate defender office have an organizational structure which permits efficient office operations?

Yes No

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
Are steps being taken to resolve the problems?

2. Does the appellate defender office have a supervisory structure which permits effective representation?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
Are steps being taken to resolve the problems?

3. Does a separate appellate unit or section exist in an office established to provide both trial and appellate work?

If yes: Does this suffice to ensure appropriate "ineffectiveness of counsel" appeals?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
Are steps being taken to resolve the problems?

4. In a mixed appellate/defense office, are all budgeting decisions made jointly by the chief defender and head of the appellate unit, with final responsibility accorded to the chief defender?

If yes: Does this work well?

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
Are steps being taken to resolve the problems?

5. In a mixed appellate/defense office, are all staffing decisions made jointly by the chief defender and head of the appellate unit, with final responsibility accorded to the chief defender?

If yes: Does this work well?

Yes No

If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
Are steps being taken to resolve the problems?

### FACTUAL DATA TO GATHER AND ASSESS

- Organizational chart
- Supervisory responsibilities (personnel manual)

### Suggestions on Internal Structure

Your office should develop such procedures as are necessary to the appropriate operation of your office. The procedures should include the appointment of intermediate supervisory staff, procedures for governing branch offices, and inclusion of such procedures in the office manual.

In a mixed trial and appellate defender office, all budgeting and staffing decisions within your office should be done jointly by the chief defender and the head of the appellate unit, with the chief defender having ultimate responsibility for the overall budget of your agency.

### TOPIC: GENERAL PROCEDURES

QUESTION: Does the appellate office have a good set of general office procedures?

Yes No

1. Does the appellate defender office have written policies/procedures governing:
  - (a) hours of work?
  - (b) hiring?
  - (c) termination of employment?
  - (d) disciplinary action?
  - (e) grievances?
  - (f) promotion?
  - (g) compensation?
  - (h) sick leave?

- (i) vacations?
  - (j) staff meetings?
  - (k) personal conduct?
  - (l) personnel responsibilities (functions)?
  - (m) filing procedures with court?
  - (n) internal filing procedures?
  - (o) internal information retrieval (e.g., briefs, opinions, pleadings)?
2. Do all staff members have a copy of office policies/procedures?
- If yes: Are they known to all staff?  
Are they used by all staff?
- If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps have been taken to resolve the problems?
3. Does the appellate defender office have standard forms for the perfection and pursuit of appeals and proceedings?
- If yes: Are they known to all staff?  
Are they used by all staff?
- If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps have been taken to resolve the problems?
4. Is a formbook available to attorneys and secretarial personnel within the office?
- If yes: Is it well used?
- If not: Why not?  
What problems does this cause?  
Does the A.D. know the problems?  
What steps have been taken to resolve the problems?

#### Suggestions on General Procedure Standards

Every appellate defender office should have written office procedures covering the internal operation of the office. The written procedures of your office should include hours of operation,

compensation policy, promotion procedures, vacation, sick leave, staff meetings and interaction, forms for legal documents, hiring and discharge proceedings and procedures, discipline procedures, grievances procedures, and all similar matters relating to the operation of your office. These written procedures should be provided to all staff members, and they should be familiar with the procedures which are set forth.

Your office should have standard forms for the perfection and pursuit of appeals and for such other proceedings as are routinely taken in post-conviction or appellate cases. Such book forms should be available to all attorney and secretarial personnel within your office and should be utilized, in the most appropriate manner possible, to increase the efficiency and productivity of your office.

#### TOPIC: PERSONNEL

QUESTION: Do standards exist for the selection of office personnel?

Yes No

1. Is selection of the chief defender in a "stand alone" office by an independent committee or board consisting of lawyers and non-lawyers?

If yes: What is the composition of the committee or board?  
What is the role in the selection process?

If not: What is the method of selection?  
Is it appropriate for the office?  
What problems does it cause?  
Is anyone aware of the problems (including the local bar)?  
Are steps being taken to handle the problems?

2. Is the selection of the chief defender in a "stand alone" office for a specified number of years?

If yes: What is the term?  
By what authority?

If not: How is term of office decided?  
Does this cause any problems?  
Is anyone (or group) aware of these problems?  
Are steps being taken to handle the problems?

3. Is the salary of the chief defender in a "stand alone" office equal to or higher than that of the highest paid attorney in the prosecutor's office?

If yes: No follow-up needed

If not: How is the salary established?  
What is the gap between defender and prosecutor salary?  
What is the reason for the gap?  
Are steps being taken to assure equality?

4. Is the discharge of the chief defender in a "stand alone" office only for "cause shown"?

If yes: What is the discharge process? Criteria?  
Is the process/criteria clear? In writing?  
Is the process/criteria known?  
What causes can be used for discharge?  
What reasons have been used in the past?

If not: What is the discharge process?  
What problems does it cause?  
Is anyone (or group) aware of the problems?  
Are steps being taken to resolve the problems?

5. Is the selection of the chief of the appellate unit in a "mixed" office by chief public defender?

If yes: What is the process?

If not: What is the method of selection?  
Is it appropriate for the office?  
What problems does it cause?  
Is anyone aware of the problems (including the local bar)?  
Are any steps being taken to handle the problems?

6. Does the chief of the appellate unit in a "mixed" office serve at the pleasure of the chief public defender?

If yes: No follow-up needed

If not: How is the term of office decided?  
Does this cause any problems?  
Is anyone (or group) aware of these problems?  
Are any steps being taken to handle the problems?

Yes No

7. Is the salary of the chief of the appellate unit in a "mixed" office equal to or higher than that of the highest paid attorney providing appellate representation on behalf of the prosecution in the jurisdiction?

If yes: No follow-up necessary

If not: How is the salary established?  
What is the gap between defender and prosecutor salary?  
What is the reason for the gap?  
Are steps being taken to assure equality?

8. Is the chief of the appellate unit or section in a "mixed" office retained when a new chief defender is selected?

If yes: No follow-up needed

If not: What is the authority?  
What is the rationale?  
Are politics involved?

9. In a "mixed" office, are short-term transfers into the appellate unit, from the trial unit, discouraged?

If yes: By what means?  
Does it work?

If not: What problems does this cause?  
Is the A.D. (or any group) aware of these problems?  
Are steps being taken to resolve the problems?

