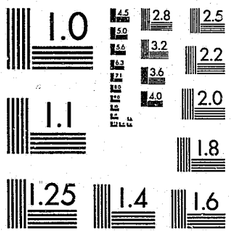

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FINAL EVALUATION

OF THE

IOWA APPELLATE DEFENDER

by

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I. INTRODUCTION

The National Legal Aid and Defender Association administered the Appellate Defender Development Project, which was funded through a grant from the Law Enforcement Assistance Admnistration (LEAA) of the United States Department of Justice. The principal objective of the Project was to establish and fund four new appellate defender offices in the states of Arkansas, Iowa, New Hampshire, and North Carolina. The Association and Project staffs provided each appellate office with administrative and managerial assistance, reviewed briefs filed by each office, and were responsible for providing each office substantive training and technical information as required. The grant provided that a "final" evaluation of each appellate office be conducted by the Project Director and outside consultants. The design and format of the evaluation are consistent with that described in the Standards and Evaluation Design for Appellate Defender Offices, National Legal Aid and Defender Association, 1980 (hereafter cited as Evaluation Design).

In May, 1981, the Iowa legislature voted overwhelmingly in favor of state organizational and financial responsibility for the State Appellate Defender office. In June, 1981, Governor Robert D. Ray signed the Office of Appellate Defender into law.

One of the purposes of this evaluation is to describe the operations of the Iowa State Appellate Defender during the grant period. An equal, if not more important, objective is to instruct other appellate defense offices, including those funded through this grant, as to the history and strategy of efforts to obtain state financing and control of the appellate defender office.

All of the offices established by NLADA are experimental, and all seek to improve appellate defense services provided to their clients and the general quality of defense services provided in each state.

The Association expresses its deep appreciation to the staff of the State Appellate Defender which contributed greatly, by its cooperation, to the completion of this final evaluation. Special thanks go to the Iowa Crime Commission, and especially to Dr. Robert A. Lowe, formerly Court Specialist, for tireless devotion to the improvement of indigent defense in Iowa. NLADA and the evaluation team also wish to express their appreciation to all other individuals who supported the continuation of the State Appellate Defender office and who so willingly donated their time and effort to make the office a reality.

I. INTRODUCTION

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II. METHOD

A. Background and Preparation

Two on-site visits were made to Iowa prior to the final evaluation visit in August of 1981. In July of 1980, NLADA staff met with members of the Iowa Crime Commission, Justices of the Iowa Appellate and Supreme Courts, members of the public defender offices within the state, and a representative of the Attorney General's office, to resolve some of the initial problems of establishing an appellate defender office in Iowa. After the office opened, a second visit was paid to the Iowa Appellate Defender by Theodore A. Gottfried, State Appellate Defender for Illinois, in March of 1981 to conduct the short-term evaluation of the office. (A written report of that visit is available upon request.) Also, shortly after the opening of the office, Frank Hoyt, the Iowa Appellate Defender, spent a day with Association staff in Washington. During the entire grant period, Association staff received briefs for review.

In the final evaluation, the team focused its attention on all aspects of service provided by the Iowa Appellate Defender, as well as on the administrative and political history of the program. Extensive interviews were conducted by the evaluation team while on-site. Moreover, a group of randomly-selected briefs was reviewed by the evaluation team, including several briefs on appeal and Anders motions filed by the office.

Prior to the evaluation, NLADA staff reviewed monthly reports submitted by the Iowa office. These reports contained basic statistical information on office caseload and case flow, and selected budget figures. This review provided the evaluation team with a number of questions asked during the site visit.

B. Evaluation Design

The evaluation design was based on that proposed in the Evaluation Design. That publication sets forth questions to be asked and data needed by evaluators to describe the extent and quality of the services rendered by an appellate defender office, its administration and procedures, and its adherence to standards. With the exception of particular inquiries based upon our review of the information provided NLADA, the evaluation team had the responsibility for defining the scope and subject areas to be covered in this evaluation. The format of the section of this report entitled "Office of the Appellate Defender Activity During Grant Period" will follow that of the Evaluation Design, parallelling the structures and areas of concern set forth there.

- James Carney, private practitioner, Polk County and lobbyist, Iowa State Bar Association.
- Raymond A. Cornwell, Deputy Citizen's Aide for Corrections.

After their visit, Ms. Daly and Mr. Thomas wrote reports summarizing their notes and recommendations and submitted these to the Association. Richard Wilson reviewed these reports and completed the final evaluation report. The other members of the evaluation team and Frank Hoyt reviewed the report for factual accuracy.

III. REPORT

A. Capsule Description of Iowa's Indigent Defense System

1. Relevant Statutes Regarding Criminal Defense

Chapter 336 of the Iowa General Statutes gives county boards of supervisors the authority to establish or abolish an office of public defender. Contiguous counties have the authority to establish a joint office.

Of the 99 counties in the State of Iowa, 15 are served by the 10 public defender offices. All offices serve a single county except the 8B Judicial District Public Defender which provides services to Des Moines, Henry and Louisa Counties, and the Benton-Tama County Public Defender, which serves both of those counties. The remaining 84 counties depend upon court-appointed private counsel for the defense of indigents at the trial level.

Prior to the creation of the Office of Appellate Defense, indigent appeals in Iowa were handled either by the public defender office, if originally handled in that office at the trial level, or by the appointment of private counsel, pursuant to Supreme Court rule.

There is no death penalty in Iowa.

Iowa is served by two institutions for adult incarceration. These are located in Fort Madison (State Penitentiary), Anamosa (Men's Reformatory) and Rockwell City (Women's Reformatory).

2. Appellate Jurisdiction in Iowa

Pursuant to Supreme Court rules in Iowa, the Supreme Court, comprised of nine members, has original jurisdiction over all appeals in criminal cases.

Relevant appellate procedures and a timetable for disposition of appellate cases is included herewith as Appendix A.

Rule 104 of the Iowa Supreme Court rules governs withdrawal of appointed counsel in frivolous appeals. A complete copy of S. Ct. Rule 104 is attached hereto as Appendix B.

3. Compensation of Appointed Counsel

Iowa general statutes, Sec. 815.7 provides:

> An attorney appointed by the court to represent any person charged with a crime in this state shall be entitled to a reasonable compensation

> which shall be the ordinary and customary charges for like services in the community to be decided in each case by a judge of the district court, including such sum or sums as the court may determine are necessary for investigation in the interests of justice...

This statute applies to both trial and appellate services. Practice indicates that submitted vouchers are reviewed by the sitting judge in some cases, and in others by a group of district judges sitting together. Until 1981, common hourly fees were awarded in the range of $35 to $40 per hour, with no distinction reported between in-court and out-of-court costs.

Funds awarded to both private appointed counsel and to public defender offices are paid from county revenues. The last computed total cost for defense services in Iowa for Fiscal Year 1979 was calculated to be $3,919,892. Increasing this figure by 10% to approximate 1980 costs, a total expenditure for criminal defense services, including LEAA block and discretionary awards, totals $4,483,693.*

No figures comparing the cost of public defender services and assigned counsel have been prepared.

Future costs of indigent defense are difficult to estimate, given the creation of a statewide Office of Appellate Defense and a June decision of the Supreme Court of Iowa. That decision, Hulse v. Wifvat, #24-64681, filed June 17, 1981, reviewed an application for attorneys' fees allowed for trial court representation of an indigent defendant on court appointment. Never having interpreted Section 815.7 previously, the Iowa Supreme Court concluded that the language of the statute requiring reasonable compensation which "shall be the ordinary and customary charges for like services in the community" entitled counsel to "full compensation for his reasonably necessary services." The Court stated that the language of the statute "plainly refers to fees charged to non-indigent clients in similar litigation." On remand, the Court ordered the trial judge to consider "certainty of payment," among other factors, in determining the amount which will fully compensate the attorney for his services as required by Section 815.7. In reaching its conclusion, the Court recognized that counties have an alternative to court-appointed systems by establishment of a county or multi-county public defender office. The Court further referred local funding authorities to alternatives and recommendations discussed in Indigent Defense in Iowa, a 1980 study report of the Iowa Crime Commission. That report

*These figures are taken from Appendix A of Lefstein, Costs of Indigent Defense in the United States, ABA Standing Committee on Legal Aid and Indigent Defendants.

contains detailed financial data regarding Iowa indigent defense structure and financing, as well as comparable data for other jurisdictions of the United States.

Because of the recent nature of the Hulse decision, no analysis of its impact is offered.

B. History of the Iowa Office of Appellate Defense

1. Administrative Aspects

In 1979, the Iowa Supreme Court's Cost of Litigation Committee specifically recommended the establishment of a statewide appellate defender office. In 1980, the proposal was passed by the Iowa legislature, without an appropriation. Also in 1980, NLADA's Appellate Defender Development Project issued a solicitation to all states inviting application for funding for statewide appellate defender services, subject to certain specified criteria. In March of 1980, the Iowa Crime Commission submitted a proposal for funding of an Iowa appellate defender. This document was primarily the work of Dr. Robert Lowe, Courts Specialist for the Iowa Crime Commission, and Barbara Schwartz, a professor at the University of Iowa Law School. Richard George, Executive Director of the Iowa Crime Commission, also participated in the project and submitted the official proposal on behalf of the Governor.

After negotiations and modification of the initial proposal, Iowa was awarded a subcontract under the Appellate Defender Development Project. The contract between the National Legal Aid and Defender Association and the Iowa Crime Commission, as agent for the government of Iowa, was finally executed on August 4, 1980. Among other provisions, the contract stated that the appellate defender office "shall not accept more than 150 indigent appeals in the 12-month period beginning 15 August 1980..."

The proposed budget for the Iowa appellate defender office was written to run through July 15, 1981, a period of approximately 11 months. This date was picked due to the expiration of funding to the Appellate Defender Development Project, which, in turn, was linked to defunding, at the federal level, of the Law Enforcement Assistance Administration.

The proposed budget called for the hiring of a chief defender, four deputy defenders, an investigator, a chief legal secretary, and one additional secretary. Approximately $2,000 was allocated for intrastate travel, and a management training workshop was written into the grant under interstate travel. In addition, one trip for consultation by the Chief Appellate Defender in Washington with NLADA staff was written into the grant. $1,200 was provided in the grant for expert witness

fees. Two IBM Selectric typewriters were provided for, as well as nine months' rental on a word processor, amounting to $4,500. $10,000 was provided for law library and subscriptions. Just over $8,000 was included for photocopying of briefs and other materials. (A complete copy of the proposed budget is attached hereto as Appendix C.)

The office was fully staffed at the end of October 1980. Also, due to diligent efforts by the newly-chosen director of the program, Frank Hoyt, the office had 20 cases by the end of October. Case activity by the office during the life of the grant is depicted in Figure A:

FIGURE A

MONTH	Appointments	Closed	Total Open	Briefs Filed	Anders Briefs	Withdrew/ Dismissed	Reply Briefs	Petitions Rehearing	Pet. Review Cert.	Oral argument	Misc. Motions	Post-conviction Proceedings
1980 OCT	18	0	20	4	0	0	0	0	0	0	18	0
NOV	21	1	52	5	0	1	0	0	0	0	15	1
DEC	33	1	75	8	0	1	0	0	0	0	13	0
1981 JAN	17	2	87	9	0	2	3	0	0	0	10	1
FEB/ MAR	20	4	98	9	0	6	1	1	1	0	4	1
APR	24	8	114	9	4	4	1	0	3	2	8	0
MAY	32	6	146	8	2	2	4	0	0	0	4	1
JUN	25	4	171	11	5	1	4	0	0	1	3	1
JUL	14	4	181	7	6	3	3	1	0	1	6	3
AUG	23	9	194	12	3	1	2	0	0	2	3	1
TOTALS	227	39	194	82	20	21	18	2	4	6	84	9

As can be seen from this figure, cases opened far exceed case closings during the life of the grant. Moreover, by the middle of April 1981, the office had exceeded the 150-case limit designated in the original contract. By the close of the grant in July of 1981, the office had accepted over 200 cases. The primary strategy in accepting these additional cases was: 1) to make an effective cost-efficiency argument to the legislature, based on low cost-per-case; and 2) to engender confidence

among the bench and bar that the office was capable of undertaking much of the workload previously handled (sometimes unwillingly) by private counsel on an ad hoc assignment basis. (Assignment of cases from public defender offices also lessened the work burdens there.)

By the end of November 1980, Hoyt had completed the initial staffing of the office, with the exception of an investigator. No investigator was ever hired, primarily due to the fact that the office could not begin to undertake collateral representation due to its large number of direct appeals, therefore obviating the necessity for investigation of collateral facts necessary to pursue such actions.

Staffing in the office remained stable during the remainder of the grant period. In March of 1981, a short-term evaluation of the Iowa Appellate Defender was conducted by Theodore A. Gottfried of the State Appellate Defender office in Illinois. A written report, incorporating the results of Mr. Gottfried's visit, as well as statistical data for the program, was prepared by NLADA, primarily through the efforts of Malcolm Young, staff attorney to the Appellate Defender Development Project.

Funds originally included in the budget for a seminar were not utilized for that purpose. Part of these funds were used by the office for attendance at the 1980 NLADA Annual Conference. Additionally, a sixth attorney was hired in November of 1980 to assist in handling the increased caseload of the office. Funds for the hiring of this attorney came partially from the unused investigator salary.

2. Political History

The Iowa Appellate Defender's office has its genesis in legislative activity which began in early 1979. The Supreme Court Litigation Committee had been interested in the concept of the Appellate Defender's Office for some time. After review by that committee, Chief Justice W. W. Reynoldson recommended that the legislature create an appellate defender office. In December 1979, a joint committee of the Iowa legislature recommended that a draft bill creating an appellate defender office be sent to the respective legislative judiciary committees. Also, in the latter part of 1979, persons on the Iowa Crime Commission and from the University of Iowa expressed support for a state appellate defender office.

Primary legislative support for the project came from Senator Lucas DeKoster and Rep. Nancy Schimanek, and after considerable deliberation and vigorous advocacy on the part of several legislators who supported some kind of state appellate defender office, and who were also informed of possible federal funding through the Appellate

Defender Development Project grant, the Iowa legislature passed a bill creating the state Appellate Defender Office as a pilot project to be reviewed in 1981.

The original version of the state appellate defender bill was Senate File 2229. That bill, which passed the Senate 49-0, created the Office of the State Appellate Defender and established a six-member commission to oversee its operations. Members of the commission were to be appointed by the Governor. The new statute provided that the appellate defender "shall represent indigents on appeal in criminal cases and in proceedings to obtain postconviction relief when appointed to do so by the District Court in which the judgment or order was issued..."

The Iowa House of Representatives rewrote the Senate version, eliminating the commission structure and providing for direct appointment of the appellate defender by the governor. The office was also established as "a pilot program for the fiscal year beginning July 1, 1980." The Act carried a repeal date of June 30, 1981. This bill was eventually signed by the Governor, and became the basis for the first year of operation of the office.

In March of 1981, Senate File 332 was introduced in the Committee on State Government of the Iowa Senate. Several changes were included in the newly-introduced bill. First, the office was made permanent, eliminating its pilot-project status in the 1980 session. Second, all employees of the office were exempted from merit employment provisions for other state employees. Third, the duties of the appellate defender were amended to include representation "on appeal in criminal cases and on appeal in proceedings to obtain postconviction relief..." Fourth, the original version of the bill would have required counties to pay back the state for money appropriated for expenditure for indigent representation on appeal. Counties would have been required to pay the actual cost of representation plus a per-case charge to constitute a payback. This section was almost immediately eliminated from the bill, replaced by a substitute section which authorized the appellate defender "to bill a county for services rendered to the county by the Office of the Appellate Defender. Receipts shall be deposited in the operating account established under this section." Finally, during the legislative process, an additional section was added repealing the Act effective four years from its enactment (copies of Senate File 332, as originally filed on May 7, 1981 in the House, and the final bill, as enacted, are included as Appendices D and E.)

3. Making the Case for an Iowa State Appellate Defender

In the final months of 1980, preliminary contact began in an effort to obtain enactment of a state appellate defender program in Iowa. Prime movers in this effort were the director of the program, Frank Hoyt, and Bob Lowe of the Iowa Crime Commission. In the early days of their efforts, two preliminary contacts were made.

First, the two went to the Legislative Services Bureau with a specific piece of legislation to make the State Appellate Defender office permanent and to remove it from the merit system. Second, the two attempted to convince Governor Ray to include funding for the project in his budget proposal to the legislature, prepared to be offered in the early months of 1981.

In preparation for the request to the Governor, Hoyt prepared a "budget request summary." This short document briefly described the operations of the office and included alternative budget packages for two-year funding. The first called for a total request of $440,000, approximately $215,000 during the first year and $225,000 the second. The second alternative included the addition of three attorneys, and raised the total funding of the office to nearly $600,000, $295,000 the first and $305,000 the second. (See Appendix F.)

The Governor's budget packaged included both cause for disappointment and optimism. No one from the Governor's office had consulted the State Appellate Defender Office regarding the funding issue. In the budget, the Governor wrote "0" into the line item for use of general funding for the office. However, the fact that he included the office in his budget, and that the narrative suggested the use of a revolving fund to raise all money for the financing of appeals from the counties, was cause for some optimism for proponents. Generally, the Governor had taken a zero-funding approach for all federally-funded programs, drawing a hard line in that regard.

The office received little response from the Legislative Services Bureau while the legislature was out of session before the turn of the new year. In December, the two men discussed the funding of the office with the Lieutenant Governor and the House Majority Leader, who control the docket of the respective houses of the Iowa legislature. This was a gradual educational process undertaken with a number of legislators during early lobbying efforts.

