

STANDARDS FOR APPELLATE DEFENDER OFFICES

An appellate defender office should provide high quality legal representation in all appropriate post conviction matters in an efficient and cost-effective manner.

I. Criteria For Assuring The *Quality* Of Legal Representation.

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

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

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

1. In an office which provides representation both at the trial and appellate levels, a separate unit or section should be established to provide appellate representation.
2. The chief of the appellate unit or section shall be selected by, and serve at the pleasure of, the chief public defender.
3. The chief of the office's appellate unit shall have the following qualifications:
 - a. A demonstrated ability to administer the unit;
 - b. The demonstrated expertise in appellate litigation, particularly in criminal cases;
 - c. The demonstrated ability to prepare effective written arguments and to edit the briefs of other attorneys; and
 - d. A demonstrated ability to interact appropriately with staff members, clients, and members of the public in general.
4. The salary of the chief of the appellate unit shall be equal to that of the highest paid attorney providing appellate representation on behalf of the prosecution in that jurisdiction.

5. The chief of the appellate unit shall not be selected on the basis of political affiliation, and it should not be assumed that when a new chief defender takes office the head of the appellate unit should be changed.

C. *Selection of Legal Staff*

1. All members of the defender office shall be hired on the basis of merit after open recruitment and hiring that has been publicly advertised in appropriate manners. Every effort shall be made to recruit and hire qualified persons of both genders and diverse racial and ethnic backgrounds.
2. The primary qualifications of staff attorneys in an appellate defender unit shall be:
 - a. The desire and ability to provide quality representation to indigent persons on appeal in criminal cases as demonstrated by such prior activities as:
 - i. Previous representation of criminal defendants;
 - ii. Clinical or law school work in legal writing, appellate advocacy, or similar activities;
 - iii. Clerkship or similar positions on appellate courts; and,
 - b. The ability to interact in a timely, professional, and appropriate manner with office staff, court personnel, and clients.
3. It is not to be assumed that an attorney whose primary previous experience is in the trial of cases is qualified to be an appellate defense counsel. Such persons shall independently demonstrate their ability to provide appellate representation to eligible defendants.
4. All members of the public defender staff shall have indefinite appointments to the positions, and shall continue to serve even when there is a new chief defender.
5. The salaries of the staff of the state public defender shall be equal to or higher than the salaries of persons doing comparable work in the prosecutor's office.
6. Staff members shall not be selected on the basis of political affiliation or be required to provide information regarding political affiliation.
7. Members of the public defender staff shall be discharged only for cause shown, and have an appropriate vehicle to appeal such dismissal or discipline to an appropriate independent agency. Such "cause" for discharge shall include the failure to provide competent, effective, or timely representation in a significant number of cases.

D. *Scope of Representation*

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

appropriate motions seeking release pending appeal when the granting of such motion is reasonably possible.

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

E. *Timing of Post-Conviction Representation*

1. The appellate defender shall cooperate with the trial courts, appellate courts, trial public defenders and private attorneys to ensure that all appeals desired by criminal defendants are timely pursued. The appellate defender should further directly assist defendants in filing the necessary jurisdictional documents to perfect appeals in a timely manner.
2. The appellate defender shall cooperate with trial courts, appellate courts, trial defenders, and private attorneys to ensure that no defendant is without legal

representation between trial and appeal, while awaiting the assignment of counsel by the court. Such cooperation might include the development of rules or procedures for ensuring that no hiatus in counsel exists, and working with the appropriate courts in developing procedures such as to ensure continuity of representation.

3. The appellate defender should take all steps necessary to reduce the delays and time necessary for the processing of appeals which adversely affect the client. Such efforts include the development of appropriate appellate court rules which minimize the unnecessary procedures for perfection and prosecution of an appeal.
4. Cases in which the defendant is incarcerated only on the basis of the conviction under appeal shall be handled in a priority manner.
5. The public defender shall cooperate with the courts and court reporters to ensure the prompt completion of the appropriate record on appeal. The public defender shall not determine the merit of any case without the careful review of such records.