10. In a "mixed" office, is recruitment and hiring for staff attorneys done jointly by the chief defender and the head of the appellate unit?

If yes: Does it work well?

If not: What is the mechanism?  
What problems does this cause?  
Is the A.D. (or any group) aware of these problems?  
Are steps being taken to resolve the problems?



Yes No

11. In a "mixed" office, are short-term transfers out of the appellate office discouraged?

If yes: By what means?  
Does it work?

If not: What problems does this cause?  
Is the A.D. (or any group) aware of these problems?  
Are steps being taken to resolve the problems?

12. Is the legal staff recruited openly?

If yes: What is the mechanism?  
How were current staff made aware of the openings?

If not: What is the mechanism?  
Does this mechanism satisfy #10 and #11 above?  
Is anyone (or group) aware of the problems?  
Are steps being taken to resolve the problems?

13. Is every effort made to recruit qualified attorneys of both genders?

If yes: What is the mechanism?  
How were current staff made aware of the openings?

If not: What problems does it cause?  
Is the A.D. (or any group) aware of these problems?  
Are steps being taken to resolve the problems?

14. Is every effort made to recruit qualified attorneys of all racial/ethnic backgrounds?

If yes: What is the mechanism?  
How were current staff made aware of the openings?

If not: What problems does this cause?  
Is the A.D. (or any group) aware of these problems?  
Are steps being taken to resolve the problems?

Yes No

15. Are appointments to the staff made on an indefinite basis?

If yes: No follow-up needed

If not: What is the mechanism?  
Does this mechanism satisfy #10 and #11 above?  
What problems does it cause?  
Is anyone (or group) aware of the problems?  
Are steps being taken to resolve the problems?

16. Are staff salaries equal to or higher than the salaries of persons doing comparable work in the prosecutor's office?

If yes: No follow-up necessary

If not: What is the mechanism?  
What problems does it cause?  
Is anyone (or group) aware of the problems?  
Are steps being taken to resolve the problems?

17. Is the discharge of the legal staff for "cause shown"?

If yes: No follow-up necessary

If not: What is the mechanism?  
What problems does it cause?  
Is anyone (or group) aware of the problems?  
Are steps being taken to resolve the problems?

18. Does an appropriate mechanism exist to appeal a dismissal or disciplinary action?

If yes: Is it known by the staff?  
What is it?

If not: Why not?  
What is the mechanism?  
What problems does it cause?  
Is anyone (or group) aware of the problems?  
Are steps being taken to resolve the problem?

### FACTUAL DATA TO GATHER AND ASSESS

- Personnel Manual
- History of office (chief appellate defender) over past 10 years
- Personnel records of attorneys
- Office salary schedule
- Prosecutor salary schedule
- Personnel records-discharges
- Advertisements for staff attorneys (place of ad, nature of ad)
- Observation of hiring mechanisms disciplinary action, termination

### STATISTICAL DATA TO GATHER AND ASSESS

- % male/female attorneys in office
- % ethnic/racial distribution of attorneys
- Changes in gender percentages over past 10 years
- Changes in ethnic/racial proportions over past 10 years
- Racial composition of locale (and ethnic)
- Racial/ethnic composition of local law school

### Suggestions on Personnel Standards

In "stand alone" appellate defender offices, the chief appellate defender should be selected on a basis of merit by an independent committee or board consisting of both lawyers and non-lawyers. The chief defender should be appointed for a specific term of years, and his/her salary should be equal to that of the highest paid attorney in the prosecutor's office. During the chief defender's term he or she should not be discharged except for cause shown.

In an office which provides representation both at the trial and appellate levels, the chief of the appellate section should be selected by, and serve at the pleasure of, the chief public defender. The salary of the chief of the appellate unit should be equal to that of the highest paid attorney providing appellate representation on behalf of the prosecution in your jurisdiction. The chief of the appellate unit should not be selected on the basis of political affiliation, and it should not be assumed that when a new chief defender takes office that the head of the appellate unit should be discharged.

All members of the defender's office should be hired on the basis of merit after open recruitment and hiring that has been publicly advertised in an appropriate manner. Every effort should be made to recruit and hire qualified persons of both genders and diverse racial and ethnic backgrounds. All members of your staff should be indefinite appointments to the positions, and should continue to serve even when there is a new chief defender.

The salaries of the staff of the state public defender should be equal to or higher than the salaries of persons doing comparable work in the prosecutor's office. Members of your staff should be discharged only for cause shown, and have an appropriate vehicle to appeal such dismissal or discipline to an appropriate independent agency. Such

"cause" for discharge should include the failure to provide competent, effective, or timely representation in a significant number of cases.

Recruitment and hiring in a mixed office should be done jointly by the chief defender and the director of the appellate unit, so as to ensure that persons with a particularized interest or skill in appellate litigation are hired for that unit. Stability in the appellate defender unit should be encouraged, and short-term transfers of attorneys into the unit should be discouraged, although it may be advantageous to allow appellate attorneys to spend short periods of time in trial units. It is preferable to have the attorney who briefed the cases handle it subsequently, including oral argument.

### TOPIC: INFORMATION MANAGEMENT

QUESTION: Does the appellate defender office record and review office procedures?

Yes No

1. Does the appellate defender gather and review information which is necessary for the day-to-day operation of the office?

If yes: What type of information is gathered?  
In what areas it is helpful?  
Who is consulted?

If not: What alternative is used?  
What problems does it cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

2. Does the appellate defender gather and review information which is necessary for short-term (e.g., quarterly) needs of the office?

If yes: What type of information is gathered?  
In what areas is it helpful?  
Who is consulted?

If not: What alternative is used?  
What problems does it cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

**CONTINUED**

**1 OF 2**

3. Does the appellate defender gather and review information which is necessary for long-term (e.g., yearly) needs of the office?

If yes: What type of information is gathered?  
In what areas is it helpful?  
Who is consulted?

If not: What alternative is used?  
What problems does it cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

4. Does the appellate defender always have accurate information on office caseload?

If yes: How is it collected?

If not: What alternative is used?  
What problems does it cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

5. Does the appellate defender always have accurate information on individual attorney workload?

If yes: How is it collected?

If not: What alternative is used?  
What problems does it cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

6. Does the appellate defender periodically review the manner in which data is gathered to determine the efficiency of the office?