In January, the lobbying effort began to generate statistics for use in the legislative process. At that time, Hoyt explained, they attempted several low-key, short contacts with Senators and Representatives. They worked the halls, outside the chambers of both houses. They were very persistent with the five or 10 people who were their best supporters.

By December, the two men were working 80-hour weeks attempting to lay the groundwork for the program. During this time, they contacted the State Bar Association, public defenders, and legal clinics, as well as the eight Chief Justices in the District Courts of the state. In early December, Hoyt made a presentation to the Bar's Committee on Methods of Appointment and Compensation for Court Appointed Counsel. (A copy of his prepared written statement and the Committee's response is attached hereto as Appendix G.) The meeting resulted in an endorsement from the bar committee. At this point, bar involvement was limited to the endorsement by the committee. While Hoyt gave some consideration to seeking the endorsement of individual county bars, he chose not to because he felt he could not undertake the extensive travel required, and did not feel he could ask the staff to take such time either. Moreover, he felt that county bar endorsement was not a high priority, except in bigger counties, where he did go.

Hoyt also took to the road to meet with each of the eight chief judges of the District Courts on "their own turf." Hoyt explained that he used these contacts to build up his caseload, to make the program better known in the field, to argue for efficiency and better use of the system, and to "complement rather than threaten" the local bar. Cost was a factor in his discussion with local chief judges but was not as strong as it was with the legislature.

Hoyt explained that his perspective in general was that of an independent non-partisan, with an emphasis on simple services and cost-efficiency. Depending on his audience, Hoyt changed his approach. To the legislature he argued cost, to the bar he argued cooperation, to the bench he argued increased dispositions.

Hoyt specifically avoided contacting the press, and made a conscientious effort to avoid press exposure. This is consistent with his general approach that the press is more likely to be adverse than helpful, and that the media should not be used as long as everything is going well. One exception to this appeared in several Iowa papers in early April, 1981. This piece, carefully planned by the office, stressed the efficiency of the office. The piece appeared in various Iowa newspapers under headlines such as "Appellate Defender - Faster, Cheaper." (See Appendix H.) Hoyt's instincts regarding the use of the press were apparently borne out later

in the legislative debate when a long story appeared in the Des Moines Register regarding the office's success in an extensive post-conviction petition at the trial court level. Hoyt attributes the appearance of this article directly to the inclusion by the legislature of a limitation to representation in post-conviction matters on appeal only.

After waiting for some time without hearing from the Legislative Services Bureau, Hoyt was informed sometime early in 1981 that the original recommendation for funding of the office was at $112,000 for the first year and $108,000 for the second year. Hoyt had nothing to say with regard to the determination of these figures. He continued to focus most of his efforts on convincing legislators of the merits of the entire program, rather than on the financial aspects. Again, without prior contact with him, the funding limits on the program changed several times during the legislative process. A second amendment resulted in the dropping of the funding to $108,000 for one year. Finally, the funding level was dropped to approximately $100,000 for one year. As explained to him, much of the reason for the drop was the requirement in the legislation that Hoyt bill counties for use of the office's services. Although Hoyt argued that he needed extra start-up money to get established, after which time he would be able to pick up county funding, these arguments were largely unpersuasive.

As eventually enacted by the legislature, the state appellate defender office is funded at a level of $100,000 for one year. However, in addition to the legislative funding, the office will receive additional revenues of approximately $60,000 from continued federal funding, as well as additional match money from the state. Finally, as a result of his request to the Iowa Crime Commission for use of reverted funds, an additional $30,000 in funding was obtained for the first year. (The request for remaining Crime Commission funds is attached hereto as Appendix J.)

Hoyt is deeply concerned about the requirement that he seek refunds from the county for appellate representation. While willing to undertake this obligation, Hoyt feels that this responsibility can be particularly burdensome, and is not likely to raise much additional money, since there are no enforcement powers included in the statute. Hoyt sees one possibility for additional funding in the future if the Iowa legislature passes the Criminal Justice Improvement Fund, or "crime tax." This bill, which passed the Senate last year 29-21, would possibly raise $2.5 million by imposing a surcharge on all offenses, including traffic.

C. Iowa Appellate Defender Office Activity During the Grant Period, With Recommendations

This report follows the topical outline used in the Evaluation Design.*

1. Organizing Services

A. Eligibility (Standards, II-F)

The Iowa Appellate Defender should establish written eligibility procedures, including standards and forms for determination of eligibility.

Under Iowa procedure, the trial court makes the determination of indigency on appeal. The State Appellate Defender Act defines indigency as follows:

> Indigent means a person found by the trial court to be unable to retain legal counsel without prejudicing the person's financial ability to provide economic necessities for the person and the person's dependents.

This definition complies with national standards. However, this broad definition requires substantive interpretation, which should be adopted in the form of standards to be utilized by the state appellate defender. Forms for indigency determination should be available for clients or potential clients for whom eligibility is in question.

Because the trial court makes the determination of indigency, a presumption of validity attaches to the OAD appointment, once made. Moreover, most clients assigned to the office are incarcerated and are unquestionably indigent. Nevertheless, this issue attracts public attention, and a publicly-funded law office must be prepared to respond to questions regarding defendants who appear to have funds or defendants who request services and appear to be without funds. Assignment or non-assignment to the office may raise significant legal and political questions. Eligibility standards can guide the office's actions in such cases, and can help deflect criticism of whatever action is taken by the office. Written standards need not be elaborate, and may simply implement an internal office procedure that assures that the statutory requirement set forth above is met in each case.

*The National Appellate Standards are found in Appendix A to the Standards and Evaluation Design for Appellate Defender Offices, NLADA, 1980. A reference to the relevant standard is made following the title of the topic to which it refers.

B. Scope of Services (Standards, I-D)

1) While the caseload of the OAD is primarily felony appeals, the office handles a full range of appellate services.

OAD's "primary" caseload, on direct appeal, is overwhelmingly felonies. Few misdemeanor or juvenile cases are handled, but this is primarily due to the judges who make appointments.

The office handles few interlocutory appeals, which appear to be an exception in Iowa appellate practice. OAD has handled very few resentencing hearings (four or five) and federal habeas corpus petitions (three or four). The policy is clearly inclusive and supportive of utilization of available remedies for the client.

2) Statutory provisions currently prevent OAD from representation of defendants in state court post-conviction trial proceedings. Long-range plans should include amendment of the statute to allow such representation.

During the first year of its operation, OAD was permitted to represent individuals in post-conviction proceedings in Iowa trial courts. Forty cases were taken pusuant to these provisions. Because of heavy caseloads, almost from the outset of the office, the interim evaluation of the office recommended that OAD decline representation of defendants in post-conviction proceedings in the trial court. ("Short Term" Evaluation, p. 8.)

As ultimately adopted, the State Appellate Defender Act limits representation to appeals from post-conviction actions. See Section 7. Because caseloads continue at extremely high levels, it is not recommended that any action be undertaken currently to amend these provisions to allow representation in the trial courts. National standards, however, provide that the appellate defender shall have discretion to seek appropriate relief in trial courts following conviction. Keeping the same counsel for all post-conviction proceedings, including direct appeal and collateral attack, proves more efficient and more cost-effective. Thus, in the long term, efforts should be made to amend the statute to allow representation in the trial courts.

C. Timeliness (Standards, II-G, I-E-1-5)

1) OAD's record of timeliness in filing of appellate court briefs as been excellent.

Appellate procedure requires that the appellant's brief (usually OAD) be filed within 90 days of the filing of the notice of appeal. This time period is reduced by one-half in appeals of guilty pleas or sentences only. (See "Timetable", Appendix A.)

OAD statistics show an average time of 93 days from their opening of a case until the filing of a page-proof brief as required by the rule. Instances in which timing deadlines have not been met involved decisions of the state-operated copying center, which does not give priority to OAD matters. Some internal coordination problems were cleared up after the Administrative Assistant circulated a memo on timing of filing of appellate briefs.

Personnel from the Clerk's office were quick to praise OAD for both its record in timely filing and its general knowledge of the sometimes complex appellate court procedures. Those interviewed stated that OAD compares extremely favorably to the private assigned counsel, the former taking approximately 2 months to file after completion of the record, while the latter averages eight months.

2) OAD should seek adoption of a court rule or legislation which would toll the time for filing of a motion in arrest of judgment in cases in which OAD is appointed.

Iowa law requires that a motion in arrest of judgment be filed following the entry of a plea of guilty in order to preserve issues on appeal. Because OAD does not normally receive the record in such appeals until long after the time for filing such motions has expired, meritorious claims on appeals are not adequately preserved. A change in court rule or legislation could cure this defect.

Alternatively, the office may wish to adopt a voluntary mechanism for monitoring the filing of guilty plea notices of appeal to ensure no such filing is completed without the necessary motion in arrest of judgment.

D. Conflicts of Interest (Standards II-E)

OAD should adopt a policy which rebuttably presumes the existence of a conflict where two or more defendants have had joint trials or joint counsel in the trial court. Instances of joint representation or trial should be ascertained at the earliest possible time following appointment of OAD, and substitution of outside counsel should be accomplished at the intake stage. Existing cases should be reviewed, and a procedure should be adopted for withdrawal from cases in which potential antagonism exists, where joint representation has already begun,

Although recommended in the Short-Term evaluation (p. 9), the OAD has not yet adopted a procedure for handling conflict of interest cases. This area requires attention for two basic reasons. First, existing appellate standards presume

the existence of a conflict in joint representation on appeal, "absent extraordinary circumstances". (Standards II-E (1) (a)). The ABA's Criminal Justice Section has recently recommended similar standards (See Appendix K for Report of the Appellate Issues Subcommittee on this issue.) While both standards allow for informal consent, no procedure exists at OAD to formally obtain such consent from clients. Second, cases involving conflict of interest at trial are tainted by joint representation on appeal, and give rise to meritorious claims for relief by federal habeas corpus. Added expense of federal review and appointment of new counsel may be avoided by careful review and screening of joint representation at the appellate stage.

2. Insuring Quality of Services

A. Staffing (Standards I-A-1)

1) The State Appellate Defender Act should be amended to provide protection of the office from political influence or interference. The language of SF 2229, creating an appellate defender commission, would be an ideal structure for accomplishing this goal.

The original legislation creating the OAD (SF 2229) contains language creating an appellate defender commission and describing its duties (See Appendix E). This language was deleted in both the 1980 and 1981 appellate defender acts. Present legislation provides for gubenatorial appointment of the Appellate Defender.

Reports from all quarters indicate that the OAD has no political interference, and that the only instruction from the Governor was to have the best possible staff for the best possible office.

2) The present State Appellate Defender is well qualified for he position he occupies, and brings significant administrative, political and substantive skill to the position.

Frank Hoyt has occupied the position of Appellate Defender since the outset of the office. He brings energy, enthusiasm, dedication and hard work to the office. The staff hired by him is also excellently qualified. Most exemplary of the praise received by the staff was a statement by the staff lawyer at the Attorney General's office who said he would hire any or all of the attorney staff "in a minute."

B. Training (Standards I-K)

1) OAD is to be commended for its liberal policy of availability of CLE outside of the office for employees.

2) Greater structure, either by formal meetings or office review sessions, should be used to guarantee uniform and non-duplicative research and issue presentation.

Briefly, following the Short-Term evaluation, OAD adopted a regular review session. This has not continued. Either this procedure should be reinstated or the office should use some more formal structure for review of cases. Presently, the First Assistant reads all briefs filed. Two additional suggestions would provide for formal issue review sessions prior to common consent of writing, or for one-on-one supervision of less experienced attorneys by the more experienced.

A notable exception to the normal formality laudably exists in the Anders area (See 3.E below).

C. Caseload (Standards I-F, G)

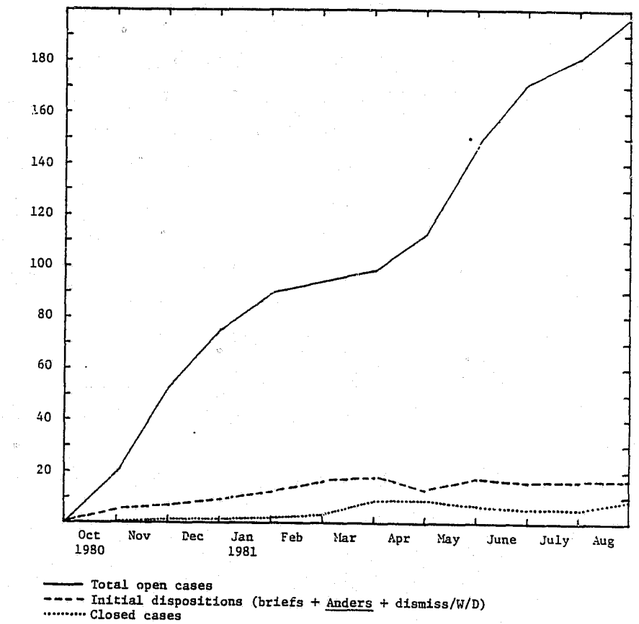
OAD is accepting too many appointments. Caseload trends demonstrate that appointments have exceeded actual and potential desposition rates with present staffing. To remedy this situation. OAD must:

1) refuse a larger number of appointments that it does at present, and/or
2) expand its staffing by at least three additional attorneys, with requisite support staff.

From the date of its original contract with NLADA, OAD has set its sights high. The contract provided for a caseload maximum of 150 appointments during the first 12 months of operations. This was to be done with a staff of 4 attorneys and an Appellate defender. Even assuming a full case load for the Appellate Defender, this averaged 30 briefs per attorney for the first year. This appeared unrealistic, due to (1) slowness of "gearing up" experienced by all programs, and (2) national caseload standards suggesting 22 work-units (a lower but more accurate measure of work performed) per attorney per year. See Standards I-H (1).

In November, 1980, an additional attorney was hired. Despite additional staff, original case limits had been exceeded by mid-April 1981. By the end of its first year of operations*, the office had accepted 269 appointments and had 232 open cases. Closed cases did not approach one-half the number of new cases. Statistically, the picture was as follows:

*October 1, 1980 - September 30, 1981



As is immediately apparent, appointments far exceed closings, and the disparity shows tendencies to widen even greater with time. While dispositions show an accelerating trend, there are serious questions as to how much higher this rate can go given human limitations and the geometric addition of work after filing of the initial brief, where additional tasks may include oral argument, motions, petitions for review or for collateral attack, correspondence and visits with the client, all before the case can be closed.

OAD informed the evaluators that it as never encountered difficulty in the refusal of appointments and that cases have been refused on a limited basis. However, given the trends described here, no additional cases should be taken until present caseloads can be handled. The resources of the office are not limitless and are close to maximum potential now (See Caseweighting, below).

In 1980, 539 appeals were filed with the Iowa Appellate Courts. 1980 Annual Statistical Report, Court Administrator of the Judicial Department, Table II, p. 25. With its 269 appointments over approximately the same time period, OAD handles approximately 50% of the appelate caseload. While ample additional cases

exist*, no more cases should be undertaken without additional staff.

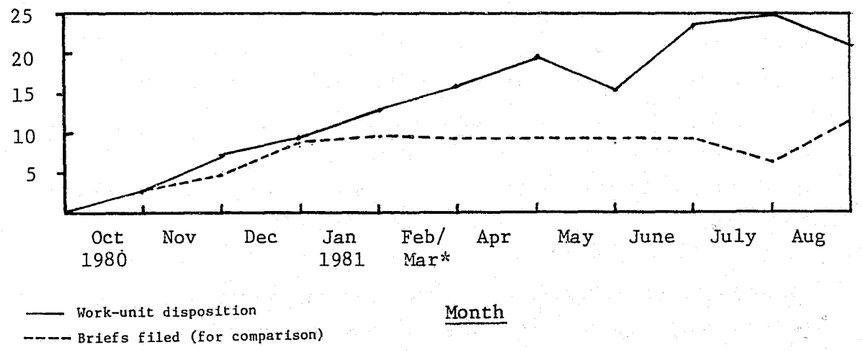
Projecting disposition rates from the last half of the first year of operations is a useful tool in determining additional needs. During the last six months of its operations, the office disposed of 98 cases, an annual rate of almost 200 cases. Assuming current caseloads, three additional attorneys would be required to dispose of cases at the same rate as at present. (This also assumes a reduced caseload for the Appellate Defender himself; see Personnel, below). This also compares approximately with national standards of 22 work units per attorney per year.

D. Caseweighting and Staffing Ratios (Standards, I-F, H)

OAD's current work unit production per attorney, a rate of 32.5, demonstrates its concern with efficient operation, but raises concerns regarding stress on present staff.

OAD is to be commended as one of the first states in this country to comprehensively utilize the case weighting data system recommended by national standards. Application of the standards however, raises concerns by the evaluators.

Work-unit production is graphically demonstrated as follows:



The trend is solidly upward, with total work unit production at 195 for the year. This averages 32.5 units per attorney per year, including the Appellate Defender at full case load, as well as a fifth staff lawyer for the full year. (This was not the case.)

*No statistics are kept as to the percentage of indigent criminal appeals, but average rates run from 60 - 75%.

Work-unit production by area was as follows:

	Work-Unit	% of Total
Briefs	85.50	55.88
Anders Briefs	19.00	12.42
Withdrawals/Dismissals	11.25	7.35
Replies/Other Pleadings	27.75	18.14
Collateral Proceedings	9.50	6.21
Total	153.00	100.00

In addition to work-units, the office argued 13 cases orally, conducted 287 client visits, filed 96 motions, took part in 107 hours of training, and worked an additional 1,405 administrative hours. None of these items are included in the work-unit calculation.