F. Caseload

1. In order to assure that effective representation is being provided by the appellate office and that adequate information is provided the funding source upon which to base an appropriate budget, it is essential that all appellate defender units develop caseload standards which accurately reflect the amount of casework which can be done by existing or contemplate staff.
2. The caseload for each particular jurisdiction should refer to national standards based on time records developed by each individual office based upon the specific nature of the cases handled by that unit.
3. It is essential that accurate records be kept for a period of time, to determine the actual time necessitated by a wide variety of cases handled by the appellate defender in each jurisdiction, including death penalty cases, lengthy or complex cases, cases which do not involve a formal appeal to the appellate court, and other types of varied cases.
4. The appellate defender shall have clearly-articulated policies to prevent the office from exceeding its caseload standards. Such policies should be discussed in advance with the funding authority and the appointing courts to ensure no misunderstanding regarding the obligations of the appellate defender. Such caseload standards and procedures should be reduced to writing regarding excessive caseload.

G. Staffing

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

H. Case Weighting and Staffing Ratios

1. An appellate defender office or division shall annually complete twenty-two work-units for each full-time attorney or the equivalent. In jurisdictions which require an abridgement of the testimony by the appellant, the annual workload shall be twenty (20) work-units. The number of work-units shall be determined as follows:
 - a. A brief-in-chief or *Anders* brief filed in a case in which the court transcripts are 500 pages or less shall be one work-unit, except as otherwise provided herein.
 - b. In cases in which the defendant has not been sentenced to death, one additional work-unit shall be added for each additional 500 pages of court transcript.
 - c. In cases in which the defendant has been sentenced to death, the preparation of the brief shall constitute ten (10) work units and the procedures specified in subparagraphs f., g., h., and i. shall constitute ten times the work-units specified in those subparagraphs.
 - d. A brief involving only the validity of a guilty plea or only the propriety of a sentence in which there shall constitute one-half work unit.
 - e. A case which is closed by the appellate unit with the submission of neither a brief nor post-conviction motion shall constitute between one-quarter and one-half work-units, depending on the length of the record reviewed and work done on the case.
 - f. A case which is closed by the appellate unit after the disposition of a post-conviction motion or writ but without the submission of an appellate-court brief shall constitute between one-half and one work-unit depending on the length of the record reviewed, the nature of the post-conviction hearing, and whether a trial court brief was submitted.
 - g. A case in which an evidentiary post-conviction hearing is conducted by the appellate unit and in which an appellate court brief is submitted shall constitute between one and one-half to two work-units.
 - h. The preparation of a reply brief or a petition for review or certiorari in a state court shall be to one-quarter work-units. A petition for a writ of certiorari filed in the Supreme Court of the United States shall be one-half work-unit.

I. Client Contact

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

- room for attorney/client visits. An attorney shall not be expected to interview a client in a general visiting room, a room divided by a screen or glass partition, or a room in which a listening device is installed. An attorney shall not be expected to interview a client while the client is wearing handcuffs, leg irons, or chains. The appellate defender should work with the department of corrections and the superintendents of each institution to ensure an advance understanding of the facilities needed for private interview space.
2. Mail Contact.
 - a. The appellate defender shall take all necessary steps to ensure that the attorney/client privilege is protected in all correspondence to and from an incarcerated individual. The appellate defender shall work with the prison administration and the attorney general in the state to ensure that the appropriate law in that jurisdiction is followed in relation to the opening and or censoring of attorney/client mail.
 - b. The appellate defender shall inform his or her client of the status of the case at each step in the appellate process, shall explain any delays in the case, and shall provide general information to every client regarding the process and procedures which will be taken in the matter, and the anticipated timeframe for such processing.
 - c. The appellate defender shall provide the client with each substantive document filed in the case by both the prosecution and the defense.
 - d. The appellate defender shall respond in a timely manner to all correspondence from clients, provided that the client correspondence is of a reasonable number and at a reasonable interval.
 3. Telephone contact.
 - a. The appellate defender should inquire as to the possibility of gaining telephone contact with clients who are incarcerated when such a brief telephonic contact can further the client's interest.

J. *Contact With Trial Counsel*

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

the case from the public defender's office when such claim appears to be arguable.

5. The appellate defender should encourage cooperation with trial counsel, including the trial attorney providing assistance on appeal, provided, however, that appellate counsel is primarily responsible for the handling of such a case.