If yes: How frequent is the review?  
How extensive is the review?  
Who is consulted?

If not: What problems does it cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

Yes No

7. Does the appellate defender periodically review the manner in which data is gathered to determine the efficiency of office procedures?

If yes: How frequent is the review?  
How extensive is the review?  
Who is consulted?

If not: What alternative is used?  
What problems does it cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

#### Suggestions on Information Management Standards

The appellate defender should determine what types of information need to be gathered for the day-to-day operation of your office, for the long-term needs of your agency, and for case tracking. By reviewing the information, you should determine whether the information being gathered meets the needs of your office on a short-term and a long-term basis. The manner in which the data is collected should be reviewed to determine whether it is efficient or whether the efficiency can be improved through an enhanced management information system or through automation. Your office should adopt a weighted caseload system for all cases entering your office to ensure a fair distribution of cases and accurate information on caseloads.

#### TOPIC: FACILITIES

QUESTION: Does the appellate defender office have facilities which promote professionalism?

Yes No

1. Is each attorney provided with an individual, fully-walled, private office in which to work?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

2. Do the following personnel have private space available for interview purposes when needed?

(a) social workers?

(b) investigators?

(c) paralegals?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

3. Is the appellate defender office conveniently by the primary appellate court?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

4. Is the appellate defender office accessible to their clients through public transportation?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

5. Does the location of the appellate defender office ensure:

(a) the security of office personnel?

(b) the security of the offices?

(c) the security of the clients?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?



Yes No

7. Does adequate space exist in the appellate defender's office for a:

- (a) library?
- (b) law student(s) researcher?
- (c) paraprofessional staff?
- (d) waiting room?
- (e) conference room?
- (f) staff lounge area?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

8. Does the appellate defender's office have adequate:

- (a) heating?
- (b) air conditioning?
- (c) lighting?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

#### FACTUAL DATA TO GATHER AND ASSESS

- Maps of area
- Observations of office

#### Suggestions on Facilities Standards

Each attorney should be provided with an individual, private, fully-walled office in which to work. Your investigator, social workers, and paralegal personnel should have available private office space in which they can interview persons.

The appellate defender office should generally not be located in a government office building or in the same building as the prosecutor. It should be amenable to client visits, and is convenient to the primary appellate court. The office should be located in a building which has easy access to the public and which ensures the security of the office itself as well as that of office personnel. The office should also have the appearance of a professional law office, and not a government agency. The appellate defender and all staff should work towards minimizing the institutional appearance of the office and maximizing its professional appearance.

Adequate space should be allocated in the appellate defender's office for a library, professional staff, waiting rooms, conference space, and lounge areas for staff. The office should also include adequate heating, air conditioning, and lighting to perform its equired duties.

#### TOPIC: EQUIPMENT

QUESTION: Does the appellate office have the equipment to assure quality representation?

Yes No

1. Is the chief defender or administrator familiar with the typewriting equipment currently available on the market (including computerized systems with text-editing capabilities)?

If yes: Is it appropriate for the office?  
Is it feasible for the office to rent/buy?

If not: Why not?

2. Does the appellate office use appropriate typewriting equipment?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

Yes No

3. Does the appellate office have an adequate phone system?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

4. Does the appellate office use adequate duplicating equipment?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

5. Does the appellate office have appropriate dictating and transcribing equipment?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

6. Does the appellate office use the dictating and transcribing equipment it has?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

7. Does the appellate office have adequate investigation equipment including cameras and tape recorders?

If yes: No follow-up needed

If not: Why not?  
What problems does this cause?  
Is the A.D. aware of the problems?  
Are steps being taken to resolve the problems?

## FACTUAL DATA TO GATHER AND ASSESS

- Observe equipment in use

### Suggestions on Equipment Standards

The chief defender or administrator of your office should be generally familiar with the typewriting equipment which is available currently on the market, including computerized systems which have text-editing capabilities. Your office should use appropriate typewriting equipment for the nature of the work, including machines which have the capability of doing text-editing.

Your office should have adequate duplicating equipment within the office, to perform the needs of the office, including where necessary, equipment to provide duplication of briefs for submission to the court. Appropriate dictating and transcription equipment should be used, and you should maintain compatible equipment to maximize the efficiency of the office.

APPENDIX

A

STANDARDS FOR  
APPELLATE DEFENDER OFFICES

AN APPELLATE DEFENDER OFFICE SHOULD PROVIDE HIGH-QUALITY LEGAL REPRESENTATION IN ALL APPROPRIATE POST-CONVICTION MATTERS IN AN EFFICIENT AND COST-EFFECTIVE MANNER.

I. CRITERIA FOR ASSURING THE QUALITY OF LEGAL REPRESENTATION.

A. Selection of the Chief Defender in "Stand Alone" Appellate Defender Offices

1. The chief appellate defender shall be selected on the basis of merit by an independent committee or board consisting of both lawyers and non-lawyers.
2. The chief defender's primary qualifications shall be:
  - a. The demonstrated commitment to the provision of quality defense representation for eligible persons charged with or convicted of criminal conduct;
  - b. The demonstrated ability to properly administer a law office of similar size and responsibilities; and
  - c. The demonstrated knowledge of the criminal law and the effective ability to provide actual representation.
3. The chief defender shall be appointed for a specific term of years.
4. The salary of the chief defender shall be equal to that of the highest paid attorney in the prosecutor's office.
5. The chief defender shall not be selected on the basis of political affiliation, and candidates for such position shall not be requested to provide information regarding political affiliation.
6. During the chief defender's term he or she shall not be discharged except for cause shown.

B. Selection of the Chief Appellate Defender in a mixed Trial/Appellate Office

1. In an office which provides representation both at the trial and appellate levels, a separate unit or section

should be established to provide appellate representation.

2. The chief of the appellate unit or section shall be selected by, and serve at the pleasure of, the chief public defender.
3. The chief of the office's appellate unit shall have the following qualifications:
  - a. A demonstrated ability to administer the unit;
  - b. The demonstrated expertise in appellate litigation, particularly in criminal cases;
  - c. The demonstrated ability to prepare effective written arguments and to edit the briefs of other attorneys; and
  - d. A demonstrated ability to interact appropriately with staff members, clients, and members of the public in general.
4. The salary of the chief of the appellate unit shall be equal to that of the highest paid attorney providing appellate representation on behalf of the prosecution in that jurisdiction.
5. The chief of the appellate unit shall not be selected on the basis of political affiliation, and it should not be assumed that when a new chief defender takes office that the head of the appellate unit should be changed.