These statistics demonstrate two things. First, the office has been selfless in its dedication to delivering cost-efficient services to the citizens of Iowa, and second, reasonable limits on time and endurance suggest that the office should consider a less strenuous schedule or additional staff.

Continued experience with caseloads will be necessary to ascertain optimum workloads and how the staffing ratios of the Standards apply to Iowa.

E. Library and Resources (Standards, II - G (2))

Present library resources are adequate. Additional purchases should include Federal Reporter, Second Series, and texts on evidence, criminal law, criminal procedure, and specialized areas, such as search and seizure.

In addition to its own facilities, OAD has easy and complete access to the library of the State Capitol, a short distance away. While some purchases would make present facilities more convenient, the current arrangement is adequate.

F. Case Assignment (Standards, II, B, C)

Case assignments are adequately handled in the current informal fashion, but consideration should be given by the assigning attorney to development and use of periodic assignment sheets.

New files are completed by the Administrative Assistant. The First Assistant then assigns cases, without prescreening for substantive issues. Factors considered are length of record and type of case. Because of this skill and experience, this system works well to ensure equitable distribution.

A more sophisticated attorney assignment log could be developed. This log would reflect at least the case type, length, and due date, in addition to case name and attorney assigned. This would assist in both equitable distribution and timely work flow. (See Appendix N for present forms.)

3. Providing Quality Services

A. Client Contact (Standards, I-1)

OAD maintains excellent client contact. Availability of a state car for staff and more funds for collect phone calls would add flexibility of response,

All personnel interviewed agree that client satisfaction with OAD is high. Many inmates have expressed thanks and approval for their representation. During the year, 287 client visits were made. This exceeds the number of appointments for the year (269) and means exceptional efforts are made to discuss cases with clients.

This fact alone probably saves Iowa taxpayers untold dollars in unfiled pro se federal actions, whether by habeas or by civil rights action, (28 USC 1983).

Staff presently travel to prisons in groups, usually with the Ombudsman in his vehicle. A state vehicle should be made available to the office.

The office now has a no-collect-call policy, due to high phone bills. This policy could be modified, by increasing the phone budget, to accomodate emergencies and illiterate clients.

B. Contact with Trial Counsel (Standards, I-J)

OAD should make at least one formal contact with trial counsel by letter. Staff should be encouraged, if not required, to consult with trial counsel in cases raising ineffectiveness of counsel or in which an Anders brief is filed.

OAD should consider adoption of procedures to maintain greater contact with counsel who try their cases. At minimum, this should include a form letter advising counsel of the appointment and inviting comments or suggestions. A good educational and public relations gesture would include trial counsel on the mailing list for copies of at least the OAD brief and the court's opinion.

In cases questioning the effectiveness of trial counsel, a phone call or personal interview is not just a courtesy; it may prevent alienation of a potentially powerful political ally. Hell hath no wrath like a lawyer spurned!

C. Brief Preparation (Standards, I-L)

Briefs filed by OAD are superior in quality and format.

Thirteen briefs were reviewed at random. Their quality was uniformly high: the issues were clearly set forth, any problem with preservation was recognized and dealt with in a straightforward manner, and argument was presented in a persuasive

manner, supported by both controlling and persuasive authority. Recommendations made here, while often being a matter of style, are presented merely as suggestions towards improvement of a clearly adequate work product.

1) Selection of Issues. Which, and how many, issues are to be raised in a particular case is a matter generally left to the discretion of the attorney assigned to the case. Although review of the briefs submitted did not suggest additional issues that should have been raised but were not, an "issues conference" or a more structured form of supervision might better ensure the office and the client against the future possibility that arguable issues are not being presented. This mechanism might also aid a relatively inexperienced staff attorney in determining whether fundamental error is present in his or her case.

   Early discussion of the issues might also provide a basic framework that would later help structure the brief, any reply brief, and oral argument had in the case.

2) Appearance and Compliance With Procedural Rules. The standardized format of every brief reviewed appears to comply with the jurisdiction's procedural rules, including the presentation of the issues and authority cited prior to the presentation of the argument section of the brief, and a request for oral argument in every case it was desired. Citations were consistent, followed the standard rules of citation, and were otherwise unremarkable. When referring to the same case at different places in the briefs, its official citation was repeated, usually with reference to a particular page when appropriate, making referral to that authority easier. Although a few misspellings and other typographical errors were noted, the number was insignificant when compared to the bulk of material presented.

   The overall appearance of the briefs was one denoting professionalism, with no gimmicks or distractions present.

   The Attorney General's office reported that other procedural rules concerning designation of the transcript, timely submission of the brief, and preparation of the appendix are complied with without incident.

3) Introductory Material. The issues as presented in the Statement of the Issues were properly phrased in an objective question format,

and generally specified the precise error there being alleged ("was the evidence sufficient where the State failed to present corroboration of the testimony of the accomplice?" rather than "was the evidence sufficient to support conviction?"). Occasionally the delineation of the specifics of the issue overtook the statement of the basic issue, making the alleged error difficult to comprehend at first reading. It is perhaps better in such an instance to sacrifice specificity for clarity: the particular nuances of the issue are better addressed in the argument itself.

At the beginning of argument on each issue, it was properly rephrased in an affirmative, generally persuasive statement favoring the client's position.

Every brief reviewed referred to the client, both in the issues and usually throughout the argument, as "defendant." As a matter of style, the use of the client's own name is preferred. "Mr. Smith" or "Mr. John Smith" contains none of the negative connotation generally associated with the term "defendant," and hopefully makes the client seem more like a person in the eyes of the court.

The "Statement of the Case" portions of the briefs generally presented enough of the facts and proceedings below to provide an understanding of the significance of each error to the case as a whole. Recitation of the title and date of every pleading filed in not required by Iowa's appellate rules, and should be avoided except where necessary. If detailed documentation of procedural matters is necessary to establish preservation of error, it might be better presented in the argument section of the brief. Similarly, as was done in several briefs, reproduction of actual trial testimony is generally more effective in the context of the argument it gave rise to or supports. Where necessary, a notation in the "Statement of the Case" that a more detailed presentation is forthcoming in the argument section should suffice. But repetition of important facts favorable to the case is also an effective means of emphasizing gravity of the error committed.

4) Substantive Arguments. With one exception, in a case where the issue involved was complex and the legal concepts many and interrelated, the briefs were well organized and the line of argument easy to follow. Where necessary, larger issues were broken into sub-issues with sub-headings. In those instances, conclusions which tied the argument together were helpful. In one particular case, three seemingly minor evidentiary rulings were appropriately argued together to emphasize the resulting denial of the right to present a defense case.

Controlling and persuasive authority (from other jurisdictions) in favor of the defense position were present in all briefs, and precedent cited and distinguished where necessary. References to disciplinary rules, law review articles, and other non-case reference materials were also noted, in addition to statutes, rules of procedure, and constitutional provisions as applicable.

A few blind citations, with no supporting material, cropped up, although the evaluator's lack of familiarity with controlling precedent in Iowa might explain away some of them. Where the case being argued was analogous to a case cited, comparison of the relevant facts as they related to the holding was made.

One brief flatly asserted "many prejudicial statements were admitted" as a result of the trial court's erroneous ruling, but most demonstrated the prejudicial effect of the error on the defense case.

Ineffective assistance of counsel claims appeared where justified and necessary to allow for consideration of the issue on its merits in spite of a failure to preserve the issue. In one case, the issue was raised to protect the client's right to pursue the issue in post-conviction relief proceedings. Although office policy requires notification of the trial attorney prior to the presentation of this isssue in a brief, the staff reports no pressure, by the targeted attorneys or others, not to raise the issue once assigned counsel has deemed it appropriate.

5) Remedy Requested. Every brief contained a conclusion that indicated the disposition being requested. But in two of the briefs, arguments were presented that alleged insufficient evidence to support the conviction, while the conclusions requested reversal and remand for a new trial. Counsel should carefully analyze the arguments presented in each case, and make sure the relief requested is appropriate.

When multiple issues are argued which require different disposition of the case, the prayer should be framed to present whatever alternatives are appropriate under the arguments presented.

6) Review and Screening. The similarity in format and approach noticeable in each brief reviewed might reflect the method of review and screening followed in the OAD office: every brief written by the staff is reviewed by the first assistance, who can and does require rewriting when necessary. While this procedure provides for a consistent work product, and may also help at least one member of the staff keep track of what issues are being raised in which cases, it also adds an additional major task to the first assistant's workload. As the caseload increases (which should be met with a corresponding increase in staff size) the need to share this task among several supervising attorneys will become greater. Shared responsibility for review of briefs will also ensure that more members of the staff are aware of what their office is arguing at any given time.

7) Reply Briefs. Although the applicable appellate rule indicates that a reply brief shall be filed only in response to issues or arguments raised by the State that were not addressed in the brief-in-chief, no written office policy exists regarding the filing of a reply brief. Although no reply briefs were reviewed, the evaluator was advised that the questions of filing one is left to the discretion of the staff attorney assigned to the case. To date, actual practice has apparently been in keeping with the provisions of the rule, although the court's recent trend denying oral argument in criminal cases reportedly has caused an increase in the number of such filings. Given that increase, adoption of a written policy on that topic might be advisable.

In sum, the concerns discussed in the Standards were all met in the briefs reviewed. The quality of representation evidenced by these briefs is perhaps best expressed through the comments of Mr. Richard Clelland, head of the Attorney General's Criminal Appeals Division. In commenting on the character of the major visible work product of the OAD, Mr. Clelland had high praise for the clear, concise, straight-forward and imaginative manner in which non-frivolous issues were presented. The quality of representation provided through these briefs was characterized

by Mr. Clelland as far above that generally afforded to indigent clients by members of the private bar.

D. Oral Argument (Standards, I-M)

OAD should continue to aggresively seek oral argument in its cases, given current policies of the appellate court encouraging waiver.

Under Iowa procedure, in cases remanded to the Court of Appeals by the Supreme Court, the attorney is sent a letter notifying him of the appeal's submission, and he is asked to state why oral argument should not be waived. A Court of Appeals Judge estimated that this policy results in oral argument in 50% or less of cases submitted.

Only 13 cases, 12% of the 105 briefs filed, were orally argued. This occurred despite the fact that oral argument was requested in all cases, according to the First Assistant. This low percentage is at least partially explained by the slow processing of appeals. Many cases with briefs have not been set for argument.* The firm policy of affirmatively seeking to utilize all available tools of the appellate process is applauded and encouraged.

E. Anders Cases (Standards, I-O)

The written policy to deal with Anders cases is clear and logical. Great care in the use of Anders Motions should be taken to preserve the offices role as client advocate.

Iowa authority to withdraw in frivolous appeals is found in Supreme Court Rule 104. Upon recommendation of the short-term evaluator, OAD adopted written policies regarding the filing of Anders motions (See Appendix L). These policies are clear and concise, with three possible exceptions: 1) notification of the filing should go to both the client and trial counsel; 2) notice to the client should be in person with an explanation of options, if possible; and 3) if any of the four reviewing attorneys finds merit, that attorney should brief the case. (In Section II, A the procedure allows withdrawal if "three of the four attorneys" believe the appeal to be frivolous.)

Anders Briefs were filed in 27 instances. This represented 17% of all dispositions filed. This number means nearly one in five clients may expect withdrawal. Any increase in Anders filings is cause for serious concern.

*11 of the 13 cases were argued in the last 6 months.

The three Anders motions reviewed follow the procedures set forth in the written policy. Based on the factual recitations and the issues presented in each of these cases, their treatment in this fashion appeared appropriate. It should be noted that in each case, the client was advised of his right to present any issue for review, as well as his right to request that another attorney be appointed to represent him. A copy of his trial transcript was also made available to him.

Rick Clelland, from the Attorney General's staff, stated that before OAD only about 60% of all Anders motions submitted to the court are granted. When denied, new counsel is appointed. He said he had never seen OAD file such a motion inappropriately, and that OAD had never had a motion denied, with new counsel appointed.

F. Discretionary Appeals

A policy should be adopted regarding the seeking of discretionary review. Where not sought, clients should be fully advised as to the availability and procedures for pursuance of such remedies.

Very few cases have reached the discretionary review stage. Only 4 cases are shown as being pursued by petition for review or certiorari. As the number of appeals and final decisions grows, however, the office will need policies to govern the taking of these steps from State Appellate to Supreme Court, to the U.S. Supreme Court and to collateral review in state or federal court. Policies in each of these areas are especially important, given the present case load and increased future disposition rates.

One possible resource in this area is the University of Iowa clinic, run by Professor Barbara Schwartz. The clinic does only habeas actions, state post-convictions and some conditions suits under 28 USC 1983. Ms. Schwartz stated that, with the exception of Pat Grady, she had seldom been contacted by OAD attorneys. This valuable resource should not be overlooked.

4. Relations with the Legal Community (Standards II, H)

The OAD has a good reputation in the trial bar for being responsive to requests for assistance. OAD's working relationship with the courts and the Attorney General, as well as the Iowa Bar Association, is excellent.

All persons interviewed were unanimous in this view.

To further develop the strong ties with the bar, consideration should be given to development of an office newsletter, a column in the Public Defender Association Newsletter, or providing access to the office brief bank.

5. Office Administration

A. Internal Structure (Standards II-D (2))

1) The Appellate Defender should consider handling a reduced caseload in order to better coordinate and guide administrative and political aspects of the office.

2) Additional support staff, both clerical and student intern would result in less performance of clerical work by attorneys.

At the time of our evaluation, the Appellate Defender carried a full caseload, approximately 17 cases, in addition to his administative responsibilities. The same was true for the First Assistant. Some consideration should be given to a reduced caseload for administrators in order to address ever-increasing administrative aspects of the job.

Two persons, the Administrative Assistant and the secretary, using a typewriter and word processor respectively, perform all clerical/secretarial duties for a staff of 6 attorneys with close to 250 open cases. This is excessive. Consideration should be givento the hiring of additional clerical help and law student interns for routine legal research, such as the pulling of citations for final brief preparation.

B. General Procedures (Standards II-A)

A policies and procedures manual for use by attorney staff should be developed immediately. Such a manual would describe general procedures as well as specific law-related policies. The existing manual for non-professional staff is an excellent beginning reference tool.

Such written personnel policies as exist can be found in the Office's Training and Reference Manual for Non-Professional Employees (Appendix M). This is an excellent training, orientation and policy tool. A similar manual is needed for all staff, describing procedures governing work hours, hiring and termination, discipline and grievances, promotion and evaluation, sick leave and vacations, and other matters. The written policy regarding Anders procedures is a step toward articulated policy in a specific area. Others are eligibility, conflict of interest, appeal bond, ineffective counsel claims, and discretionary appeals procedures.

C. Personnel (Standards, I-A, I-C)

OAD staff was carefully selected by the Appellate Defender by open recruiting. Staff appointments are for indefinite terms. Salaries are equal to or higher than those of prosecutorial counterparts.

The present staff of the OAD is all white males and one white female. This reflects the general racial and ethnic composition of the bar in the immediate geographical area. Efforts should be made to diversify staff in future hiring.

All staff currently employed have strong backgrounds. Professional staff are paid between $20,000 and $35,000 annually. Prosecutorial counterparts in the Attorney General's office are paid $16,000 to $19,000. Private firm starting salaries average about $15,000 to $16,000. Similar figures occur within non-professional staff.

D. Information Management (Standards, II-B)

OAD's management information system is adequate. No more elaborate system is needed, nor is automation recommended.

OAD relies uponthe NLADA management information system package almost without change (see Appendix N). There is no form book, but it does not appear that one is necessary at this time.

As noted earlier, it may be desireable to develop a periodic (weekly or monthly) assignment sheet to assist in caseload measurement and distribution.

E. Facilities (Standards II-G(1))

Office facilities are clearly inadequate and must be changed immediately.

At the time of the evaluation, OAD was sharing space with the Crime Commission. The area is cramped, noisy and lacks privacy. Partitions divide some offices. The Standards provide that each attorney should have a private, fully walled office. These should be provided at the earliest possible date.

Office location is convenient to courts and law libraries. Travel to institutions is a full-day trip.

F. Equipment (Standards, II-G (4))

Lack of adequate equipment ranks high in OAD's shortcomings. Needed additions include:

1) in-house photocopying equipment;
2) an additional word processor;
3) access to the state automobile pool; and
4) some new or replacement furniture and/or files.

OAD currently spends $800 to $900 per month on out-of-house copying. Purchase of a copier would reduce not only actual costs but lost clerical time in carrying work in and out of the office. This also creates timeliness problems alluded to previously.

The Administrative Assistant's abilities could be greatly expanded by purchase or rental of an additional word processor. Each of the evaluators attests to the cost-effectiveness of this equipment in appellate offices.

Some hand-me-down furniture and cabinets from the Crime Commission needs replacement.