K. Training

1. Training for attorneys.
 - a. Each appellate defender office shall have an established training program for entry level attorneys which should be commenced prior to the attorney actually providing representation in any case. "On the job" training, based upon what the attorney will learn from individual cases is not adequate. Such training shall involve both appellate defender staff, court personnel, and others.
 - b. The appellate defender shall have ongoing continuing legal education programs for attorneys, and specially designed ongoing training for all members of the staff, including support staff and the most senior attorney.
 - c. The appellate defender shall make use of national programs which are of particular relevance to appellate defenders, and shall work with funding sources to ensure funding for both in-state and out-of-state continuing legal education programs.
2. The appellate defender office shall have training for all staff members that enter the office, including secretarial persons. Such training should include a background on the importance of the appellate defender and the relationship of the work each staff member to the ultimate goal of the office of providing quality and efficient representation.
3. The appellate defender should take an active role in the continuing legal education of the entire bar, and should work actively with the providers of continuing legal education to ensure participation.
4. The appellate defender shall cooperate and work with attorneys who provide trial representation to:
 - a. Identify issues which might be raised at trial which reflect new or developing legal trends;
 - b. Properly preserve at trial issues which might be raised on appeal;
 - c. Acquaint the trial bar with recent decisions which have an impact on the trial cases; and
 - d. Share the appellate defender research facilities if such materials are not available elsewhere and the appellate defender has adequate materials and office space.

L. Brief Preparation

1. All briefs filed by the appellate defender shall conform to the court rules of that jurisdiction.
2. All briefs filed by the appellate defender should have a professional, neat appearance, without typographical errors or misspellings, and be generally comparable in appearance to the briefs filed by the best law firms in the state.

3. All briefs filed by the appellate defender shall make appropriate use of legal authority, and be of the highest professional quality.
4. Briefs filed by the appellate defender office shall utilize federal case authority from other jurisdictions in support of positions for which no local authority exists or when local authority is contrary to the weight of recent decisions from other jurisdictions.
5. Briefs filed by the appellate defender shall include non-case reference materials, such as law reviews, treatises, scientific works, and, where appropriate, legal encyclopedias.
6. Briefs filed by the appellate defender shall have a consistent method of citation, consistent with that used by the appellate courts in the state or circuit. Where no consistency is found in the appellate courts, the appellate defender should follow the prescribed form of citation used in the *Harvard Citator*.
7. Appellate defenders should not use blind citations without supporting materials or run-on citations, listing many cases in support of one general or vague proposition.
8. Each appellate defender should adopt procedures for reviewing and screening the briefs that are filed by that office, which should include the careful review of the brief and record by at least one member of the staff other than the person who wrote the brief prior to the completion of the final draft of the brief, in offices of more than five attorneys, supervisory staff shall be designated for this purpose.
9. Each appellate defender should adopt procedures for providing an "issues conference" between the attorney handling the case and some other members of the staff in which the issues raised in the case are appropriately discussed prior to the actual commencement of the writing of the brief in the case.

M. Oral Argument

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

N. Discretionary Review

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

initially presented the case. In offices of five or more attorneys, supervisory staff shall be designated for this purpose.

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

O. Procedure for *Anders* Cases

1. Each office shall have a procedure for determining how the office shall handle cases which fall under the criteria of *Anders v. California*, 386 U.S. 738 (1967), and how such decision should be communicated to the courts and the clients.
2. An office may determine that *Anders* briefs shall never be filed, but such decision should be made only after consideration of the ramifications of such decision, and consultation with representatives of the appellate court, and with representatives of the prosecution. Appellate defenders should consider that filing merit briefs in every case may undermine the credibility of the appellate defender with the appellate courts. On the other hand, appellate defenders should consider that the filing of *Anders* briefs may compromise the office's reputation within the client community.
3. The appellate defender shall adopt an extremely strict standard in determining what cases have "no arguable merit." Such cases should be genuinely frivolous, and not simply cases which the appellate defender believes will not prevail on appeal.
4. *Anders* briefs shall not be filed in cases in which the death penalty or life imprisonment has been imposed.
5. The office shall adopt an internal procedure for review of all cases in which it has been decided by the attorney handling the case that an *Anders* brief will be filed. Such internal review shall include, at the minimum, a plenary review of the case by another member of the legal staff. In offices of more than five attorneys, supervisory staff shall be designated for this purpose.
6. In each case in which a determination has been made that an *Anders* brief shall be filed, the attorney shall communicate that decision to the client prior to the filing of such brief, and shall give the client the opportunity to withdraw his request for the appointment of counsel or to withdraw the appeal. Such option should

be given in a non-coercive manner, with the attorney making clear that an *Anders* brief will be filed as an alternative.