C. Selection of Legal Staff

1. All members of the defender office shall be hired on the basis of merit after open recruitment and hiring that has been publicly advertised in appropriate manners. Every effort shall be made to recruit and hire qualified persons of both genders and diverse racial and ethnic backgrounds.
2. The primary qualifications of staff attorneys in an appellate defender unit shall be:
  - a. The desire and ability to provide quality representation to indigent persons on appeal in criminal cases as demonstrated by such prior activities as:
    - i. Previous representation of criminal defendants;
    - ii. Clinical or law school work in legal writing, appellate advocacy, or similar activities;

iii. Clerkship or similar positions on appellate courts; and,

- b. The ability to interact in a timely, professional, and appropriate manner with office staff, court personnel, and clients.
- 3. It is not to be assumed that an attorney whose primary previous experience is in the trial of cases is qualified to be an appellate defense counsel. Such persons shall independently demonstrate their ability to provide appellate representation to eligible defendants.
- 4. All members of the public defender staff shall have indefinite appointments to the positions, and shall continue to serve even when there is a new chief defender.
- 5. The salaries of the staff of the state public defender shall be equal to or higher than the salaries of persons doing comparable work in the prosecutor's office.
- 6. Staff members shall not be selected on the basis of political affiliation or be required to provide information regarding political affiliation.
- 7. Members of the public defender staff shall be discharged only for cause shown, and have an appropriate vehicle to appeal such dismissal or discipline to an appropriate independent agency. Such "cause" for discharge shall include the failure to provide competent, effective, or timely representation in a significant number of cases.

#### D. Scope of Representation

- 1. The appellate defender shall have a clearly-articulated policy of discussing the merits, strategy, and ramifications of the proposed appeal with each client prior to the perfection and completion thereof. Such policies shall include discussing any possible adverse consequences or strategic problems when pursuing such appeal, even when there is an arguable issue to appeal. It is the obligation of the appellate counsel to provide the client with his/her best professional judgment as to whether the appeal should be pursued in view of the and strategic considerations.
- 2. The appellate defender shall have a clearly-articulated policy regarding seeking the release of defendants on appellate bond which shall include the filing of appropriate motions seeking release pending appeal when the granting of such motion is reasonably possible.
- 3. The appellate defender shall have a clearly-articulated



policy regarding the filing of motions in the appellate court which should include providing the client with the most complete and effective representation in the appellate court through the appropriate motion practice.

4. The appellate defender may provide representation in interlocutory (pre-judgment) appeals, and shall make the availability of the office known to attorneys providing representation to criminal defendants at trial.
5. The appellate defender shall be assigned appeals taken by the prosecution in the same manner in which appeals are assigned when taken by the defendant.
6. The appellate defender shall have discretion to seek appropriate relief in trial courts following conviction. The unsuccessful pursuit of a appeal should not be a condition precedent to seeking relief in the trial court.
7. The appellate defender shall have the authority to seek discretionary review in any state appellate court, consistent with the appellate defender's professional judgment.
8. The appellate defender shall have the discretion to seek review of any state court conviction in both the United States Supreme Court by writ of certiorari or appeal and in federal courts when such relief appears to be warranted in the attorney's best judgment.
9. The appellate defender shall have the discretion to assist prison inmates and others seeking redress of institutional grievances, and shall have the discretion, where resources are available, to provide representation to such persons in appropriate litigation challenging the condition of such confinement.
10. The appellate defender shall assist non-clients in seeking appropriate post-conviction remedies, including seeking counsel on appeal, obtaining the necessary forms for filing motions in state and federal courts, and explaining to prison inmates the law as it relates to the facts of each case. The appellate defender should take whatever steps are necessary to ensure that non-clients are provided appropriate representation either by the appellate defender or by other counsel, where such representation appears to be in the defendant's best interest and supported by arguable legal bases.
11. The appellate defender shall file amicus curiae briefs in state appellate courts when issues are raised in cases litigated by other counsel when such cases will have a significant impact on a large number of defender clients

and the briefs filed by counsel can be effectively augmented by such amicus briefs; in all other cases the appellate defender shall have the discretion to file amicus briefs.

#### E. Timing of Post-Conviction Representation

1. The appellate defender shall cooperate with the trial courts, appellate courts, trial public defenders and private attorneys to ensure that all appeals desired by criminal defendants are timely pursued. The appellate defender should further directly assist defendants in filing the necessary jurisdictional documents to perfect appeals in a timely manner.
2. The appellate defender shall cooperate with trial courts, appellate courts, trial defenders, and private attorneys to ensure that no defendant is without legal representation between trial and appeal, while awaiting the assignment of counsel by the court. Such cooperation might include the development of rules or procedures for ensuring that no hiatus in counsel exists, and working with the appropriate courts in developing procedures such as to ensure continuity of representation.
3. The appellate defender should take all steps necessary to reduce the delays and time necessary for the processing of appeals which adversely affect the client. Such efforts include the development of appropriate appellate court rules which minimize the unnecessary procedures for perfection and prosecution of an appeal.
4. Cases in which the defendant is incarcerated only on the basis of the conviction under appeal shall be handled in a priority manner.
5. The public defender shall cooperate with the courts and court reporters to ensure the prompt completion of the appropriate record on appeal. The public defender shall not determine the merit of any case without the careful review of such records.

#### F. Caseload

1. In order to assure that effective representation is being provided by the appellate office and that adequate information is provided the funding source upon which to base an appropriate budget, it is essential that all appellate defender units develop caseload standards which accurately reflect the amount of casework which can be done by existing or contemplated staff.
2. The caseload for each particular jurisdiction should refer to national standards based on time records developed by

each individual office based upon the specific nature of the cases handled by that unit.