Appendices

A. Timetable for disposition of appellate cases

B. Supreme Court Rule 104

C. Proposed budget for OAD

D. Senate File 332, May 7, 1981

E. OAD legislation, as enacted

F. Budget Request Summary to Governor

G. Statement to State Bar Committee and Committee response

H. Newspaper article on OAD

J. Request for reverted Crime Commission funds

K. ABA report on appellate conflicts

L. Office policy on Anders motions

M. Training and reference manual for non-professional employees

N. Sample present office forms

APPELLATE PROCEDURE TIMETABLE

APPENDIX A

	1. Notice of appeal filed with trial court clerk and served, and copy sent to supreme court clerk.
10	2. Appellant orders transcript from court reporter and if entire transcript is not ordered files with trial court clerk and serves description of parts of proceedings ordered transcribed and statement of issues. See rule 10(b), Rules of Appellate Procedure.
14	3. Appellant files with supreme court clerk and serves certificate of ordering transcript or certificate of no transcript. See rule 12(b). Trial court clerk transmits certified copy of docket and calendar entries to supreme court clerk and all parties. See rule 11(a).
10	4. If appellee deems a transcript of other parts of proceedings to be necessary, he files with the trial court clerk and serves a designation of those additional parts. See rule 10(b).
4	5. Appellant orders additional transcript, or if he fails or refuses to, appellee either orders the additional parts or applies to trial court to compel appellant to do so. See rule 10(b).
4	6. Party ordering additional transcript files with supreme court clerk and serves a supplemental certificate of ordering transcript. See rule 12(b).
	7. Appellant files transcript with trial court clerk within the time fixed or allowed for docketing. See rule 10(b).
-0 (20#)	8. Appellant pays $25 docket fee to supreme court clerk or requests appeal be docketed if prepayment of fee has previously been waived or the trial court in a criminal case has found a defendant-appellant indigent and appointed appeal counsel. Simultaneously appellant files with supreme court clerk and serves statement regarding applicability of rule 17. See rules 12(a), 103 and 105#.
14	9. Parties agree on contents of appendix and file a short memorandum of that agreement, or in absence of agreement appellant files and serves a designation of the parts of the record he intends to include in the appendix and a statement of issues. See rule 15(b).
10	10. In absence of agreement appellee files and serves a designation of additional parts of the record he deems necessary for inclusion in the appendix. See rule 15(b).
	11. Appellant files and serves the appendix with his brief. See rule 15(a).
30 (25*)	12. Appellant files and serves his brief. See rules 13(a), 17*, and 105*.
20 (15*)	13. Appellee files and serves his brief. See rules 13(a), 17*, and 105*.
7	14. Appellant requests trial court clerk to immediately transmit remaining record and takes all action necessary to enable trial court clerk to assemble and transmit the remaining record. See rule 11(b).
14 (7*)	15. Appellant may file and serve a reply brief. See rules 13(a), 14(c), 17*, and 105*.

If rule 105 (appeals from a guilty plea or sentence only) applies, then time for docketing is reduced by one-half.

* If rule 17 (child custody cases) or 105 (appeals from a guilty plea or sente only) applies, then times for filing briefs are reduced by one-half.

APPENDIX B

RULE 104. FRIVOLOUS APPEALS; WITHDRAWAL OF COUNSEL

(a) If counsel appointed to represent a convicted indigent defendant in an appeal to the Supreme Court is convinced after conscientious investigation of the trial transcript that the appeal is frivolous and that he cannot, in good conscience, proceed with the appeal, he may move the Supreme Court in writing to withdraw. The motion must be accompanied by a brief referring to anything in the record that might arguably support the appeal.

(b) Prior to filing any motion to withdraw from an appeal, counsel shall advise his client in writing of the decision as to frivolity accompanied by a copy of counsel's motion and brief, and counsel shall attach to the filed motion a certificate showing service thereof. Counsel's notice to his client shall further advise the client that if he agrees with counsel's decision and does not desire to proceed further with the appeal, the client shall within thirty days from service of the motion and brief clearly and expressly communicate such desire, in writing signed by him, to the Supreme Court.

(c) Receipt of such communication shall result in the appeal being forthwith dismissed.

(d) Counsel's notice to his client shall further advise the client that in the event he desires to proceed with the appeal he shall within such thirty days give like communication to the Supreme Court, raising any points he chooses. The Supreme Court will then proceed, after a full examination of all the proceedings, to decide whether the appeal is wholly frivolous. If it so finds, it may grant counsel's motion to withdraw and dismiss the appeal.

(e) In order to protect his client's rights, counsel desiring to withdraw shall within the time permitted for docketing the appeal under rule 12, Rules of Appellate Procedure, make application pursuant to rule 20, Rules of Appellate Procedure, for extension of time in which to docket the appeal.

(f) If however the Supreme Court finds the legal points to be arguable on their merits and therefore not frivolous, it may grant counsel's motion to withdraw but will prior to submission of the appeal afford the indigent the assistance of new counsel, to be appointed by the trial court. Such new counsel shall proceed with the appeal pursuant to the Rules of Appellate Procedure. Appellant's brief shall raise any issues counsel believes to be meritorious after a conscientious examination of the record. Counsel shall also inform the court in appellant's brief of the issues his client raises and otherwise cause the case to be reviewed in accordance with the Rules of Appellate Procedure.

(g) Defendant's failure to communicate to the Supreme Court within the time provided in this rule or any extension thereof his disagreement with counsel's decision that the appeal is frivolous, or of defendant's desire to proceed with the appeal, shall be deemed an election by him to agree with counsel's decision.

APPENDIX C

PROPOSED BUDGET

IOWA APPELLATE DEFENDER OFFICE

(12 month budget)

PERSONNEL	ANNUAL SALARY	PERIOD OF TIME	MONTHS	TOTAL BUDGETED SALARY
Chief Defender	35,000	Aug. 15-July 15, '81	11	$ 32,084
1st Deputy Defender	30,000	Aug. 31-July 15, '81	10-1/2	26,250
2nd Deputy Defender	26,000	Aug. 31-July 15, '81	10-1/2	22,750
3rd Deputy Defender	24,500	Sept. 15-July 15,'81	10	20,417
4th Deputy Defender	20,000	Sept. 30-July 15, '81	9-1/2	15,834
Investigator	14,000	Sept. 15-July 15, '81	10	11,667
Legal Secretary	15,500	Aug. 15-July 15, '81	11	14,209
Secretary	12,500	Aug. 31-July 15, '81	10-1/2	10,938
		Total Salaries		$154,149
		Benefits (Combined 11.88% of 154,149 and $32 x 11 x 8)		$ 18,313 2,816 $ 21,129
		TOTAL PERSONNEL		$175,278

TRAVEL

Intra-state: 1,680 miles x $.18		$ 2,102
Inter-state:		
Management Training Workshop		
(5 persons, 3 days)		
Airfare: 5 x $350	$1,750	
Per diem: 5 x 3 x $50	750	
Ground transportation: 5 x $20	100	
Tuition: 5 x $150	750	

Consultation - Chief Appellate Defender and NLADA staff (Washington, D.C.)		
Airfare: (round trip)	356	
Per diem: 4 x $50	200	
Ground transportation	20	
Total Interstate		$ 3,926
TOTAL TRAVEL		$ 6,028

CONTRACTUAL SERVICES

Expert Witnesses	$ 1,200
TOTAL CONTRACTUAL SERVICES	$ 1,200

SUPPLIES

Office Supplies ($28 x 10.4 x 8)	$ 2,330
Postage	3,600
TOTAL SUPPLIES	$ 5,930

EQUIPMENT

2	IBM Selectric typewriters ($1,000 each)	$ 2,000
6	Five drawer file cabinets ($210 each)	1,260
5	Executive desks ($250 each)	1,250
3	Regular desks ($200 each)	600
8	Desk chairs ($145 each)	1,160
14	Side chairs ($85 each)	1,190
7	Bookcases ($80 each)	560
1	Conference table and six chairs	500
8	Dictating Units ($285 each)	2,280
1	Word processor - last 9 months ($500 per month)	4,500
	Law library, subscriptions, etc.	10,000
	TOTAL EQUIPMENT	$ 25,300

OTHER

Lease photocopy equipment	
Brief copying - 150 briefs x 40 x 22 copies x $.04	$ 5,280
Miscellaneous copying ($250 x 12 months)	3,000
Telephone ($500 per month x 11 months)	5,500
Advertising	500
TOTAL OTHER	$ 14,280

BUDGET TOTALS

Personnel	$175,278
Travel & Training	6,028
Contractual Services	1,200
Supplies	5,930
Equipment	25,300
Other	14,280
TOTAL BUDGET	$228,016
FEDERAL	$171,012
MATCH	$ 57,004

APPENDIX D

SENATE FILE 332

H-4010

Amend Senate File 332 as passed by the Senate as follows:

1. By striking everything after the enacting clause and inserting in lieu thereof the following:

"Section 1. NEW SECTION. DEFINITIONS. As used in this Act unless the context otherwise requires:

1. "Appellate defender" means the state appellate defender.

2. "Indigent" means a person found by the trial court to be unable to retain legal counsel without prejudicing the person's financial ability to provide economic necessities for the person and the person's dependents.

Sec. 2. NEW SECTION. CREATION OF OFFICE. The office of state appellate defender is established. The governor shall appoint the state appellate defender and establish the appellate defender's salary.

Sec. 3. NEW SECTION. QUALIFICATIONS OF APPELLATE DEFENDER. Only persons admitted to practice law in this state shall be appointed appellate defender or assistant appellate defender.

Sec. 4. NEW SECTION. DUTIES OF APPELLATE DEFENDER. The appellate defender shall represent indigents on appeal in criminal cases and on appeal in proceedings to obtain postconviction relief when appointed to do so by the district court in which the judgment or order was issued and shall not engage in the private practice of law. The court may, upon the application of the indigent or the indigent's trial attorney, or on its own motion, appoint the appellate defender to represent the indigent on appeal or on appeal in postconviction proceedings.

Sec. 5. NEW SECTION. STAFF. The appellate defender may appoint assistant appellate defenders who, subject to the direction of the appellate defender, shall have the same duties as the appellate defender and shall not engage in the private practice of law. The salaries of the staff shall be fixed by the appellate defender. The appellate defender and his or her staff shall receive actual and necessary expenses, including travel at the state rate set forth in section 18.117.

Sec. 6. NEW SECTION. ACCOUNT ESTABLISHED. There is established in the state general fund an account to be known as the appellate defender operating account. The appellate defender is authorized to bill a county for services rendered to the county by the office of the appellate defender. Receipts shall be deposited in the operating account established under this section. There is appropriated from the

state general fund all amounts deposited in the appellate defender operating account for use in maintaining the operations of the office of appellate defender. Expenditures by the office of the appellate defender in excess of the amount appropriated to the office by the general assembly for the fiscal year beginning July 1, 1981 and ending June 30, 1982 shall be only from funds collected for services provided by the office.

Sec. 7. Section 19A.3, subsection 5, Code 1981, is amended to read as follows:

5. All employees under the supervision of the attorney general ~~or his assistants~~ or assistant attorneys general, and all employees under the supervision of the appellate defender or assistant appellate defenders."

H-4010 FILED MAY 6, 1981

BY COMMITTEE ON APPROPRIATIONS
WELDEN, Chair

HOUSE FILE 771

H-4030

Amend the Senate amendment, H-3925, to House File 771, as amended, passed and reprinted by the House, as follows:

1. Page 2, by striking lines 8 through 11 and inserting in lieu thereof the following:

"___. Page 2, by striking lines 27 through 32 and inserting in lieu thereof the following:

"PARAGRAPH DIVIDED. ~~provided, however, that nothing contained in this chapter shall be construed to~~ This chapter does not apply to municipally owned water works, or rural water districts incorporated and organized pursuant to chapters 357A and 504A, or to a person furnishing electricity to five or fewer customers from electricity that is produced primarily for the person's own use. This chapter also does not apply to a water works having less than two thousand customers; provided however, that the company shall be subject to this chapter upon receipt by the commission of a petition that is signed by twenty percent or more of the subscribers of the water works and that requests that the water works be subject to this chapter.""

H-4030 FILED MAY 6, 1981

BY DAVITT of Warren

APPENDIX E

SENATE FILE 332

AN ACT

RELATING TO THE OFFICE OF APPELLATE DEFENDER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. DEFINITIONS. As used in this Act unless the context otherwise requires:

1. "Appellate defender" means the state appellate defender.

2. "Indigent" means a person found by the trial court to be unable to retain legal counsel without prejudicing the person's financial ability to provide economic necessities for the person and the person's dependents.

Sec. 2. NEW SECTION. CREATION OF OFFICE. The office of state appellate defender is established. The governor shall appoint the state appellate defender and establish the appellate defender's salary.

Sec. 3. NEW SECTION. QUALIFICATIONS OF APPELLATE DEFENDER. Only persons admitted to practice law in this state shall be appointed appellate defender or assistant appellate defender.

Sec. 4. NEW SECTION. DUTIES OF APPELLATE DEFENDER. The appellate defender shall represent indigents on appeal in criminal cases and on appeal in proceedings to obtain postconviction relief when appointed to do so by the district court in which the judgment or order was issued and shall

not engage in the private practice of law. The court may, upon the application of the indigent or the indigent's trial attorney, or on its own motion, appoint the appellate defender to represent the indigent on appeal or on appeal in postconviction proceedings.

Sec. 5. NEW SECTION. STAFF. The appellate defender may appoint assistant appellate defenders who, subject to the direction of the appellate defender, shall have the same duties as the appellate defender and shall not engage in the private practice of law. The salaries of the staff shall be fixed by the appellate defender. The appellate defender and his or her staff shall receive actual and necessary expenses, including travel at the state rate set forth in section 18.117.

Sec. 6. NEW SECTION. ACCOUNT ESTABLISHED. There is established in the state general fund an account to be known as the appellate defender operating account. The appellate defender is authorized to bill a county for services rendered to the county by the office of the appellate defender. Receipts shall be deposited in the operating account established under this section. There is appropriated from the state general fund all amounts deposited in the appellate defender operating account for use in maintaining the operations of the office of appellate defender. Expenditures by the office of the appellate defender in excess of the amount appropriated to the office by the general assembly for the fiscal year beginning July 1, 1981 and ending June 30, 1982 shall be only from funds collected for services provided by the office.

Sec. 7. Section 19A.3, subsection 5, Code 1981, is amended to read as follows:

5. All employees under the supervision of the attorney general ~~or his assistants~~ or assistant attorneys general, and all employees under the supervision of the appellate defender or assistant appellate defenders.

S.F. 332

Sec. 8. Sections 1 through 6 of this Act are repealed effective four years from the effective date of this Act.

TERRY E. BRANSTAD
President of the Senate

DELWYN STROMER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 332, Sixty-ninth General Assembly.

LINDA HOWARTH MACKAY
Secretary of the Senate

Approved _____, 1981

ROBERT D. RAY
Governor

APPENDIX F

STATE APPELLATE DEFENDER'S OFFICE

BUDGET REQUEST SUMMARY

1981 - 1982

ROBERT D. RAY
GOVERNOR

FRANCIS C. HOYT, JR.
CHIEF APPELLATE DEFENDER

TABLE OF CONTENTS

OVERVIEW
OF
IOWA STATE APPELLATE DEFENDER'S OFFICE

In the fall of 1979, the Supreme Court Cost of Litigation Committee, chaired by former Chief Justice Edwin C. Moore, recommended the development of a State Appellate Defender's Office. This recommendation was followed by a recommendation from Chief Justice W. W. Reynoldson that the legislature actively pursue the possibility of establishing an Appellate Defender's Office. In December, 1979, the Court Joint Sub-Committee of the Iowa Legislature unanimously recommended that a draft bill creating an Appellate Defender's Office be sent to the respective legislative judiciary committees for immediate consideration. In response thereto, the Iowa Legislature passed a bill creating the State Appellate Defender's Office. S.F. 2229. Governor Ray signed the legislation at the end of the 1980 legislative session.

The major function of the Appellate Defender's Office is to represent indigent criminal defendants on appeals and in proceedings to obtain post-conviction relief.

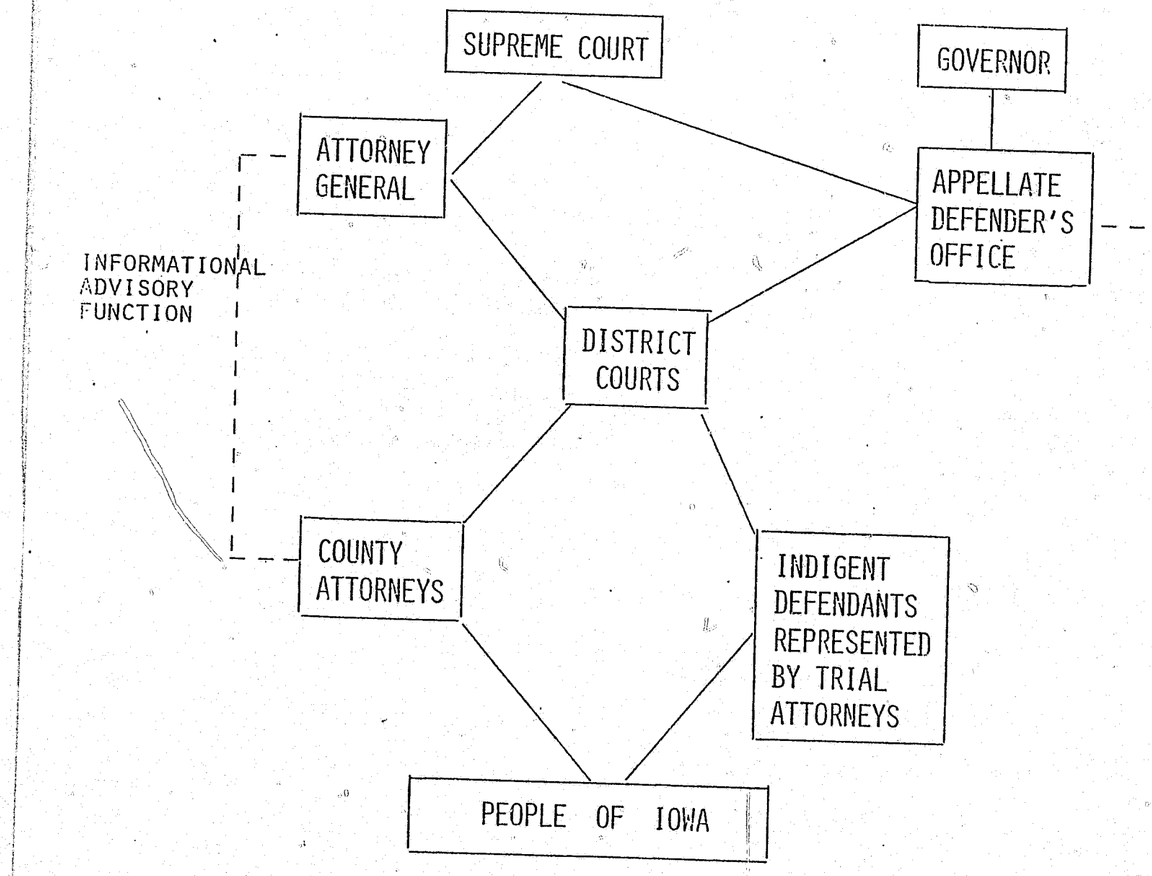
Major objectives of the office include reducing the cost of criminal appeals within the state, providing property tax relief to local counties by absorbing costs resulting from indigent criminal appeals, promoting greater judicial efficiency within the criminal justice system by reducing unnecessary delays in the administration of criminal appeals, and promoting the best interests of justice by providing high quality appellate representation to indigent criminal defendants.

