

**RULE**  
**Office of the Governor**  
**Indigent Defense Assistance Board**  
Indigent Defense Assistance and Representation  
of Defendants Sentenced to Death  
(LAC 22:XV.Chapters 1 - 5)

The Louisiana Indigent Defense Assistance Board has adopted rules and guidelines for direct and indirect assistance of judicial district indigent defender boards within the regulations established by R.S. 15:151 et seq.

**Title 22**  
**CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**  
**Part XV. Indigent Defense Assistance Board**

**Chapter 1. Purpose and Definitions**

**§101. Purpose**

A. The purpose of these guidelines is to effectuate an equitable distribution of state funds to the 41 judicial district indigent defender boards based on articulated, quantifiable, and verifiable criteria and improve the delivery of defense services to the poor within the authority of the Constitution of the United States and the Constitution and laws of the State of Louisiana. The Louisiana Indigent Defense Assistance Board has adopted these rules pursuant to R.S. 15:151.2 (F).

1. The purpose of these guidelines is to effectuate a program of legal representation to indigent individuals sentenced to death within the authority of the Constitution of the United States and the Constitution and laws of the State of Louisiana.

2. These rules and guidelines are designed to provide for prompt representation on appeal and curb the acute problems of unnecessary delay in the filing of an application for post-conviction relief in capital cases; to instill public confidence in the process of appellate and post-conviction review; to construct a financially sound and publicly accountable programmatic approach for the delivery of defense services to indigent individuals sentenced to death; and, to efficiently and effectively provide for judicial review and finality of capital appellate and post-conviction proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151 through 15:151.4.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1200 (June 2002).

**§103. Definitions**

A. For the purposes of this rule, the following definitions shall apply.

*Appellate Case*--a criminal proceeding in which a review as of right is exercised by or on behalf of an individual seeking judicial redress of a final judgment in accordance with Const. Art. I, Sec. 19 (1974), C.Cr.P. Arts. 911-913, and Ch.C. Arts. 330 and 710(B).

*Arrest*--the taking of one person into custody by another. To constitute an arrest, there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him or her.

*Capital Case*--a criminal proceeding involving the arrest or indictment of an individual whereby the accused, if found guilty, may be sentenced to death.

*Case*--a statistical construct used to report the number of defendants to be represented by a judicial district indigent defender board for a period of time exceeding one hour in a single proceeding of the number of bills of information, indictments, charges, or petitions brought against an individual in a single proceeding.

*Caseload*--the total number of cases handled by a district indigent defender board or individual attorney. Caseloads are reported to the LIDAB in the caseload categories established by the LIDAB. These categories include, but are not limited to: Capital Trial Cases; Capital Appellate Cases; Capital Post-Conviction Cases; Non-Capital Felony Trial Cases; Non-Capital Felony Appeal Cases; Non-Capital Felony Post-Conviction Cases; Misdemeanor Trial Cases; Traffic Trial Cases; Juvenile Delinquency Cases; Child In Need of Care Cases; Families In Need of Services Cases; Juvenile Appellate Cases; Mental Health Cases; Probation Revocation Cases; and Other Cases.

*Certification Program*--the combination of all procedures, regulations, guidelines and rules of the LIDAB mandated by La. S.Ct. Rule XXXI. Unless otherwise indicated, this term applies to both the Capital and Appellate Certification Programs.

*Certified Counsel*--an attorney that has been authorized through the appropriate certification program to serve as lead or associate counsel in capital trial cases and/or felony appellate cases on behalf of an indigent client.

*Confinement*--the placement of an individual into physical custody by authority of law pursuant to Titles 14, 15, 32, and 40 of the Louisiana Revised Statutes, the Louisiana Code of Criminal Procedure, the Louisiana Children's Code, and all other laws providing criminal penalties for violation of their provisions. Confinement shall include physical custody arising from an arrest, a conviction, a finding of delinquency, an order of commitment to a juvenile shelter or detention facility, or an order of commitment to a public or private mental institution or institution for the mentally retarded.

*Criminal Proceeding*--any litigation involving the investigation or commission of any offense punishable by imprisonment, confinement, or custody.

*Custody*--the detention or confinement of an individual as a result of, or incidental to, an instituted or anticipated criminal, mental health, or juvenile proceeding.

*Defense Services*--include all reasonable and necessary steps involved in representing an individual in accordance with constitutional and statutory law, rules of the Louisiana Supreme Court, and the Louisiana State Bar Association Rules of Professional Conduct.