3. It is essential that accurate records be kept for a period of time, to determine the actual time necessitated by a wide variety of cases handled by the appellate defender in each jurisdiction, including death penalty cases, lengthy or complex cases, cases which do not involve a formal appeal to the appellate court, and other types of varied cases.
4. The appellate defender shall have clearly-articulated policies to prevent the office from exceeding its caseload standards. Such policies should be discussed in advance with the funding authority and the appointing courts to ensure no misunderstanding regarding the obligations of the appellate defender. Such caseload standards and procedures should be reduced to writing regarding excessive caseload.

#### G. Staffing

1. In order to ensure quality representation and to adequately support requests for staffing and funding, each appellate unit shall develop staffing ratios related to the caseload and number of attorneys in the office.
2. Prior to the creation of any appellate unit, or as soon thereafter as possible, a clearly-articulated caseload standard staffing ratio and caseload weighting system should be developed - and publicly stated - with written plans for alternative methods of providing representation in the event those standards are exceeded.

#### H. Case Weighting and Staffing Ratios

1. An appellate defender office or division shall annually complete twenty-two work-units for each full-time attorney or the equivalent. In jurisdictions which require an abridgement of the testimony by the appellant, the annual workload shall be twenty (20) work-units. The number of work-units shall be determined as follows:
  - a. A brief-in-chief or Anders brief filed in a case in which the court transcripts are 500 pages or less shall be one work-unit, except as otherwise provided herein.
  - b. In cases in which the defendant has not been sentenced to death, one additional work-unit shall be added for each additional 500 pages of court transcript.
  - c. In cases in which the defendant has been sentenced to

death, the preparation of the brief shall constitute ten (10) work units and the procedures specified in subparagraphs f., g., h., and i. shall constitute ten times the work-units specified in those subparagraphs.

- d. A brief involving only the validity of a guilty plea or only the propriety of a sentence in which there shall constitute one-half work unit.
- e. A case which is closed by the appellate unit with the submission of neither a brief nor post-conviction motion shall constitute between one-quarter and one-half work-units, depending on the length of the record reviewed and work done on the case.
- f. A case which is closed by the appellate unit after the disposition of a post-conviction motion or writ but without the submission of an appellate-court brief shall constitute between one-half and one work-unit depending on the length of the record reviewed, the nature of the post-conviction hearing, and whether a trial court brief was submitted.
- g. A case in which an evidentiary post-conviction hearing is conducted by the appellate unit and in which an appellate court brief is submitted shall constitute between one and one half to two work-units.
- h. The preparation of a reply brief or a petition for review or certiorari in a state court shall be to one-quarter work-units. A petition for a writ of certiorari filed in the Supreme Court of the United States shall be one-half work-unit.

#### I. Client Contact

- 1. All appellate defender clients shall be personally interviewed by the attorney who will actually be handling the case.
  - a. Each appellate defender unit shall adopt written office policies which require each client to be seen by the attorney actually providing representation in that case. Such policy shall include at least one visit, and such additional visits as are required by the particular facts and circumstances of the case.
  - b. Each appellate defender office shall work out, in advance, procedures with those correctional institutions which will be visited by appellate

defender staff to insure the least possible delay and misunderstanding.

- c. The appellate defender shall work with institutional officials to ensure that each correctional institution makes arrangements for a private interview room for attorney/client visits. An attorney shall not be expected to interview a client in a general visiting room, a room divided by a screen or glass partition, or a room in which a listening device is installed. An attorney shall not be expected to interview a client while the client is wearing handcuffs, leg irons, or chains. The appellate defender should work with the department of corrections and the superintendents of each institution to ensure an advance understanding of the facilities needed for private interview space.

## 2. Mail Contact

- a. The appellate defender shall take all necessary steps to ensure that the attorney/client privilege is protected in all correspondence to and from an incarcerated individual. The appellate defender shall work with the prison administration and the attorney general in the state to ensure that the appropriate law in that jurisdiction is followed in relation to the opening and or censoring of attorney/client mail.
- b. The appellate defender shall inform his or her client of the status of the case at each step in the appellate process, shall explain any delays in the case, and shall provide general information to every client regarding the process and procedures which will be taken in the matter, and the anticipated timeframe for such processing.
- c. The appellate defender shall provide the client with each substantive document filed in the case by both the prosecution and the defense.
- d. The appellate defender shall respond in a timely manner to all correspondence from clients, provided that the client correspondence is of a reasonable number and at a reasonable interval.

- 3. Telephone contact. The appellate defender should inquire as to the possibility of gaining telephone contact with clients who are incarcerated when such a brief telephonic contact can further the client's interest.

## J. Contact With Trial Counsel

1. Each appellate defender office should have a clearly-articulated procedure for contact with trial counsel which shall include, at a minimum, notifying trial counsel that the appellate defender unit has been assigned to provide appellate representation to the defendant and should include such other general procedures as appear necessary within that jurisdiction.
2. In any case in which appellate counsel argues that trial counsel provided ineffective representation, appellate counsel should give notice to the trial attorney of such asserted claim.
3. Each office shall develop clearly-articulated internal procedures for screening cases in which claims of ineffectiveness are raised.
4. Appellate defenders working in a mixed office which includes a trial representation unit should always be mindful of the potential conflict in providing representation to an individual representation to an individual represented by that same office at trial. Attorneys should carefully consider claims of ineffectiveness in every case, and immediately take action to remove the case from the public defender's office when such claim appears to be arguable.
5. The appellate defender should encourage cooperation with trial counsel, including the trial attorney providing assistance on appeal, provided, however, that appellate counsel is primarily responsible for the handling of such a case.

## K. Training

1. Training for attorneys.
  - a. Each appellate defender office shall have an established training program for entry level attorneys which should be commenced prior to the attorney actually providing representation in any case. "On the job" training, based upon what the attorney will learn from individual cases is not adequate. Such training shall involve both appellate defender staff, court personnel, and others.
  - b. The appellate defender shall have ongoing continuing legal education programs for attorneys, and specially designed ongoing training for all members of the staff, including support staff and the most senior attorney.
  - c. The appellate defender shall make use of national programs which are of particular relevance to appellate defenders, and shall work with funding sources to

ensure funding for both in-state and out-of-state continuing legal education programs.