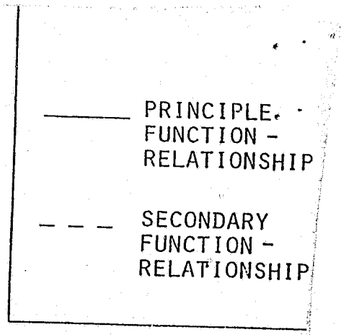
The State Appellate Defender's Office opened September 8, 1980. Initial priorities included the selection of a high-quality staff; establishing a working relationship with the courts, the counties, the criminal defense bar, the legislature and other state agencies; and providing for the effective administration of the office.

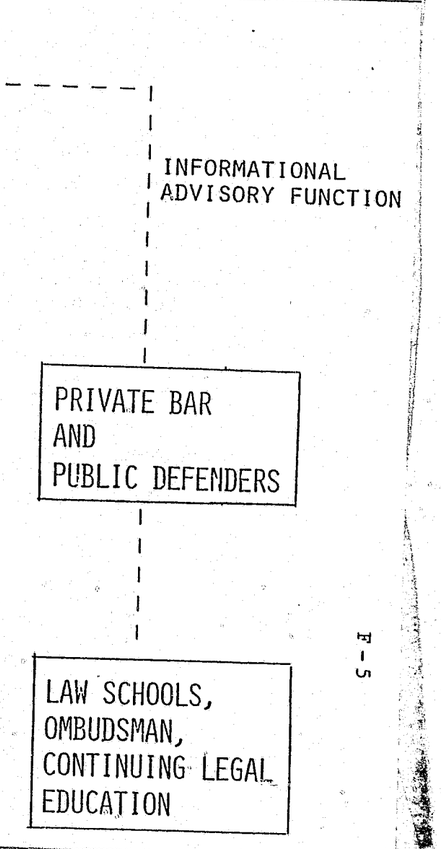
Current priorities include handling 150 criminal appeals during the first year of operation; developing a policy with regard to post-conviction relief proceedings; and providing technical expertise and assistance in the area of criminal appeals.

At present, the State Appellate Defender's Office is well on the way toward full integration into the criminal justice system.

CRIMINAL APPEALS FLOW CHART







APPELLATE DEFENDER'S OFFICE

FUNCTIONS - BENEFITS

Represents Indigent Criminal Defendants on Appeals

Represents Indigent Criminal Defendants in Proceedings to Obtain Post-Conviction Relief

Provides Reformative Influence on Criminal Justice System

Reduces Cost of Criminal Appeals in Iowa

Provides Property Tax Relief to Local Counties by Absorbing Cost of Indigent Criminal Appeals

Promotes Judicial Efficiency in the Criminal Justice System by Reducing Unnecessary Delays in Administration of Criminal Appeals

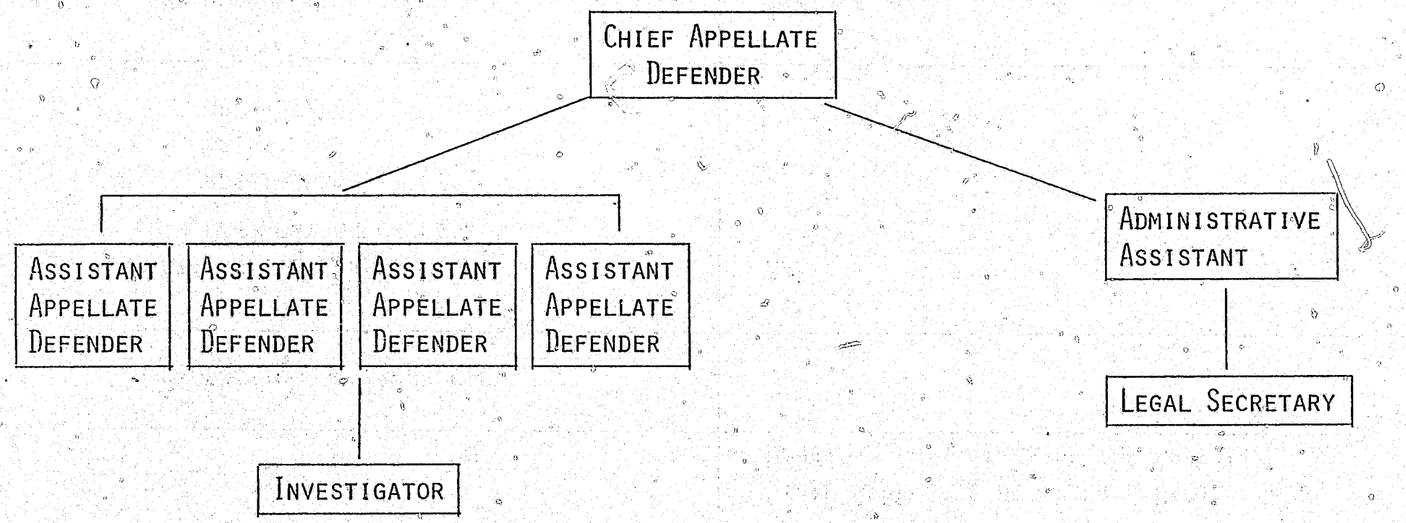
Promotes the Best Interests of Justice by Providing High Quality Appellate Representation to Indigent Criminal Defendants.

STAGES IN THE CRIMINAL APPEAL

	STATE APPELLATE DEFENDER'S OFFICE SAVES MONEY AT THIS STAGE OF THE APPEAL:
PRODUCTION OF TRANSCRIPT	
ATTORNEY BILLABLE HOURS IN PREPARATION OF CASE: RESEARCH BRIEF APPENDIX	XXX
PRINTING COSTS: APPENDICES BRIEFS	XXX
TRAVEL COSTS	XXX

STATE APPELLATE DEFENDER'S OFFICE

TABLE OF ORGANIZATION



DECISION PACKAGE I

REQUEST:	FISCAL YEAR 1981 - 1982	FISCAL YEAR 1982 - 1983
$440,690	$216,254	$224,436

NARRATIVE

The allocation of $440,690 to the State Appellate Defender's Office will allow it to maintain its present staff of eight, which is currently performing the following services for the State of Iowa:

1. Reducing the cost of criminal appeals within the State;
2. Providing property tax relief to local counties by relieving the counties of costs resulting from criminal appeals;
3. Promoting greater judicial efficiency within the criminal justice system by reducing unnecessary delays in the administration of criminal appeals;
4. Promoting the best interests of justice by providing high quality appellate representation to indigent criminal defendants; and
5. Providing a reformative influence in the criminal justice system:
   a. Coordinating the efforts of the criminal defense bar;
   b. Serving as a resource center for the criminal defense bar; and
   c. Promoting continuing legal education activities in the area of criminal appeals.

In sum, the allocation of $440,690 will allow the State Appellate Defender's Office to perform a number of necessary services for the people of Iowa in the most cost-effective manner.

DECISION PACKAGE II

	Request:	Fiscal Year 1981 - 1982	Fiscal Year 1982 - 1983
BASE	$440,690	$216,254	$224,436
+	$158,877	$ 77,921	$ 80,956
	$599,567	$294,175	$305,392

Narrative

Decision Package II calls for an allocation of $599,567 which will provide the State Appellate Defender's Office with three additional attorneys.

The three additional attorneys will allow the State Appellate Defender's Office to:

1. Reduce the heavy financial burden which falls upon local counties with regard to post-conviction relief proceedings; and
2. Reduce the unpredictable and high cost of defense in major felony cases which falls upon rural counties with no experienced criminal bar.

Post-conviction relief proceedings are local in nature. (Chapter 663A). Thus, these involve costs in terms of both time and travel. Three regionally located attorneys housed with local public defenders would allow the State Appellate Defender's Office to handle a higher volume of post-conviction relief proceedings and reduce the travel costs associated with them.

In addition, regionally located attorneys could help reduce the high costs of major felony cases which fall upon rural counties with no experienced criminal bar.

In sum, the placement of regionally located attorneys around the State would help provide for more efficient and cost-effective indigent defense in Iowa.

APPENDIX G

OVERVIEW
OF THE
STATE APPELLATE DEFENDER'S OFFICE

Prepared For

THE COMMITTEE ON METHODS
OF APPOINTMENT AND COMPENSATION
FOR COURT APPOINTED COUNSEL

Submitted by
Francis C. Hoyt, Jr.
Chief Appellate Defender

In the fall of 1979, the Supreme Court Cost of Litigation Committee, chaired by former Chief Justice Edwin C. Moore, recommended the development of a State Appellate Defender's Office. This was followed by a recommendation from Chief Justice W. W. Reynoldson, that the legislature actively pursue the possibility of establishing an Appellate Defender's Office. In December 1979, the Court Joint Sub-Committee of the Iowa Legislature unanimously recommended a draft bill creating an Appellate Defender's Office. In response thereto, the Iowa Legislature passed S.F. 2229 which created the office.

Among the objectives of the new office are:

1. Promoting the best interests of justice by providing quality appellate representation to indigent criminal defendants;
2. Promoting judicial efficiency within the criminal justice system by reducing unnecessary delays in the administration of criminal appeals;
3. Serving as a resource center for the criminal defense bar;
4. Promoting continuing legal education activities in the area of criminal appeals; and
5. Providing property tax relief to local counties by absorbing some of the costs resulting from criminal appeals.

The Appellate Defender's Office hopes to handle 150 appeals in its first year of existence. There were approximately 450 criminal appeals filed in the Iowa Supreme Court in 1979. Thus, the new office does not intend to supplant those already working in the area of criminal defense; rather, it intends to complement their efforts in order to improve the overall system of indigent defense in Iowa.

One of the initial priorities of the office is establishing a positive working relationship with the bar. In this regard, the Appellate Defender's Office is anxious to provide any assistance it can to the criminal bar. The establishment of a positive working relationship between the criminal bar and the State Appellate Defender's Office will guarantee high quality representation for indigent criminal defense.

Questions regarding the State Appellate Defender's Office should be addressed to:

State Appellate Defender's Office
First Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841

FOR YOUR INFORMATION

COPY

THE IOWA STATE BAR ASSOCIATION

COMMITTEE ON METHODS OF APPOINTMENT AND COMPENSATION FOR COURT APPOINTED COUNSEL
LEWIS S. HENDRICKS, CHAIRMAN
WILSON BUILDING
ROCKWELL CITY, IOWA 50579
1-712-297-7567

December 9, 1980

Headquarters Office
The Iowa State Bar Association
1101 Fleming Building
Des Moines, IA 50309

REPORT OF COMMITTEE MEETING HELD DECEMBER 3, 1980

Francis C. Hoyt, Esquire, Chief Public Defender of the State Appellate Defenders Office, addressed the Committee and answered questions regarding the purpose, establishment, operations and future needs of the recently established State Appellate Defenders Office. An overview of the State Appellate Defenders Office was submitted by Mr. Hoyt and a copy of the same is attached hereto.

Provisions must be made for future funding of the State Appellate Defenders Office and this Committee proposes that arrangements be made to disseminate information regarding the Appellate Defenders Office to all members of The Iowa State Bar Association, all members of the State Legislature as well as other interested citizens. Mr. Hoyt agreed to furnish the Legislative Counsel of The Iowa State Bar Association an information sheet regarding the office and its needs and the Legislative Counsel indicated his willingness to coordinate the publication of such information in such form and manner as the appropriate committee of this Association deems proper.

It was suggested to the Committee by a member of the Bar who attended the Committee meeting that the active involvement of the Iowa Law School as Criminal Defense Counsel should probably be equalized by active involvement of the Iowa Law School in assisting Criminal Prosecution Counsel. To provide for further discussion of this matter

in a proper forum the Chairman of the Legal Education and Admissions Committee of this Association is planning to invite the Dean of the Iowa Law School and the member of the Bar who presented the suggestion to attend the next meeting of the Committee on Legal Education and Admissions.

Respectfully submitted,

L. S. HENDRICKS, CHAIRMAN

LSH:pag

The following page (Appendix H) contain material protected by the Copyright Act of 1976 (17 U.S.C.) APPELLATE DEFENDER-FASTER, CHEAPER
Ames Daily Tribune, Monday, April 6, 1981

APPENDIX J

REQUEST FOR REMAINING CRIME COMMISSION FUNDS

STATE APPELLATE DEFENDER'S OFFICE

Submitted by

Francis C. Hoyt, Jr.
Chief Appellate Defender

The Iowa Crime Commission played a major role in the establishment of the State Appellate Defender's Office. The Commission had recommended the creation of such an office for many years. In the fall of 1979, the Supreme Court Cost of Litigation Study Committee recommended that the Iowa Legislature establish a state office to handle indigent criminal appeals. Thereafter, the Court Joint Sub-Committee of the Iowa Legislature recommended a draft bill creating a State Appellate Defender's Office to the Iowa Legislature. The office was created with legislation signed by Governor Ray at the end of the 1980 legislative session. S.F. 2229 went into effect July 1, 1980. It established a pilot program to be reviewed in the upcoming session. First year funding of the new office was secured by the Iowa Crime Commission through the National Legal Aid and Defender Association. (Washington, D.C.). Iowa was one of three states chosen nationally for the implementation of an appellate defender program.

Among the objectives of the State Appellate Defender's Office are the following:

1. Reducing the cost of criminal appeals within the State;
2. Providing property tax relief to local counties by relieving the counties of costs resulting from criminal appeals;
3. Promoting greater judicial efficiency within the criminal justice system by reducing unnecessary delays in the administration of criminal appeals;
4. Promoting the best interests of justice by providing high quality appellate representation to indigent criminal defendants; and
5. Providing a reformative influence in the criminal justice system:
   a. Coordinating the efforts of the criminal defense bar;
   b. Serving as a resource center for the criminal defense bar; and

   c. Promoting continuing legal education activities in the area of criminal appeals.

The office opened on September 8, 1980. Initial priorities included the selection of a high-quality staff; establishing a working relationship with the courts, the counties, the criminal defense bar, the legislature and other state agencies; and providing for the effective administration of the office.

Current priorities include handling 150 criminal appeals during the first year of operation; developing a policy with regard to post-conviction relief proceedings; and providing technical expertise and assistance in the area of criminal appeals.

At present, the office is well on the way toward full integration into the criminal justice system. Many of the objectives set forth above are already being achieved. The State Appellate Defender's Office is currently providing quality appellate representation in a cost-effective manner.

In order to assure its continuing operation, the Appellate Defender's Office is seeking $50,000 from remaining Crime Commission funds for 1981 - 1982. With these funds, the office will continue to provide a necessary service in a cost-effective manner.

REQUESTED BUDGET

State Appellate Defender's Office

Base Budget

Request:	Fiscal Year 1981 - 1982	Fiscal Year 1982 - 1983
$440,690	$216,254	$224,436

The $50,000 we have requested will be applied to the cost for Fiscal Year 1981 - 1982.

APPENDIX K

REPORT

The question of conflict of interest on an appeal appears in four contexts: first, when an attorney, either retained or appointed, represents more than one appellant; second, when an attorney represents an appellant after having previously represented another defendant in the case at trial; third, when an attorney represents a single defendant both at trial and on appeal; and fourth, when an attorney, although representing only one appellant, is asked or directed by the appellate court to file with co-counsel a joint statement of facts or a joint presentation of the legal issues. This report to the Criminal Justice Section Council concerns problems arising in the first, second, and fourth situations; problems arising in the third are to be discussed in a separate position paper.

1. The right to counsel whose loyalties are undivided

The constitutional right to counsel on an appeal as of right derives from the due process* and equal protection clauses of the Constitution. Anders v. California, 386 U.S. 738 (1967); Douglas v. California, 372 U.S. 356 (1963).

> The constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to an amicus curiae. The no merit letter [in lieu of an appellate brief] and the procedure which it triggers do not reach that dignity. Counsel should and can with

*Skills on appeal require that counsel be "scrupulously accurate in referring to the record and the authorities upon which counsel relies in the presentation to the court of briefs and oral argument." American Bar Association Project on Standards for Criminal Justice, THE DEFENSE FUNCTION §8.4(b) (1980) (hereinafter, "DEFENSE FUNCTION").

> honor and without conflict, be of more assistance to his client and to the court.
>
> Anders v. California, supra, 386 U.S. at 744.*

When a constitutional right to representation by counsel exists, the Sixth Amendment requires such representation to be free from conflicts of interests. Wood v. Georgia, ___ U.S. ___, 48 U.S.L.W. 4218, 4220 (March 4, 1981); Cuyler v. Sullivan, ___ U.S. ___, 48 U.S.L.W. 4517 (May 13, 1980); Halloway v. Arkansas, 435 U.S. 475, 481 (1978).