7. The attorney shall send a copy of the *Anders* brief to the defendant with instructions for responding thereto, and may assist the defendant in responding to the *Anders* brief or in contacting another agency or lawyer for such assistance.
8. In any case in which the appellate court has rejected an *Anders* brief, the chief appellate attorney shall review the handling of the case, the merits of the case, and discuss the matter with the attorney handling the case to determine whether the office procedures for screening the case were adequate, and whether it is appropriate for that attorney or the office to continue representation.
9. Each appellate defender office should adopt clearly-articulated procedures for dealing with clients who desire to raise individual issues in cases which the attorney believes to be without arguable merit. Such procedures should be sufficient to ensure that the issue desired by the client is presented to the appellate court in an appropriate manner so as to receive the serious attention of the court. It is preferable to have counsel include the issue in the brief submitted, if at all possible.

II. Criteria For Assuring The Efficiency Of The Legal Representation

A. Regular Office Procedures

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

B. Management Information Systems

1. The appellate defender shall determine what types of information need to be gathered for the day-to-day operation of the office, for the long term needs of the agency, and for case tracking.
2. The office shall determine whether the information being gathered meets the needs of the office.

3. The office shall review the manner in which the data are collected to determine whether it is efficient or whether the efficiency can be improved through an enhanced management system or through automation.
4. The office shall adopt a weighted caseload system for all cases entering the office to ensure a fair distribution of cases and accurate information on caseloads.

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

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

D. *Internal Structure of the Appellate Defender Office*

1. In a mixed trial and appellate defender office.
 - a. Recruitment and hiring in a mixed office shall be done jointly by the chief defender and the director of the appellate unit, so as to ensure that persons

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

E. *Procedures for Handling Conflict of Interest Cases*

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

F. *Eligibility for Services*

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

G. Facilities

1. Office Space
 - a. *Area for staff.* Generally 150 sq. ft. should be allocated for each full-time or equivalent staff member.
 - b. *Privacy.* Each attorney should be provided an individual, private, fully walled office in which to work; investigators, social workers, and paralegal personnel have available private office space in which they can interview persons.
 - c.
 - i. The appellate defender office should generally not be located in a government office building or in the same building as the prosecutor, but should be located in an area which is accessible to public transportation, is amenable to client visits, and is convenient to the primary appellate court.
 - ii. The appellate defender should be located in a building which has easy access to the public and which ensures the security of office personnel.
 - iii. The appellate defender office should have the appearance of a professional law office, and not a government agency. The appellate defender and all staff should work towards minimizing the institutional appearance of the office and maximizing its professional appearance.
 - iv. Adequate space should be allocated in the appellate defender's office for library, waiting rooms, conference space, and lounge areas for staff.
 - v. The appellate defender office should have adequate heating, air conditioning, and lighting to perform its required duties.
2. Library
 - a. Where such materials are published, each attorney in the appellate defender office shall be provided:
 - i. One complete set of state statutes and court rules;
 - ii. One set of statutes annotated, covering those statutes and rules governing criminal and appellate law and procedures;
 - iii. Those sections of the state digest and/or state legal encyclopedia covering criminal law; and