2. The appellate defender office shall have training for all staff members that enter the office, including secretarial persons. Such training should include a background on the importance of the appellate defender and the relationship of the work each staff member to the ultimate goal of the office of providing quality and efficient representation.
3. The appellate defender should take an active role in the continuing legal education of the entire bar, and should work actively with the providers of continuing legal education to ensure participation.
4. The appellate defender shall cooperate and work with attorneys who provide trial representation to:
  - a. Identify issues which might be raised at trial which reflect new or developing legal trends.
  - b. Properly preserve at trial issues which might be raised on appeal;
  - c. Acquaint the trial bar with recent decisions which have an impact on the trial cases; and
  - d. Share the appellate defender research facilities if such materials are not available elsewhere and the appellate defender has adequate materials and office space.

#### L. Brief Preparation

1. All briefs filed by the appellate defender shall conform to the court rules of that jurisdiction.
2. All briefs filed by the appellate defender should have a professional, neat appearance, without typographical errors or misspellings, and be generally comparable in appearance to the briefs filed by the best law firms in the state.
3. All briefs filed by the appellate defender shall make appropriate use of legal authority, and be of the highest professional quality.
4. Briefs filed by the appellate defender office shall utilize federal case authority from other jurisdictions in support of positions for which no local authority exists or when local authority is contrary to the weight of recent decisions from other jurisdictions.
5. Briefs filed by the appellate defender shall include non-case reference materials, such as law reviews, treatises, scientific works, and, where appropriate, legal encyclopedia.

6. Briefs filed by the appellate defender shall have a consistent method of citation, consistent with that used by the appellate courts in the state or circuit. Where no consistency is found in the appellate courts, the appellate defender should follow the prescribed form of citation used in the Harvard Citator.
7. Appellate defenders should not use blind citations without supporting materials or run-on citations, listing many cases in support of one general or vague proposition.
8. Each appellate defender should adopt procedures for reviewing and screening the briefs that are filed by that office, which should include the careful review of the brief and record by at least one member of the staff other than the person who wrote the brief prior to the completion of the final draft of the brief, in offices of more than five attorneys, supervisory staff shall be designated for this purpose.
9. Each appellate defender should adopt procedures for providing an "issues conference" between the attorney handling the case and some other members of the staff in which the issues raised in the case are appropriately discussed prior to the actual commencement of the writing of the brief in the case.

#### M. Oral Argument

1. In jurisdictions which allow or encourage waiver of oral argument on appeal, the appellate defender shall have written standards for determining when such waiver is appropriate or requested.
2. All attorneys who are going to provide oral argument before an appellate court have adequately prepared their argument. The office should adopt procedures for assisting attorneys with the development and presentation of oral argument, including the use of "moot court" arguments and video tape.
3. The chief appellate defender shall make certain that each member of his or her staff understands the rudiments of appellate argument, including the fact that no oral argument is to be read.

#### N. Discretionary Review

1. Each office should have procedures for determining how cases should be reviewed and what standard should be applied when deciding whether a discretionary appeal to either state or federal court should be taken.
2. Review of each case for determining whether it is appropriate for discretionary review shall be based upon articulated standards, and in the event the attorney handling the case determines that such discretionary review shall not be



pursued, the case shall be reviewed by another attorney other than the one who initially presented the case. In offices of five or more attorneys, supervisory staff shall be designated for this purpose.

3. Following an unsuccessful first appeal, the defendant shall be informed of the alternatives for discretionary review, and given the opportunity to articulate a desire to seek such review. In the event a competent client indicates that no further appeals shall be pursued, no further action shall be taken by the appellate defender. In the event the client desires to pursue a discretionary appeal or further discretionary review, the ultimate decision of whether such discretionary review shall be pursued is the attorney's, and not the client's.
4. Every appellate defender in a state system shall have the availability of review in the federal courts by habeas corpus. State appellate defenders shall not be restricted to state courts.
5. When a defendant absconds during the pendency of an appeal, no new appeals, or petitions should be filed on his/her behalf. Any pending appeal shall be completed, unless it appears that the fact that the defendant has escaped will prejudice the defendant at any new trial. Except when learned through information governed by the attorney-client privilege, the appellate defender shall inform the court having jurisdiction over the case that the defendant has absconded.

#### O. Procedure for Anders Cases

1. Each office shall have a procedure for determining how the office shall handle cases which fall under the criteria of Anders v. California, 386 U.S. 738 (1967), and how such decision should be communicated to the courts and the clients.
2. An office may determine that Anders briefs shall never be filed, but such decision should be made only after consideration of the ramifications of such decision, and consultation with representatives of the appellate court, and with representatives of the prosecution. Appellate defenders should consider that filing merit briefs in every case may undermine the credibility of the appellate defender with the appellate courts. On the other hand, appellate defenders should consider that the filing of Anders briefs may compromise the office's reputation within the client community.
3. The appellate defender shall adopt an extremely strict standard in determining what cases have "no arguable merit." Such cases should be genuinely frivolous, and not simply cases which the appellate defender believes will not prevail on appeal.

4. Anders briefs shall not be filed in cases in which the death penalty or life imprisonment has been imposed.
5. The office shall adopt an internal procedure for review of all cases in which it has been decided by the attorney handling the case that an Anders brief will be filed. Such internal review shall include, at the minimum, a plenary review of the case by another member of the legal staff. In offices of more than five attorneys, supervisory staff shall be designated for this purpose.
6. In each case in which a determination has been made that an Anders brief shall be filed, the attorney shall communicate that decision to the client prior to the filing of such brief, and shall give the client the opportunity to withdraw his request for the appointment of counsel or to withdraw the appeal. Such option should be given in a non-coercive manner, with the attorney making clear that an Anders brief will be filed as an alternative.
7. The attorney shall send a copy of the Anders brief to the defendant with instructions for responding thereto, and may assist the defendant in responding to the Anders brief or in contacting another agency or lawyer for such assistance.
8. In any case in which the appellate court has rejected an Anders brief, the chief appellate attorney shall review the handling of the case, the merits of the case, and discuss the matter with the attorney handling the case to determine whether the office procedures for screening the case was adequate, and whether it is appropriate for that attorney or the office to continue representation.
9. Each appellate defender office should adopt clearly-articulated procedures for dealing with clients who desire to raise individual issues in cases which the attorney believes to be without arguable merit. Such procedures should be sufficient to ensure that the issue desired by the client is presented to the appellate court in an appropriate manner so as to receive the serious attention of the court. It is preferable to have counsel include the issue in the brief submitted, if at all possible.