Several federal circuit courts of appeal have indicated recognition of potential conflict situations on appeal by including in their Plans pursuant to the Criminal Justice Act of 1964 provisions relating to conflict. Specifically, the Third Circuit provides in its Plan:

> In appeals of multiple defendant cases, one or more attorneys may be appointed to represent all appellants, but where circumstances warrant, such as conflicting interests of different appellants, separate counsel may be appointed for each of the appellants or any one of them.
>
> Federal Rules of Criminal Procedure, Third Circuit, Appendix III.3.

The Second Circuit Plan contains similar language:

> In appealed cases involving more than one defendant, one or more attorneys

*To the extent that Ross v. Moffitt, 417 U.S. 60 (1974), implies that the denial of counsel on appeal as of right is not a denial of due process, we respectfully disagree. Requiring that, to pursue an appeal as of right, the defendant read and digest the record, present a comprehensive and accurate statement of facts, identify and research the legal issues even when unobjected to, write legal arguments coherently and succinctly, and present his oral argument so that the judges are afforded a structured and skillful mechanism for fairly examining a case is, for most litigants, a denial of a meaningful opportunity to be heard. See Powell v. Alabama, 287 U.S. 45, 68-69 (1932) ("The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel").

> may be appointed to represent all appellants, but where circumstances warrant, such as conflicting interests of respective appellants, separate counsel may be appointed for each of the appellants or for any one of them.
>
> Second Circuit Criminal Justice Act Plan, III(2).

See also the Fifth, Sixth, and Eighth Circuit Plans.

A strict policy against counsel whose interests are in conflict appears in the Code of Professional Responsibility, Canons 4, 5, and 9. The language of the Canons appears to have unlimited applicability to all lawyers in all professional activities, and thus should apply to counsel in criminal appeals as well as to attorneys performing other functions. Some jurisdictions have included the Canons as part of their local Rules of Practice (Rule X, Rules of the District of Columbia Court of Appeals). Many judicial opinions employ the standard of the Canons to evaluate counsel's behavior; and although few of these opinions deal with counsel's performance in a criminal appeal (but see State Appellate Defender v. Saginaw Circuit Judge, 283 N.W.2d 810 (Ct. App. Mich. 1979)), the principles therein are applicable. See Watson v. District Court, 604 P.2d 1165 (Sup. Ct. Colo. en banc 1980); see also cases cited infra at pages

The problem of conflict appears to be made more complex by cases in which an institutional defender is appointed to represent co-appellants and different staff attorneys are assigned to handle the cases. However, the institutional defender should usually be treated as a unitary attorney, for there is generally, among the attorneys, access to client files, discussion of issues and problems, and precedents relevant to a client's case, intra-office editing of briefs and preparation for argument, and a discussion of client confidences to establish strategies. As the Standards for Defense Function state:

> If a single lawyer should not represent codefendants, it follows that "no partner, or associate, or any other lawyer affiliated with him or his firm, may accept or continue such employment." ABA, CODE OF PROFESSIONAL RESPONSIBILITY DR5-105(D).
>
> DEFENSE FUNCTION, Standard 4-3.5 at 4.41 n.3.

The same difficulty arises when an institutional defender represents one defendant at trial and a co-defendant on the appeal.

2. The role of counsel

The general duty of counsel is "to represent his client zealously within the bounds of the law...." Canon 7; EC 7-1. Counsel may urge any permissible construction of the law favorable to his client so long as it is not frivolous (EC 7-4). The exercise of counsel's judgment should be solely on behalf of his client (EC 5-1).*

Counsel should establish a relationship of trust and confidence, and should explain the attorney's obligation of confidentiality to his client. DEFENSE FUNCTION, Standard 4-3.1(a) at 4.28. The ABA Standards themselves reflect the role counsel must play in representing his client at trial. These guidelines are appropriate for appeals as well.

> The role of counsel for the accused is difficult because it is complex, involving multiple obligations. Toward the client the lawyer is a counselor and an advocate; toward the prosecutor the lawyer is a professional adversary; toward the court the lawyer is both advocate for the client and counselor to the court. The lawyer is obliged to counsel the client against any unlawful future conduct and to refuse to implement any illegal conduct.* But included in defense counsel's obligations to the client is the responsibility of furthering the defendant's interest to the fullest extent

*The ABA Standards require the following:

> 3.9 Obligations to client and duty to court
>
> Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.
>
> DEFENSE FUNCTION, Standard 4-3.9 at 4.51.

> that the law and the standards of professional conduct permit.**

*ABA Code of Professional Responsibility, DR 1-102(A).

**See Johns v. Smith, 176 F.Supp. 949 (E.D.Va. 1959); Thode, The Ethical Standard for the Advocate, 39 Tex.L.Rev. 575, 583-584 (1961).

> DEFENSE FUNCTION, Standard 4-1.1 at 4.8 (Commentary).

Conflict obviously exists when the lawyer has other loyalties which might cause him to modify his zeal in representation and when the interests of other clients dilute his duty to his client (Canon 5, EC 5-1):

> Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have different interests, whether such interests be conflicting, diverse, or otherwise discordant.
>
> ABA Canons, EC 5-14.

Not only must counsel vigorously represent his client, unimpeded by other interests, he must also preserve the confidences and secrets of his client (Canon 4, EC 4-1; DR 4-10 (A)). The information acquired in the course of representation should not be revealed, used to the disadvantage of the client, or employed for the lawyer's own purposes. The lawyer must prevent disclosures of confidences from one client to another, and no employment should be accepted that might require such disclosure (EC 4-5; DR 4-101(B)). The lawyer's obligation to preserve a client's confidences and secrets continues after termination of the attorney's employment (EC 4-6). The lawyer must avoid even the appearance of impropriety (Canon 9).

3. The nature of appellate conflict

The ABA Standards describing possible trial conflicts are relevant by analogy to the appeal process. The Standards state:

> [F]requently there are factual differences

in the prosecutor's case agaisnt them or in their defense to the charges, or, at the very least, differences in their backgrounds and social history that are relevant at sentencing. Where the differences are patent, separate counsel are obviously essential. If, for example, defendant X states that defendant Y committed the offense, and vice versa, the same attorney clearly cannot represent both parties.

Frequently, however, the differences or conflicts are more subtle but still make effective, zealous representation of all defendants impossible. During the plea negotiation stage, for example, a lawyer cannot urge identically favorable plea agreements for all of the defendants unless all are identically situated. The presence of even slight differences in the backgrounds of defendants or in their cases (e.g., one defendant held a gun while the other served as a lookout) means that strong advocacy to the prosecutor on behalf of one codefendant necessarily undermines, by comparison, the position of other defendants. Similar problems are experienced by counsel during trial, whether the issue is deciding what questions to ask on direct examination or cross-examination, which witnesses will testify, or what evidence to introduce. Questions, testimony, or evidence that is particularly beneficial to one defendant may indirectly reflect adversely on other defendants. The difficulty for an attorney is especially acute when it comes to arguing the cases of multiple defendants to the fact finder. Unless the prosecutor's evidence against the defendants and their defenses is identical, attempts by counsel to exploit weaknesses in evidence against one defendant necessarily makes the case against other defendants appear stronger.

DEFENSE FUNCTION, Standard 4-3.5 at 4.42 (Commentary).

The representation of co-appellants must, with few exceptions, cause a conflict and affect the entire appellate

review proceedings. Conflict on appeal is as serious as conflict at trial. One reason for the serious effect of an appellate conflict is that the course of the appeal is determined by the appellant's counsel. It is the appellant's attorney who structures the factual framework of the case by electing to emphasize those parts of the record which relate to the legal issues selected and which demonstrate innocence or reduced culpability on the part of the client, or the weaknesses in the prosecution case. Similarly, the appellant's counsel determines the legal issues to be raised on appeal, and the course of the argument. Second, the proper and perhaps successful presentation of every legal issue depends on the presentation of the facts as revealed by the record, and virtually every record will present a difference in the evidence with respect to each defendant. The variation may go to the quantity or the quality of the evidence against the defendant, but differences in the strength of the prosecution case against separate defendants are frequent. The brief on appeal must reflect such differences in evidence, whether greater or lesser, and the facts must then be used to explain how the claimed legal error arose, the significance of the legal argument, and the prejudice resulting from the asserted legal error.

Third, the courts respond to factual statements which demonstrate a weakness in the prosecution's factual or legal case against one of the accused. A legitimate challenge to the proof of guilt or to the validity of the verdict, discounting the effect of the alleged error, is of great importance to a client. However, and by necessity, the position of another appellant who cannot benefit from the argument is weakened in the eyes of the court.

The specific issues for appellate review also demonstrate the actual conflict created by joint representation. Conflict arises of necessity when the appellate court can review sentence, as it does in New York. Conflict of interests on this appellate issue, not unlike that found in joint representation at sentencing itself, exists because the argument is necessarily predicated on such claims as lesser culpability, mitigating circumstances, favorable history, or defects in the prosecution's case. Of necessity, such an argument sets up a comparison between co-appellants in which one is portrayed as more worthy than another: it is not possible to argue that multiple clients are all less culpable.

Similar difficulties arise in the presentation of an issue of credibility of witnesses (as is included in interest of justice jurisdiction in New York) or the adequacy of the prosecution's case under Jackson v. Virginia, 443 U.S. 307

(1979). It is conflict to argue that the guilt of one client is not established and, by implication, that the other's guilt was proved beyond a reasonable doubt. The statement of facts for one client would necessarily emphasize the vulnerability of the prosecution's case, thereby highlighting its strength relative to the other client. Such a conflict is particularly clear in accessorial crimes, such as conspiracy and aiding and abetting. See People v. Macerola, 47 N.Y. 2d 257 (1979). Other arguments in behalf of the client in the weaker evidentiary position would also be adversely affected by the necessity of highlighting the relative strength of the prosecution's case against the other appellant.

Examples of other legal issues in which arguments for each client would differ (depending on the record evidence or other factors specifically relevant to the client) are evidentiary questions such as hearsay, business records, documents, prior similar acts, use of presumptions or inferences; challenges to the constitutionality of a statute as applied (Ulster County Court v. Allen, 442 U.S. 140 (1979)); errors in the court's jury charge; and errors in the prosecutor's summation.

In cases in which a defense has been presented at trial for one defendant but not for others, the presentation of the appeal is different for each co-appellant. Not only the statement of facts, but issues such as claimed errors in the charge, admission of rebuttal evidence, denial of severance, and others are also structured specifically for each co-appellant.

The conflict that may be presumed to exist because of joint representation on appeal is aggravated if the appellants were also represented jointly at trial. If an actual conflict of interests existed at trial, it may remain undisclosed or unlitigated as an appellate issue if a single attorney examines the trial record on behalf of both appellants for review purposes.* See Wood v. Georgia, supra; United States v. Carrigan, 543 F.2d 1053 (2d Cir. 1976) (where the court requested one attorney to represent both appellants but counsel refused).

*The possibility that a trial conflict will remain undisclosed on appeal and not considered for review is increased if the attorney on the appeal is the same attorney who represented the defendants at trial. Not only is he likely to miss the conflict for appeal purposes if he has not realized its existence previously, but he is also in the intolerable position of having to attack his own performance and judgment.

Recently, appellate courts have requested or required that separate co-counsel in a case prepare briefs with combined statements of fact or legal argument. This procedure raises the same actual conflicts, and will have the further effect of provoking distrust for counsel. As noted above, the critical nature of the statement of facts necessitates a separate presentation of the record on behalf of each appellant. The legal argument can seldom be presented without reference to the pertinent facts, especially as the argument relates to the prejudice to the appellant and his right to a fair trial. Each appellant thus deserves individual presentation of the issues on his own behalf. Whether he retains counsel or is provided court-appointed counsel, a client has the right to expect that his attorney will present his best interests and that those interests will not be diluted by compulsory representation by someone else's lawyer.

Co-appellants, if not formal adversaries to a litigation, are in fact adversaries because claims of error are usually more substantial for one than for the other. By implication and contrast, legal and factual issues are weaker, less favorable, and less likely to be successful for the other. Minimizing the differences between co-appellants so as to avoid prejudice to the appellant in the weaker position is tantamount to representing the client in the stronger position inadequately. Counsel's conflict in such a case is obvious. It is clear that an attorney may not, in one case, represent adversaries, and this injunction should apply here.

Based on experience, it is safe to say that an actual conflict would result from joint representation of co-appellants in all but a very small number of cases. However, ascertaining which cases contain no conflict would be time-consuming and expensive; thus, it is simply the better course to have each appellant separately represented from the initiation of the review process.

Not only does conflict arise because of the precise appellate issues involved in a case, but because of the possibility of revelation of confidences and secrets. The ABA Standard requires that a lawyer should seek to establish a relationship of trust and confidence, that he should explain to his client the need for full disclosure of the relevant facts, and that

> ... the lawyer should explain the obligation of confidentiality which makes privileged the accused's disclosures

relating to the case.

> DEFENSE FUNCTION, Standard 4-3.1(a) at 4.28 (Commentary).

Yet,

> ... the fact of multiple representation means that the statements of the accused to the lawyer are not given in full confidence.
>
> DEFENSE FUNCTION, Standard 4-3.5 at 4.42 (Commentary).

Counsel is obligated to each client to inform him of anything he knows that will be helpful to the client; on the other hand, he is obligated to each client to retain that client's confidences. Thus, conflict is apparent. The problem also arises in cases in which the attorney represents one defendant at trial and another in the same case on appeal:

> ... The principle is clear that a lawyer who represents a client in litigation should not thereafter represent an adversary in the same case. That principle is in part, but only in part, "a strict prophylactic rule to prevent any possibility, however slight, that confidential information acquired from a client during a previous relationship may subsequently be used to the client's disadvantage." ... The principle also rests on the lawyer's obligation to exercise his professional judgment, within the bounds of the law, "solely for the benefit of his client and free of compromising influences and loyalties." ABA Code of Professional Responsibility, EC 5-1 (1978).... In his representation of the original client, there should be no prospect that he might later be employed by a different client to uphold or upset what he had done.... Nor, in the later representation of the adversary, should there be any possibility that the loyalty of counsel to the adversary is diluted by lingering loyalty

to the original client.

> Pisa v. Commonwealth, 393 N.E.2d 386, 388 (Sup. Jud. Ct. Mass. 1979).*

A further conflict between a new and former client exists because representation of the new client is circumscribed by the need to shape an appellate argument for that client which does not adversely affect the former client, and the confidences of the former client may actually shape the legal argument for the new client:

> An attorney should not use information he received in the course of representing a client to the disadvantage of that client. In this regard, the attorney should exercise care to prevent disclosure of confidences and secrets of one client to another and decline employment that would require such disclosure. ABA Code of Professional Responsibility EC 4-5. See, also, id. DR 4-101. This obligation to preserve the secrets and confidences imparted by a client continues even after the termination of employment. ABA Code of Professional Responsibility EC 4-6. An attorney should similarly refrain from representing a party in an action against the former client where there is an appearance of a conflict of interest or a possible violation of confidence, even if such may not be true in fact. 2 American Bar Association Committee on Ethics and Professional Responsibility, Informal Ethics Opinions 23 (1975). The purpose for disqualification of an attorny in such situations is to ensure the attorney's absolute fidelity and to guard against inadvertent use of confidential information. Ceramco, Inc.

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*In Pisa, the court criticized but found no prejudice when a law student in the office of a trial defense counsel later edited for cite and substance accuracy the brief of the prosecutor. Interestingly, the court noted that the prosecutor on a defense appeal merely responds to defense arguments and that the danger of prejudice is not so great. It is, of course, appellant's counsel who shapes the arguments, and that attorney must be without conflict.

v. Lee Pharmaceuticals, 510 F.2d 268, 271 (2d Cir. 1975).

National Texture Corp. v. Hymes, 282 N.W.2d 890, 894 (Sup. Ct. Minn. 1979).

4. Waiver

The only way an attorney may represent more than one client in a proceeding is to obtain a waiver:

> ... Thus before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent. If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should also advise all of the clients of those circumstances.
>
> EC 5-16.

The ABA Standards also require waiver for joint representation:

> ... The potential for conflict of interest in representing multiple defendants is so grave that ordinarily a lawyer should decline to act for more than one of several codefendants except in unusual situations where, after careful investigation, it is clear that:
>
> (i) no conflict is likely to develop;
>
> (ii) the several defendants give an informed consent to such multiple representation; and
>
> (iii) the consent of the defendants is made a matter of judicial record. In determining the presence of consent by the defendants, the trial judge should make appropriate inquiries respecting actual or potential conflicts of interest of counsel and whether the defendants fully comprehend the difficulties

> that an attorney sometimes encounters in defending multiple clients.
>
> DEFENSE FUNCTION, Standard 4-3.5(b) at 4.38.

In the appeal context, circumstances are such that it may not be possible to obtain a waiver. Joint representation on appeal arises when counsel for a defendant at trial is continued as counsel for the appeal and is also assigned to represent a co-defendant; when new counsel is assigned to represent co-appellants; when counsel for one defendant at trial is assigned to represent another defendant on appeal; or when counsel is retained by one client for himself and another, or jointly by both clients.

In order to obtain a "knowing and intelligent" waiver (Johnson v. Zerbst, 304 U.S. 458 (1938)), counsel would be obliged to explain the meaning and effect of joint representation to his clients. An in-person interview is the only satisfactory way of assuring a valid waiver. In many instances an assignment by the court to appellate clients is not made and the lawyer is not aware of the joint representation until the clients are already serving a sentence, perhaps at a far-removed prison or institution. The attorney must then visit both his clients in prison, possibly at great expense and time, and possibly at different prisons, to explain the meaning of joint representation and waiver. In instances in which the court directs the filing of briefs within a limited and specific period of time, such trips may result in late filing or in requests for extensions of time in which to file appellate briefs.