- iv. A directory of all attorneys, judges, and prosecutors in the jurisdiction; and
 - v. A dictionary.
 - b. *At a minimum*, each appellate defender shall have an in-house library with at least the following material:
 - i. A complete set of:
 - 1) United States Supreme Court decisions;
 - 2) All published state appellate court decisions;
 - 3) Federal Reporter;
 - 4) State Statutes Annotated;
 - 5) State Digest;
 - 6) State legal encyclopedia;
 - 7) Law reviews published in the state;
 - 8) Either *Am. Jur.* or *C.J.S.*;
 - 9) Pattern criminal jury instructions for the state;
 - 10) Federal Digest;
 - 11) State *Shepards Citations*; and
 - 12) Current A.B.A. Standards for Criminal Justice; and
 - 13) Current prison, parole, and probation regulations for that jurisdiction.
 - ii. One set of all published state appellate court decisions since 1960 for every ten attorneys.
 - iii. Current *Criminal Law Reporter*.
 - iv. Legal Dictionary
 - v. One standard treatise on:
 - 1) criminal substantive law;
 - 2) criminal procedure; and
 - 3) criminal evidence.
 - c. Priority should be given to expanding the law library beyond this minimum collection.
 - d. Each appellate defender shall identify those complete law libraries convenient to its offices which contain regional and state reporters, Federal Supplement, all major law reviews, and such standard references as *A.L.R.* and *Words and Phrases*. The appellate defender shall endeavor to work out procedures for the staff to use such materials during working and non-working hours and, where appropriate, to withdraw materials from the library.
3. Other Research Aids
- a. Briefbank
 - i. Each appellate defender office shall have an index of briefs such as will allow other staff members and other researchers to have access to briefs completed by the office.
 - ii. Each office shall have a procedure for requiring the cataloging of briefs done by the office.
 - iii. Each office shall have a procedure for requiring the cataloging of motions/research done by the office.
 - b. Automated Research Devices

- i. Where funds are available, each appellate defender should determine the feasibility of using automated research equipment to do legal research.
 - ii. The automated equipment should be put in a location that is accessible to all staff members, but disrupts the research of other staff members as little as possible.
 - iii. The office should develop procedures to ensure the utilization of the automated equipment by staff members.
 - iv. The office should monitor the cost efficiency of all automated equipment within the office to determine whether it is sufficient for the office's purpose.
 - c. Unless it would seriously disrupt the operation of defender office, the appellate defender should make its library, brief bank, and research tools available to other public defenders and members of the private bar.
 4. Word Processing Equipment
 - a. Typewriting Equipment
 - i. The chief defender or administrator of the office shall be generally familiar with the typewriting equipment which is available currently on the market, including computerized systems which have text-editing capabilities.
 - ii. The office shall use appropriate typewriting equipment for the nature of the work, including machines which have the capability of doing text-editing.
 - b. The public defender office shall have adequate duplicating equipment, in-house, to perform the needs of the office, including, where necessary, equipment to provide duplication of briefs for submission to the court.
 - c. The appellate defender office shall make use of appropriate dictating and transcribing equipment and shall maintain compatible equipment to maximize the efficiency of the office.

G. Brief Preparation

1. Timeliness of Briefs
 - a. At least 75 percent of all briefs filed by the appellate defender should be filed within the time limit set by statute or court rule without extension.
 - b. In cases in which briefs are not filed within the time limitation set by court rule or statute, the appellate defender office shall have established procedures for requesting extensions of time in a timely and efficient manner.
2. Each appellate defender shall adopt procedures for ensuring that all materials submitted by the court are circulated to staff members for their information and feedback and are cataloged for further reference by the staff.
3. All material filed in each case shall be sent to the client involved, as should prosecution briefs and substantive pleadings.
4. Reply Briefs
 - a) Each office shall adopt a procedure for the filing of reply briefs.
 - b) Priority of briefs
 - i. Reply briefs shall be limited to responding to issues raised by the prosecution, not theretofore identified or adequately argued in the brief-in-chief.

- ii. New materials should not generally be raised for the first time in a reply brief.

H. Feedback

1. With Appellate Courts
 - a. The appellate defender and his or her staff shall establish regular lines of communication with judges on the appellate court and with appellate court staff to determine whether the office is providing representation in a manner acceptable and appropriate to the court.
 - b. The appellate defender shall establish procedures for the disposition of administrative matters which arise on an emergency basis and to avoid confrontation with court staff.
2. The appellate defender should establish a cordial, and professional, relationship with the appellate court prosecutor so that mutual problems can be solved administratively or with a concerted effort.
3. The appellate defender should have on-going contact with the criminal defense bar in the jurisdiction.
4. The appellate defender should have contact with the private bar generally within the jurisdiction.
5. The appellate defender should reach out to the client community, and particularly to the community of institutionalized persons, to provide assistance, information, and support.