## II. CRITERIA FOR ASSURING THE EFFICIENCY OF THE LEGAL REPRESENTATION

### A. Regular Office Procedures

1. Every appellate defender office shall have written office procedures covering the internal operation of the office.

2. These written procedures shall be provided to all staff members.
3. Staff members shall be familiar with the procedures which are set forth in the written procedures.
4. The office shall adhere to the written procedures.
5. The written procedures of the office shall include hours of operation, compensation policy, promotion procedures, vacation, sick leave, staff meetings and interaction, forms for legal documents, hiring and discharge proceedings and procedures, discipline procedures, grievances procedures, and all similar matters relating to the operation of the office.
6. Each appellate defender office shall have standard forms for the perfection and pursuit of appeals and for such other proceedings as are routinely taken in post-conviction or appellate cases. Such form books shall be available to all attorney and secretarial personnel within the office and shall be utilized, in the most appropriate manner possible, to increase the efficiency and productivity of the office.

#### B. Management Information Systems

1. The appellate defender shall determine what types of information needs to be gathered for the day-to-day operation of the office, for the long term needs of the agency, and for case tracking.
2. The office shall determine whether the information being gathered meets the needs of the office.
3. The office shall review the manner in which the data is collected to determine whether it is efficient or whether the efficiency can be improved through an enhanced management system or through automation.
4. The office shall adopt a weighted caseload system for all cases entering the office to ensure a fair distribution of cases and accurate information on caseloads.

### C. Assignment, Management, Supervision and Case Flow

1. Each appellate defender shall develop a procedure for the assignment of cases to the lawyers within the office. Such procedures may include either assignment at the time that case is assigned to the office or when the complete trial record and transcripts have been received.
2. When cases are not assigned to a specific attorney until the record is received, the appellate defender shall immediately inform the client of this fact and ensure that the client has a person within the office to contact prior to the receipt of the court record.
3. Cases shall not be reassigned to another attorney within the office unless:
  - a. The first attorney leaves the defender office permanently or for a significant period of time.
  - b. The first attorney's workload is such to deny the client prompt handling of the case; or
  - c. The chief defender determines there to be an irreconcilable conflict between the first attorney and the client which prevents a normal attorney/client relationship and the client has not previously requested a change of counsel.
4. Attorneys who transfer from the appellate division of defender office to another division shall retain all appellate cases in which he/she has already interviewed the defendant or read the trial transcript.
5. Clients may request a specific attorney within the appellate defender office to handle his/her case, and the chief appellate defender shall consider such request, but the assignment of the case is within the discretion of the chief defender based upon the following factors:
  - a. The attorney's workload and schedule;
  - b. The attorney's ability to provide prompt and high quality representation in that specific case; and
  - c. The attorney's and the office's previous contact with the client.

6. The appellate defender shall adopt procedures for monitoring the flow and movement of cases to determine.

- a. Any inappropriate delays in individual cases;
- b. Any attorneys who are not handling cases in an appropriate timeframe;
- c. Any systematic delays which can be identified and corrected; and
- d. Assignment of cases and anticipating future caseloads.

Such monitoring shall occur on a monthly basis and shall be the responsibility of a specific supervisory attorney designated by the chief defender.

#### D. Internal Structure of the Appellate Defender Office

- 1. In a mixed trial and appellate defender office.
  - a. Recruitment and hiring in a mixed office shall be done jointly by the chief defender and the director of the appellate unit, so as to ensure that persons with a particularized interest or skill in appellate litigation are hired for that unit.
  - b. Stability in the appellate defender unit should be encouraged, and short-term transfers of attorneys into the appellate unit should be discouraged, although it may be advantageous to allow appellate unit should be discouraged, although it may be advantageous to allow appellate attorneys to spend short periods of time in trial units. It is preferable to have the attorney who briefed the cases handle it subsequently, including oral argument.
  - c. All budgeting and staffing decisions within a public defender office shall be done jointly by the chief defender and the head of the appellate unit, with the chief defender having ultimate responsibility for the overall budget of the agency.
- 2. In stand-alone appellate defender offices, the appellate defender should develop such procedures as are necessary to the appropriate operation of the office, including the appointment of intermediate supervisory staff, procedures for governing branch offices, and inclusion of such procedures in the office manual.

#### E. Procedures for Handling Conflict of Interest Cases

1. Each office shall have a written definition of situations which constitute a conflict of interest, requiring the assignment of outside counsel. Those situations shall include:
  - a. When the appellate defender is appointed provide representation to co-defendants, absent extraordinary circumstances warranting joint representation and the consent of all clients involved.
  - b. When the defendant was represented by the trial division of that same defender agency and it is asserted by the client or appears arguable to the appellate attorney that trial counsel provided ineffective representation;
  - c. When two or more clients have entered pleas of guilty or have advanced defenses at trial which were not inconsistent, but assert for the first time after conviction that one or more of the clients were more culpable than others;
  - d. When it is necessary for the appellate attorney to interview or examine in a post-conviction evidentiary hearing another client of that office in an effort to substantiate information provided by the first client; or
  - e. When, in the pursuit of an appeal or post-conviction hearing it is necessary to assert for the first time that another client of the office committed perjury at trial.
2. If a conflict of interest exists, it exists for the entire office, and assigning the case to another attorney within that entire agency will not cure the conflict.
3. As soon as a case is identified as meeting the definition of "conflict of interest case" the case shall be immediately identified and assigned to counsel outside the defender office. The office shall adopt a procedure for ensuring a prompt review of each case to make a timely decision as to whether a conflict of interest is probable.
4. The procedure followed by the office shall be adequate to obtain independent counsel in a timely manner.

#### F. Eligibility for Services

1. Each office shall have written standards for eligibility for persons applying for the services of the appellate defender. It is assumed that defendants who were found to be indigent at the time of trial and who have been sentenced to a correctional institution remain indigent.
2. The standards should generally reflect the individual's ability to retain counsel in the private market given the individual's other financial obligations, and not be artificially geared to a level of income or assets not related to the cost of obtaining adequate representation privately.
3. The eligibility standards shall be established in such a manner that the defendant's eligibility can be easily determined on an application, affidavit, or similar instrument.
4. The office shall adopt procedures for assisting persons who are found to be not eligible under such standards, including obtaining retained counsel and, if appropriate, seeking review of the eligibility decision either by a court or appellate court.