Communication of these matters through the mails is not only an unsatisfactory method of explaining problems of such import, but is time-consuming because the client may have a number of questions and legitimate concerns which must be responded to in successive communications.

Furthermore, a waiver may not appropriately be given unless the client understands that another lawyer is available to represent him.

In situations in which the client is incarcerated, court assurance that the waiver is valid also presents obvious and serious and expensive logistical problems. For retained counsel, where the client is not incarcerated, such mechanical difficulties in obtaining a waiver may be reduced. However, the concept of one client paying an attorney's fee for himself and a co-appellant creates a situation in which conflict cannot be avoided, and in such a case no waiver

should be sought. The ABA Standard (DEFENSE FUNCTION, Standard 4-3.5(c) at 4.39) requires that:

> [i]n accepting payment of fees by one person for the defense of another, a lawyer should be careful to determine that he or she will not be confronted with a conflict of loyalty since the lawyer's entire loyalty is due the accused. It is unprofessional conduct for the lawyer to accept such compensation except with the consent of the accused after full disclosure. It is unprofessional conduct for a lawyer to permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

Absent such an understanding, the conflict is self-evident.

Furthermore, because the transcript of trial proceedings will probably not be available for inspection at the time a waiver must be discussed, the attorney cannot advise his clients of the appellate issues, and thus cannot assure them that joint representation will not produce a conflict. Thus, the important decision of whether one appellate lawyer will represent more than one client must be made without essential information.

Although appellate counsel may also have been counsel for a co-defendant at trial, he, too, faces a problem of appraising the trial record from new perspectives to determine the merits of the appeal for the client he did not previously represent and to evaluate how the interests of the two clients relate. Here, too, proper analysis must await the availability of the trial transcript, which may create time problems for perfection of the appeal.

Application of a theory of waiver of separate counsel in the context of appellate representation is fraught with danger. Conflict is likely even if one does not appear initially; it may appear at a later date when remedy is not possible.

The decision in Cuyler v. Sullivan, supra, noting the Canons of Professional Responsibility and the ABA Standards, makes clear that the primary burden of avoiding conflicts resulting from joint representation rests with counsel:

> ... Defense counsel have an ethical obligation to avoid conflicting representations

> and to advise the court promptly when a conflict of interest arises during the course of trial.
>
> Id., 48 U.S.L.W. at 4250.

Under Cuyler, if counsel consents to represent two clients the court assumes the absence of a conflict. Experience with representation at trial, as reflected in ABA Standards, DEFENSE FUNCTION, Standard 3.5, is that the potential for conflict is so great that, ordinarily, joint representation should not be undertaken. For trial counsel the single exception to this rule exists when careful investigation discloses no likelihood of conflict, when an informed waiver is obtained, and when the court has approved. However, as noted, in post-conviction circumstances these conditions are particularly difficult to meet. Thus, it is suggested that joint appellate representation not be undertaken. It is believed that this is already the position of many institutional defenders;* it is in New York City and in the District of Columbia.

Not only is avoidance of conflict the best way to protect the client's right to counsel and his right to a full and fair appeal, it is, as contrasted with the right to unconflicted trial counsel, the only meaningful way to protect the rights of an appellant. Under Cuyler, if an actual conflict exists at trial, whether apparent on the record or established after a hearing (see Wood v. Georgia, supra), the matter may be raised on appeal and the judgment vacated notwithstanding the level of prejudice. However, a claim after the fact that counsel on appeal was conflicted is, as a practical matter, an error without remedy and is not readily demonstrable as a matter of proof. It would probably be hopeless to argue that counsel displayed a conflict because he prepared a statement of facts without the emphasis that counsel representing only one client or the appellant himself might have written. This would be the case even if the statement of facts reflected counsel's conflict of interests in representing more than one client. As for the issues to be raised on appeal, one court has already held that it is counsel who determines what questions are to be presented, and the appellant may not thereafter complain that other issues were not raised (Ennis v. LeFevre, 560 F.2d 1072 (2d Cir. 1977). The Ennis principle and the doctrine that collateral attack may not substitute for an appeal seem to preclude raising on collateral attack an issue not raised on appeal even though a conflict was the cause of the failure.

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*See Cuyler v. Sullivan, supra.

Only if the appellant is aware of an appeal conflict and notifies the court of his complaint is an alternative to counsel's self-disqualification available to the appellant. However, this situation assumes a client who is knowledgeable concerning the law of the issues in his case, aware of the legally relevant differences between his case and that of a co-appellant, and possessed with the ability to recall specifics of the proceedings below. This is precisely what counsel is supposed to do, and an unfair burden is placed on laypersons, especially when they are often illiterate and without even basic skills, to make such an analysis. Furthermore, if the client ever becomes aware of the conflict, it is often after the brief is filed, at a time when the court is likely to decide the claim quickly and adversely so as to avoid delay in the appellate process.

Counsel should represent only one client on appeal.

— PHYLIS SKLOOT BAMBERGER
Chairman
Subcommittee on Guidelines for
Joint Representation in
Co-Appellant Cases

For LINDA LUDLOW
Chairman
Criminal Appellate Issues Committee
CRIMINAL JUSTICE SECTION

MINORITY REPORT

At the April 11, 1981, Committee on Criminal Appellate Issues meeting, it was resolved by a majority of the members present that defense counsel should not represent co-appellants. However, six members were of the belief that such a conclusion should be absolute, while five members maintained that, under appropriate circumstances, representation of co-appellants was permissible.

The minority view suggested that an absolute prohibition implicated a criminal defendant's Sixth Amendment right to counsel. (See, for example, North Carolina v. Alford, 400 U.S. 25 (1970), and California v. Faretta, 422 U.S. 806 (1975)). Accordingly, the minority explained that a mechanism by which co-appellants could make a knowing and intelligent waiver of such a proscription should be explored.

The minority was unable to resolve how and by what means a waiver should properly be effected to insure its voluntariness. The proposals presented included: (1) use of a standardized waiver form filed by counsel with the court; (2) application by a formal Motion for Appointment of Co-Appellants which would contain a sworn affidavit of co-appellants stating their desire for joint representation; and (3) implementation of a judicially approved wiaver hearing to be conducted by a magistrate, the trial judge, or the Court of Appeals. (The time, place, and form of this hearing would be resolved on a jurisdiction by jurisdiction basis.)

In the minority's mind, the importance of a waiver provision is highlighted by the following hypothetical: Husband and wife are indicted for violation of the tax laws. They retain private counsel for their joint defense. They lose a motion to suppress evidence and enter into a stipulated trial preserving the right to appeal. Trial counsel is prepared to continue her representation of husband and wife on appeal. Husband and wife are desirous of counsel's continued services. Should they enjoy this right?

— MICHAEL ZELDIN

APPENDIX L

STATE OF IOWA APPELLATE DEFENDER'S OFFICE

Policy Statement Concerning Frivolous Appeals

The propriety of our current procedure of voluntarily dismissing appeals which we believe are frivolous has been questioned on two grounds:

1.) A voluntary dismissal effectively precludes the possibility of a PCR action raising issues which could have been raised on direct appeal while a client resisted 104 motion does not. See Stanford v. Iowa State Reformatory, 279 N.W.2d 28, 33-34 (Iowa 1979).

2.) A rule 104 motion allows the court to determine whether the appeal is frivolous while a voluntary dismissal reflects only our opinion as to the merits of an appeal. Our use of the voluntary dismissal mechanism gives the appearance that we "browbeat" clients into dismissing appeals thereby forever precluding appellate review of the case.

The considerations which support the use of the voluntary dismissal mechanism are as follows:

1. Rule 104 motions are often as time consuming as an ordinary appeal and constitute an unnecessary expenditure of time.

2. We are confident in our ability to detect issues and we do not dismiss appeals even if they have only questionable merit.

3. In guilty plea cases in which no motion in arrest of judgment was ever filed, it is not the voluntary dismissal which prejudices the clients right to appeal. In such cases the right to appeal (except for sentencing error) is effectively precluded by the time we get the case and we obviously have no control over the filing of motions in arrest of judgment.

CONTINUED

1 OF 2

On balance, the considerations stated above weigh strongly in favor of using Rule 104 in ordinary cases. However, consideration number (3) in favor of voluntary dismissals is equally compelling in guilty plea cases where no motion in arrest of judgment was filed.[1]

For these reasons the State of Iowa Appellate Defender's Office adopts the following policies:

I. Procedure for frivolous appeals:

A.) At the time an attorney believes an appeal is frivolous, he or she shall inform the client of his or her opinion. The attorney shall explain to the client the procedure that will be undertaken pursuant to Rule 104. If the client insists that the appeal be dismissed, the attorney, after he or she has satisfied him or herself that the client fully understands the consequences of voluntary dismissal, may proceed by voluntary dismissal in any case. The client should not be informed under this section until the procedure outlined in §II(A) is complete.

B.) In any guilty plea case in which no motion in arrest of judgment was filed in the district court the attorney may proceed by voluntary dismissal. Before proceeding in this manner the attorney shall take care to examine whether circumstances exist which would alleviate the motion in arrest bar. (e.g.-plea taken during time when motion in arrest requirement did not apply, defendant not informed or improperly informed of requirement, or error occurs after time for filing motion therefore impossible for defendant to comply.) In such cases, attorneys shall also take care to examine whether sentencing error has taken place.

C.) Procedure in all other frivolous guilty plea cases shall be as outlined in paragraph I (A).

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1. It should also be noted that the voluntary dismissal of an appeal from a guilty plea in which no motion in arrest of judgment was filed may not preclude an attack on the plea in a PCR application, based on ineffective assistance of counsel. This may be equally true with respect to any ineffective assistance of counsel claim regardless of whether the appeal was voluntarily dismissed or not. Sims v. State, 295 N.W.2d 420 (Iowa 1980).

II. Review Procedure

A.) Prior to actually proceeding to withdraw from a case under Rule 104, or to proceeding by voluntary dismissal, the attorney shall ask two other attorneys in the office to review the case in its entirety and to determine whether they believe the appeal is frivolous. No Rule 104 motion shall be filed unless all three of the attorneys who have reviewed the case believe it to be frivolous.

B.) Whenever it is permissible, under §I, to proceed by voluntary dismissal, an affidavit signed by the client in the presence of a notary public or other person authorized to administer oaths shall accompany the motion to dismiss and shall contain the following:

1. A statement of the exact crime the client was sentenced for by description and code section, date sentence was imposed, whether sentence was imposed after guilty plea or trial, and the terms of the sentence.

2. A statement that the client has been informed that the appeal is, in the attorney's opinion, frivolous.

3. A statement that the client has been informed that he has a right to appeal and that he has right to elect to force us to proceed under Rule 104.

4. A statement that the client has been fully informed of the consequences of a voluntary dismissal, specifically including the effect in future PCR litigation contrasted with the effects if Rule 104 were used.

5. A statement that the client fully understands his rights and that he understands the consequences of his dismissal and that it is his personal decision not to proceed with the appeal

C.) Before any client is presented with such an affidavit, the attorney shall take care to personally explain all of the matters contained in the affidavit and assure him or herself that the client fully understands the affidavit's contents.

APPENDIX M

IOWA STATE
APPELLATE DEFENDER'S OFFICE

TRAINING AND REFERENCE MANUAL
FOR
NON-PROFESSIONAL EMPLOYEES

Non-Professional staff members are not required or expected to be lawyers. However, it is important that the staff have a general understanding of the criminal justice system in Iowa and of the operation of appellate process.

I. Overview of the Criminal Justice System

Under our federal and state constitutions, every individual who is charged with a violation of the criminal law is entitled to a trial at which the state (represented by a county attorney) must prove that the individual is guilty of the charged offense. The individual charged with the violation is known as the defendant. The state is known as the plaintiff.

The vast majority of criminal cases, however, are not disposed of by trials. Rather, defendants typically choose, largely as a result of "plea bargaining", to plead guilty of the charged crime and forego a trial. Thus, there are two ways in which a defendant may be convicted; after a trial, or after an admission of guilt or "guilty plea".

Once an individual has been found guilty after trial or has pled guilty, the trial judge imposes a sentence. When a defendant is sentenced, it is said that judgment has been entered. It is from this judgment that defendants appeal.

Every defendant against whom judgment has been entered has the legal right to apreal that judgment and has the right to an attorney to represent him or her on appeal. However, all defendants are not entitled to the services of our office. Only those defendants who are indigent, meaning that they are financially unable to hire an attorney without

jeopardizing their ability to provide for the basic existence of themselves or the dependents, are entitled to our representation. The determination of whether a particular defendant is indigent is made by the trial court.

When the case is on appeal, the parties retain the same designation as they had in the trial court. Additional terms are used, however, in order to designate the party taking the appeal and the party defending against the appeal. The party taking the appeal is known as the appellant and the party defending against the appeal is known as the appellee. In the context of our work, the defendant will almost always be the appellant. There are situations, however, in which the state may appeal. In those cases, the defendant will be the appellee and the state the appellant.

II. What is an appeal?

An appeal is not a new or second trial. An appeal is essentially a statement by the appellant that something went wrong before, during, or after the trial (or guilty plea proceeding) which made the result illegal or unfair and which requires correction by the appellate court. A list of the possible specific errors which could occur at trial would be, literally, endless. However, there are four general types of error most typically raised:

1. An error in applying a rule of criminal procedure.
   e.g. Defendants must be brought to trial within ninety days of indictment. This defendant was not brought to trial within ninety days. The defendant asked the trial court to dismiss the charge and the trial court refused. The defendant-appellant now asks the appellate court to correct the trial court's error.

2. An error in applying a rule of evidence.
   e.g. Witnesses cannot express an opinion on the ultimate issue of the defendant's guilt. During trial the prosecutor asks a witness if he thinks the defendant is guilty. The defense attorney objects. The trial court overrules the objection and the witness answers "yes". On appeal, the defendant-appellant asks the appellate court to correct the error.
3. An error in applying the United States Constitution.
   e.g. No one may be forced to incriminate themselves. The defendant is arrested by police and interrogated for 14 hours without food, water, or rest. The defendant finally confesses because he is hungry, thirsty, and tired. At trial, the prosecutor introduces his confession and his attorney objects stating that the confession was forced from the defendant. The trial court overrules the objection. On appeal, the defendant-appellant asks the appellate court to correct this error.
4. An error in applying a rule of substantive state law.
   e.g. In a prosecution for robbery, the state must prove that the defendant intended to commit a theft. The defendant is charged with robbery. He asks the trial court to instruct the jury that they must find that he intended to commit a theft. The judge refuses and the defendant is convicted of robbery. On appeal, the defendant-appellant asks the appellate court to correct this error.

Generally, all errors must be "preserved for review". This simply means that errors must be raised in the trial court, when they first

become apparent. The appellate courts will not consider errors which have been raised for the first time on appeal. These errors are said to be waived or not preserved.

When the appellant asks the appellate court to "correct an error" he may ask for several different types of relief, depending on the type of error. Most often the appellant asks for a new trial.

III. The Court system.

A. District Courts: - The district courts are "trial courts". There are 99 district courts, one for each county. Each district court conducts trials for crimes committed within the boundaries of the county in which it is located. (Lee County has two district courts: one in Keokuk and one in Fort Madison.) Although there are 99 district courts, there are only 8 judicial districts. A judicial district is an administrative area designated for the purpose of assigning judges. Thus, each district court does not necessarily have its own judge.

B. Appellate Courts:

1. The Iowa Court of Appeals.

There are five judges on this court: Currently, they are:

Leo Oxberger, Chief Judge
Janet Johnson, Judge
James Carter, Judge
Allen Donielson, Judge
Bruce Snell, Jr., Judge

Criminal appeals are assigned, by the Supreme Court, to itself or to the court of appeals. Normally, the court of appeals initially hears all but the most important cases. If the appellant or appellee is dissatisfied with the decision of the court of appeals, he may petition the Iowa Supreme Court for further review.

2. The Iowa Supreme Court:

This is the highest court in the state and its decisions are binding on all lower courts. The court consists of nine judges who currently are:

Ward Reynoldson, Chief Justice
Robert Allbee, Justice
K. David Harris, Justice
Jerry Larson, Justice
Clay LeGrand, Justice
Mark McCormick, Justice
Arthur McGiverin, Justice
Harry Uhlenhopp, Justice
Louis Schultz, Justice

The court normally hears cases in panels of five, but in very important cases sits en banc, meaning all nine hear the case.

C. Clerks of Court:

1. District courts: Each district court has a clerk of court. Therefore, there are 99 clerks of court. The clerk functions as a record keeper and a conduit for formal communications between the parties and the trial court. All formal documents in a case are filed with the clerk as are orders from the trial judge.

2. Supreme Court Clerk: The Supreme Court Clerk performs the same function for the court of appeals and Supreme Court as the district court clerks perform for the district courts. The Supreme Court Clerk's office is in the basement of the capitol building.

D. The appeal:

The following documents are those which will be filed in every appeal. Each secretary should have a set of forms which includes these documents and others not listed. Generally, the forms should be usable in every appeal. However, secretaries should be willing to alter them according to the instructions of an attorney when a particular situation requires a deviation from the form.

1. Notice of Appeal.

Filed: District Court in which conviction took place; Supreme Court.

Served: County Attorney of county in which conviction took place, A. G.'s office.

Time: Filed & served within 60 days of sentence.