#### G. Facilities

1. Office space
  - a. Area for staff. Generally 150 sq. ft. should be allocated for each full-time or equivalent staff member.
  - b. Privacy. Each attorney should be provided an individual, private, fully walled office in which to work; investigators, social workers, and paralegal personnel have available private office space in which they can interview persons.
  - c.
    - i. The appellate defender office should generally not be located in a government office building or in the same building as the prosecutor, but should be located in an area which is accessible to public transportation, is amenable to client visits, and is convenient to the primary appellate court.
    - ii. The appellate defender should be located in a building which has easy access to the public and which ensures the security of office personnel.

iii. The appellate defender office should have the appearance of a professional law office, and not a government agency. The appellate defender and all staff should work towards minimizing the institutional appearance of the office and maximizing its professional appearance.

iv. Adequate space should be allocated in the appellate defender's office for library, waiting rooms, conference space, and lounge areas for staff.

v. The appellate defender office should have adequate heating, air conditioning, and lighting to perform its required duties.

## 2. Library

a. Where such materials are published, each attorney in the appellate defender office shall be provided:

i. One complete set of state statutes and court rules;

ii. One set of statutes annotated, covering those statutes and rules governing criminal and appellate law and procedures;

iii. Those sections of the state digest and/or prosecutors in the jurisdiction; and

iv. A directory of all attorneys, judges, and prosecutors in the jurisdiction; and

v. A dictionary.

b. At a minimum, each appellate defender shall have an in-house library with at least the following material:

i. A complete set of:

- 1) United States Supreme Court decisions;
- 2) All published state appellate court decisions;
- 3) Federal Reporter, Second Series;
- 4) State Statutes Annotated;
- 5) State Digest;
- 6) State legal encyclopedia;



- 7) Law reviews published in the state;
  - 8) Either Am. Jur. or C.J.S.;
  - 9) Pattern criminal jury instructions for the state;
  - 10) Federal Digest;
  - 11) State Shepard's Citations; and
  - 12) Current A.B.A. Standards for Criminal Justice; and
  - 13) Current prison, parole, and probation regulations for that jurisdiction.
- ii. One set of all published state appellate court decisions since 1960 for every ten attorneys.
  - iii. Current Criminal Law Reporter.
  - iv. Legal Dictionary
  - v. One standard treatise on:
    - 1) criminal substantive law;
    - 2) criminal procedure; and
    - 3) criminal evidence.

- c. Priority should be given to expanding the law library beyond this minimum collection.
- d. Each appellate defender shall identify those complete law libraries convenient to its offices which contain regional and state reporters, Federal Supplement, all major law reviews, and such standard references as A.L.R. and Words and Phrases. The appellate defender shall endeavor to work out procedures for the staff to use such materials during working and non-working hours and, where appropriate, to withdraw materials from the library.

### 3. Other Research Aids

#### a. Briefbank

- i. Each appellate defender office shall have an index of briefs such as will allow other staff members and other researchers to have access to briefs completed by the office.
- ii. Each office shall have a procedure for requiring the cataloging of briefs done by the office.
- iii. Each office shall have a procedure for requiring the cataloging of motions/research done by the office.

#### b. Automated Research Devices

- i. Where funds are available, each appellate defender should determine the feasibility of using automated research equipment to do legal research.
  - ii. The automated equipment should be put in a location that is accessible to all staff members, but disrupts the research of other staff members as little as possible.
  - iii. The office should develop procedures to ensure the utilization of the automated equipment by staff members.
  - iv. The office should monitor the cost efficiency of all automated equipment within the office to determine whether it is sufficient for the office's purpose.
- c. Unless it would seriously disrupt the operation of defender office, the appellate defender should make its library, brief bank, and research tools available to other public defenders and members of the private bar.

#### 4. Word processing Equipment

##### a. Typewriting Equipment

- i. The chief defender or administrator of the office shall be generally familiar with the typewriting equipment which is available currently on the market, including computerized systems which have text-editing capabilities.
  - ii. The office shall use appropriate typewriting equipment for the nature of the work, including machines which have the capability of doing text-editing.
- b. The public defender office shall have adequate duplicating equipment, in-house, to perform the needs of the office, including, where necessary, equipment to provide duplication of briefs for submission to the court.
- c. The appellate defender office shall make use of appropriate dictating and transcribing equipment and shall maintain compatible equipment to maximize the efficiency of the office.

## G Brief Preparation

### 1. Timeliness of Briefs

- a. At least 75 percent of all briefs filed by the appellate defender should be filed within the time limit set by statute or court rule without extension.
- b. In cases in which briefs are not filed within the time limitation set by court rule or statute, the appellate defender office shall have established procedures for requesting extensions of time in a timely and efficient manner.

### 2. Each appellate defender shall adopt procedures for ensuring that all materials submitted by the court are circulated to staff members for their information and feedback and are cataloged for further reference by the staff.

### 3. All material filed in each case shall be sent to the client involved, as should prosecution briefs and substantive pleadings.

### 4. Reply Briefs

- a) Each office shall adopt a procedure for the filing of reply briefs.
- b) Priority of briefs
  - i. Reply briefs shall be limited to responding to issues raised by the prosecution, not theretofore identified or adequately argued in the brief-in-chief.
  - ii. New materials should not generally be raised for the first time in a reply brief.

## H. Feedback

### 1. With Appellate Courts

- a. The appellate defender and his or her staff shall establish regular lines of communication with judges on the appellate court and with appellate court staff to determine whether the office is providing representation in a manner acceptable and appropriate to the court.

- b. The appellate defender shall establish procedures for the disposition of administrative matters which arise on an emergency basis and to avoid confrontation with court staff.
- 2. The appellate defender should establish a cordial, and professional, relationship with the appellate court prosecutor so that mutual problems can be solved administratively or with a concerted effort.
- 3. The appellate defender should have on-going contact with the criminal defense bar in the jurisdiction.
- 4. The appellate defender should have contact with the private bar generally within the jurisdiction.
- 5. The appellate defender should reach out to the client community, and particularly to the community of institutionalized persons, to provide assistance, information, and support.

APPENDIX

B

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