2. Certificate of Ordering Transcript (C.O.T.):
   Filed: Supreme Court.
   Served: A.G.
   Time: Within 14 days after Notice of Appeal filed.
3. Documents filed at time of docketing. The following documents are all filed at the same time. The request for docketing and Rule 17 statement are contained in the same document.
   a) Request for Docketing and Waiver of Filing Fee:
      Filed: Supreme Court
      Served: A. G.
      Time: Within 40 days of Notice of Appeal[1]
   b) Notice of Election to Defer Appendix:
      Filed: Supreme Court
      Served: A. G.
      Time: Within 40 days of Notice of Appeal[1]
   c) Rule 17 Statement:
      Filed: Supreme Court.
      Served: A. G.
      Time: Within 40 days of filing of Notice of Appeal[1]
4. Page proof brief & designation of appendix contents:
   Filed: Supreme Court
   Served: A. G.
   Time: Within 50 days of the date of docketing.[2]

A page proof brief is the product of an election to defer the appendix. Since the appendix is not filed until after the page proof brief is complete, the brief contains cites to the raw record. The final brief contains cites to the appendix.

e.g.: Page proof brief: (Tr. p. 20, App. p.)
Final brief: (Tr. p. 20, App. p. 15)
OR
Page proof brief: (Tr. p. 20, App. p.)
Final brief: (App. p. 15)

[1] IMPORTANT: In the case of guilty plea appeals this time is cut in half (20 days)

[2] In guilty plea appeals or, appeals from sentencing only, this time is cut in half (25 days)

5. Appendix:
   Filed: Supreme Court
   Served: A. G.
   Time: Within 21 days of filing of state's page proof brief
6. Final Brief:
   Filed: Supreme Court
   Served: A. G.
   Time: Within 14 days of filing of appendix.

NOTE: Although the appendix and final brief are not reuiqred to be filed at the same time, it is our policy, except when time constraints prevent it, to file both the appendix and the final brief (as well as any reply briefs) at the same time.

E. Filing and service of documents, forms of briefs and forms of documents.

1. Filing:
   a) Documents are filed in the district courts by sending the original and (3) copies to the district court clerk requesting that (1) file stamped copy be returned to our office.
   b) Documents are filed in the Supreme Court by hand delivering the original and (3) copies to the Supreme Court Clerk's office and returning (1) file-stamped copy to our office. (The exception to this is when filing required documents, such as Rule 17, Request for Docketing, Time Extensions through third extension, C.O.T's, etc., in which only the original and (1) are filed in Clerk's office, returning the file stamped copy to our office). This rule is follows as above, except when filing briefs, appendices, and reply briefs.

Briefs are filed as follows:

page proof: (3) copies to Supreme Court Clerk, (1) file stamped returned.
appendix: (20) copies to Supreme Court Clerk, (2) file stamped returned.

final brief: same as appendix.
reply brief: same as appendix & final brief.

2. Service: All documents required to be served on another party shall contain a proof (or certificate) of service, for which we have rubber stamps. We have two stamps: service by mail, and service by hand delivery. All service on the A.G. shall be by hand delivery with an acknowledgment of receipt signed. All documents served are served by either mailing or hand delivering (1) copy to that party. This rule does not apply to briefs and appendices. These are served as follows:
   page proof briefs: (1) copy to A.G. but certificate of service, don't use stamp.
   appendix: (2) copies to A.G. - don't use stamp.
   final brief & reply brief: same as appendix.
3. Form of documents:
   Documents filed in Supreme Court are on 8½x11 inch paper. Documents filed in district court are on 8½x14 inch paper (legal size).
4. Form of briefs, appendices: Consult form briefs and these rules:
   a) Cover colors:
      i) page proof, final brief of Appellant: Blue
         " " " " " Appellee: Red
      ii) appendix: white
      iii) reply briefs: gray
   b) Briefs and appendices must be copied on both sides.
   c) All briefs must contain a request for oral argument unless you are otherwise instructed by the attorney. If in doubt, consult attorney.
   d) All final briefs and appendices must contain a cost certificate.

   e) Citations:

(The Iowa reports end with the cases reported in volume 251 N.W.2d)

IOWA CASES:
X v. Y, 1 N.W.2d 2 (Iowa 1980)
X v. Y, 1 Iowa 2, 3 N.W.4 (1965)
X v. Y, ___N.W.2d___ (Iowa 5/30/81) (Sup. Ct. No. 12345)

IOWA RULES OF PROCEDURE:
Criminal: Iowa R. of Crim. P. 1(2)
Civil: Iowa R. of Civ. P. 1(2)
Appellate: Iowa R. of App. P. 1(2)

STATUTES:
§123.4, The Code 1979 - section and year may vary, of course.

FEDERAL CASES:
Sup.Ct. - Rosenberg v. Iowa, 25 U.S. 25, 25 S.Ct. 25, 25 L.Ed.2d 25 (1981)

Federal Circuit Courts of Appeal: Travis v. Iowa, 25 F.2d 25 (8th Cir. 1981) - circuit may vary

Federal District Courts: Harrington v. Grady, 25 F.Supp. 25 (S.D. Iowa 1981)

   f) Tables Of Authority:
   1) Cases listed in the Table of Authorities should be listed in alphabetical order. All the cases should be underlined. Next should be statutes and rules in numerical order, not underlined and finally, other authorities in alphabetical order.

e.g.:

TABLE OF AUTHORITIES

Other Authorities:

2) Authorities listed under Issue Headings:
These authorities should be listed in the order they appear in the argument. Not more than (4) nor less than (1) should be underlined.
e.g.:

I. DID THE CHIEF DEFENDER ERR ON AN EASY FLY BALL TO CENTER FIELD?

AUTHORITIES

Ruth v. Gehrig, 25 F.2d 425 (1st Cir. 1939)
Iowa R. of Softball P. 23
Dallyn v. Strickler, 290 N.W.2d 250 (Iowa 1981)
Steinbrenner v. Jackson, 351 N.Y.2d 321, 360 N.E.2d 229 (1978), certiorari denied 420 U.S. 413, 98 S.Ct. 175, 39 L.Ed.2d 655 (1979)

G. The Record on Appeal.
The record on appeal consists of all the documents filed in the district court, all the exhibits offered into evidence and the transcripts of testimony given during the trial, and during pre and post trial hearings and proceedings.
You need to be concerned about the record at two stages:

1. Opening cases: When new cases are opened (appeals only) the clerk of the district court should be requested to send us a complete copy of the court file. If the clerk declines, have her/him send a certified copy of the trial court papers to the Supreme Court Clerk. The attorney can then check the papers out from the Supreme Court. Do not request the district court clerks to send exhibits. This will be the responsibility of the attorney. Original papers (and transcripts) should never be sent to us.

2. After all briefs are filed. Within (7) days after all final briefs are filed, the appellant must send a letter to the district court clerk, asking her/him to transmit to the Supreme Court Clerk all parts of the record not already transmitted. It is the attorney's responsibility to see that this letter is sent.

CONCLUSION

No manual could possibly address all the problems and questions which will arise. The type of work we are engaged in requires patience, flexibility, and someitmes, a desire to learn new things. Questions are not only necessary but desirable.

In the course of their work, non-professional personnel should, and will, develop a rare and valuable knowledge of the appellate process. Although deemed "non-professional", these individuals and their work, are as important as the attorneys' work. The entire staff, therefore, must strive to maintain the image of a highly skilled, extremely competent, professional team. To this end, suggestions for improved efficiency and for better ways of carrying through with office procedures are not only welcomed but encouraged, as is individual initiative. With hard work we can make the office one of the best agencies in the state and one of the taxpayers' best bargains.

* * * * * * * * *

* * * * * * * * *

APPENDIX N

IOWA APPELLATE DEFENDER

OFFICE FORMS

Computation of deadlines - attached to each new case file.

JURY TRIAL

Notice of Appeal	filed _____
C.O.T. (14 days)	due _____
Docket, Rule 17, Defer Appendix (40 days)	due _____
Brief (90 days)	due _____

GUILTY PLEA

Notice of Appeal	filed _____
C.O.T. (14 days)	due _____
Docket, Rule 17, Defer Appendix (20 days)	due _____
Brief (45 days)	due _____

*COURT FILE TO BE SENT WEEK OF _____

STATE OF IOWA
APPELLATE DEFENDER'S OFFICE
CLIENT INFORMATION SHEET

COUNTY _____ N-3

NAME _____ Appt. Ct. # _____ Tr.Ct.# _____

Address: * _____ *OFFENSE: _____

Sex ____ Race _____ DOB: _____ Case Type: _____

Attorney Assigned _____ *Trial Attorney _____

*Co-Defendant(s) _____

*Name of Judge _____ *Prosecutor _____

*Jury Trial _____ *Guilty Plea _____ *COURT REPORTER(S) _____

Parole Officer _____

*Date of Sentence/Judgment _____ Docketing Due _____

*Date of Notice of Appeal _____ Record Filed _____

*Date of Appointment _____ Appearance Filed _____

Client Contact Letter Sent _____ C.O.T. Filed _____

Attorney Contact Letter Sent _____

APPELLATE COURT

Appellate Brief Due _____ Filed _____

State's Brief Due _____ Filed _____

Reply Brief Due _____ Filed _____

Oral Argument Date _____ Decision Date _____

Disposition _____

Petitions for Rehearing Due _____ Filed _____

Petitions for Rehearing Granted _____ Denied _____

Petition for Hearing in Supreme Court Due _____ Filed _____

SUPREME COURT

Appellate Brief Due _____ Filed _____

State's Brief Due _____ Filed _____

Reply Argument Date _____ Filed _____

Oral Argument Date _____ Decision Date _____

Disposition _____

Petitions for Rehearing Due _____ Filed _____

Petitions for Rehearing Granted _____ Denied _____

Petition for Writ of Certiorari Due _____ Filed _____

Collateral Attack Filed _____ Nature of Attack _____

FINAL MANDATE ISSUED _____

CASE CLOSED (date) _____ CLOSING ATTORNEY _____

NOTES: _____

ATTORNEY _____ N-4

STATE vs. _____

DOCUMENT	DATE FILED
OTICE OF APPEAL	
PPEARANCE	
ERTIFICATE OF ORDERING TRANSCRIPT	
EQUEST FOR DOCKETING WAIVER ILING FEE	Requested Docketed
JLE 17 STATEMENT	
LECTION TO DEFER APPENDIX	
ROOF BRIEF	
ES)NATION OF APPENDIX CONTENTS	

OTHER DOCUMENTS	DATE FILED

G. BRIEF (Original Due Date)	Ext. Req. Until	Granted Until
**(A.G. Brief Filed)	1.	1.
ppendix Due _____	2.	2.
n-' Brief Due _____	3.	3.
	4.	4.

ATTORNEY MONTHLY REPORT

Month _____, 19___

Attorney: _____

Original briefs (client's name; court where filed length of trial record)

_____

_____

_____ No. _____ (A)* Work Units ___ (1,2)*

Anders motions filed (client's name; court where filed; case type) length of trial record

_____

_____

_____ No. _____ (B) Work Units _____ (1)

Withdrawals or dismissals (client's name; court where filed; action taken, length of trial record)

_____

_____

_____ No. _____ (C) Work Units _____ (3)

Reply briefs, supplemental briefs, rehearing petitions, petitions for review or cert. (client's name; court where filed; nature of document)

_____

_____

_____

Nos. of: Reply briefs _____ (D1) Supplemental _____ (D2) Reh. _____ (D3)
Rev. or Cert. _____ (D4) Total Work Units for D1 thru D4 ____ (1,2)

Oral arguments (client's name, court)

_____

_____

_____ No. _____ (E)

* Refers to column of Attorney Monthly Report Summary where this information is to be recorded.

** Refers to paragraph in "Calculation of 'Work Units' for Appellate Case Weighting" to be used in calculating Work Units for completed work.

Collateral Attacks (client's name, court where filed, nature of document)

_____

_____

_____

No. in State Court ____(F1) No. in Federal Court ___(F2) Total Work Units for F1 and F2 _____(4)

Client visits (client's name, location of visit, date)

_____ _____

_____ _____

_____ _____

_____ No. of visits _____(G)

Miscellaneous motions (client's name, nature of motion, result if known)

_____

_____

_____

_____

_____ No. ___(H)

Training activity (office or outside conferences, CLE, course reading: give nature and date of activity)

_____

_____

Hours spent for this activity (do not include travel time) _____(J)

Other work (state any substantial activity not reflected above or not directly related to case work, including out-of-state travel for training and investigation)

_____

_____

_____

_____

_____

_____

Hours spent in the described activities ____(K)

Closed cases (client's name)

_____

_____

_____ No. _____(L)

_____ Date: _____, 198___
Signature

1/23/81 *brief has been filed

SCOTT	DOUG	CHRIS	CHARLIE	PAT	FRANK
*Floyd V. Connor Robbery 1st	*Ronald Julson	*James White	*Curtis Jon Roberts	*Michael Howell	*Allen W. Johnson
Jack Blanchard Robbery 1st	*Samuel M. Post	James Jeffries Murder 1st	*Kallon Goettshe	*Thomas Grady	*Dale E. Schmidt
Steve Merksick OMVUI, Carrying Weapons	*Randall Rhea	Jimmie W. Ware Larceny	*Stanley Graves	*Marvin Mead	Jody H. Shafer
Floyd Conner Escape	Doris Ann Wolfe Murder 2nd	John D. Koop Robbery	Edmundo Castillo Robbery 2nd	*Kevin Griffen	
Jeffrey Landon PCR	James Walsh Murder 1st	Harvey Bone Burglary 2nd	Theodore Hand Escape	*Dennis Hodges	
Jeffrey Landon Escape	Randy Squires Conspiracy	Will S. Davis Robbery 2nd	Timothy Green Murder 2nd	Bobbie Max Phipps	Antwone Woods (2)
Kevin Johnson Murder 1st	Craig Henderson Robbery 1st	James J. Ransom Invol. Manslaughter	Walter Hess Robbery 2nd	James M. Smith	Antwone Woods
Jerry Miles [illegible]	Wm. J. Gillette	Dennis C. McGeehon OMVUI 1st	Samuel D. Cook Theft 3rd	Joe Edward Hill	Ray A. Gordon
Randy Combs Theft 2nd	George Windsor Sexual Abuse	Allan Schaffer Theft 1st	Mark A. Harris Robbery 2nd	Donna Ricklefs Robbery 1st, PCR	~~Mary Thula Warren~~ FUFI
Walter Walker Robbery 1st	Wm. Peter Witry OMVUI 3rd	Allen A. Kemp Robbery 2nd	Barbara J. Prugh OMVUI	Kevin Van Duesen Theft 2nd	Rubin E. Jones
*Ray Brown	Donald Thompson Sexual Abuse	Joel Martin Burglary 2nd	Cordell Kirby PCR	Leon C. Ross Theft, 4th	
*Jerry Mortvedt	James Kersh OMVUI	Curtis Ziegler	Gregory A. Sykes	Langrehr, Jeffrey	
*C. Burk		Everett Lyon		Allen L. Hall	
		N. Bauer		Rick Eugene White	
				Walter Brown Jr.	
				John David Long	
				Mary Warren	
				Kenneth Jensen	

Not updated (old form)

CORRECTIONS FORM

Case: _____

Document: _____ Attorney: _____

	(Page)	(Correction)
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____
12.	_____	_____
13.	_____	_____
14.	_____	_____
15.	_____	_____

ATTORNEYS: Please do not write on the document except in PENCIL only. Thanks.

T Y P I N G L O G

BRIFFS - FINAL BRIEFS - APPENDICES

CASE	ATTORNEY	DOCUMENT	DATE DUE	DATE TO PRINTER	DATE FILED

STAPLE RECEIPTS HERE

IN ACCOUNT WITH

THE STATE OF IOWA

For the items of service and expense enumerated below, which were incurred in performance of duties imposed by law, and ordered by the .....

Name and Title		
Residence (City)		Date
Soc. Sec. No.	Official Domicile	

Date 19___	Travel From	To	Bus, R.R., Plane State or Priv. Auto Miles	Charge	Meals (Actual) B	L	D	Total	Lodging (Actual) Name	Charge	Actual Totals Meals & Lodging	Reimbursable Totals Meals & Lodging	Misc. Expenses Explain	Amount	Actual Amount To Be Reimbursed
	Totals (Actual)														
	Totals (Reimbursable)														
Accumulative Miles - Fiscal Year.															

CLAIMANT'S CERTIFICATION

I, the within claimant do certify that the items for which payment is claimed were furnished for state business under authority of the law; and that the charges are reasonable, proper, and correct, and no part of this claim has been paid.

Signature: (Claimant) (Date)

AGENCY CERTIFICATION

I hereby certify that the above expenses were incurred and the amounts are correct and should be paid from the funds appropriated by:

Code Section	OR	Chapter	Section	Gen. Asm.

(FOR COMPTROLLER'S USE ONLY)

N - 10

STATE OF IOWA

STATE APPELLATE DEFENDER'S OFFICE

LEAVE APPLICATION

Employee _____ Date _____

Application is hereby made for approval of leave as indicated below, in accordance with the provisions of Attendance and Leave Regulation.

_____ Days Annual Leave (Vacation) Remarks:

_____ Days Sick Leave _____ Family _____ Personal

_____ Days Leave Without Pay

_____ Days Other _____

From _____ To _____ Inclusive
(Beginning Date) (Ending Date)

Approved by: _____
(Supervisor)

Requested by: _____
(Employee Signature)

STATE APPELLATE DEFENDER'S OFFICE

EMPLOYEE: _____

HOME ADDRESS _____ HOME TELE. # _____

_____

_____

Begin Date _____ End Date _____

1980

_____

ILLNESS: _____ VACATION: _____

REMARKS: _____

END