*Direct Assistance*--financial aid provided to a judicial indigent defender board by the Louisiana Indigent Defense Assistance Board, including grant-in-aid programs, technical assistance grants, and reimbursement of expenses for defense experts and specialized scientific tests.

*Expert Witness*--an individual recognized as an authority on a subject based on the person's knowledge, skill, experience, training, or education. To be considered an expert witness under this rule, it is not necessary that the individual be called to testify at a criminal, mental health, or juvenile proceeding.

*Grant Application*--the formal process whereby a judicial district indigent defender board requests assistance from the LIDAB for financial or technical assistance for a specific need or purpose.

*Grant-in-Aid Program*--formal procedures, rules, and regulations established by the LIDAB to provide direct financial assistance to a judicial district indigent defender board based on the LIDAB's funding levels, the judicial district indigent defender board's demonstrated need, and compliance with the LIDAB's guidelines.

*Imprisonment*--confinement of a person in a jail or state correctional facility.

*Independent Financial Audit*--a formal review of all financial records of a judicial district indigent defender board by an independent certified public accountant in accordance with government approved accounting practices.

*Indigency Standards*--those procedures provided in R.S. 15:147-149.

*Indirect Assistance*--non-financial support provided by the LIDAB to a judicial district indigent defender board. Such support includes, but is not limited to, assistance in the development and improvement of administrative and management practices, the sharing of technical information, and the provision of specialized continuing legal education programs.

*Judicial District Indigent Defender Board*--a public entity established pursuant to R.S. 15:144-146.

*Juvenile Proceedings*--those proceedings instituted pursuant to provisions of the Louisiana Children's Code wherein the services of a judicial district indigent defender board are specifically required.

*Local Counsel*--counsel that is certified by the Louisiana Indigent Defense Assistance Board as qualified to represent indigents in capital cases within a judicial district wherein he or she resides or regularly practices law.

*Louisiana Indigent Defense Assistance Board*--a nine member board established within the office of the governor pursuant to R.S. 15:151, et seq. for the purpose of providing supplemental assistance to judicial district indigent defender boards to the extent required by the Constitution and laws of Louisiana or the Constitution of the United States of America.

*May*--permissive.

*Regional Defense Service Centers*--regional service centers established pursuant to R.S. 15:151.

*Shall*--mandatory.

*Specialized Continuing Legal Education*--includes courses and seminars primarily focused on criminal defense oriented issues and skills and approved by the Mandatory Continuing Legal Education Committee for continuing legal education credit.

*Louisiana Register Vol. 28, No. 06 June 20, 2002, p. 1202*

*Specialized Scientific Testing*--includes any specialized testing outside the ken of lay persons that is carried out on behalf of an indigent person and authorized by a court of competent jurisdiction as necessary to the defense.

*Supplemental Assistance*--includes direct and indirect financial support and non-financial support of defender programs, including, but not limited to, improvement of administrative procedures, exchange of information, budgetary management and continuing legal education.

AUTHORITY NOTE: Promulgated by the Louisiana Indigent Defense Assistance Board in accordance with R.S. 15:151.2 (D)-(F)]

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1200 (June 2002).

### **Chapter 3. Guidelines and Eligibility Criteria**

#### **§301. Eligibility Criteria for Direct and Indirect Supplemental Assistance**

A. A district indigent defender board shall not be eligible to receive supplemental assistance from the Indigent Defense Assistance Board unless the following criteria are met.

1. All courts within the judicial district are assessing at least \$25 in court costs in accordance with R.S. 15:146, provided the amount of court costs being assessed shall not bar supplemental assistance to cover the costs of defense services in capital cases.

2. The judicial district indigent defender board has instituted and is complying with a system to assure that defense services are limited only to those who meet indigency standards after reasonable inquiry, including compliance with R.S. 15:147. In all proceedings where defense services are provided by a judicial district indigent defender board, the board shall file, in the record of the proceedings, a written certification attesting to the individual's indigency, signed by the client or a representative of the judicial district indigent defender board.

3. A judicial district indigent defender board is providing legal services and related expenses only to the extent required by the Constitution of Louisiana or the Constitution of the United States of America or specific statutory provisions affording the right of counsel to indigents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1202 (June 2002).

### **§303. Guidelines for Direct and Indirect Supplemental Assistance**

A. The Louisiana Indigent Defender Assistance Board provides direct and indirect supplemental assistance to the state's 41 judicial district indigent defender boards in accordance with R.S. 15:151 et seq. and the following guidelines.

1. Supplemental assistance to be provided shall take into account the provision of defense services by the judicial district indigent defender board for indigent persons arrested or detained in connection with the investigation or commission of any offense or charged with an offense punishable by imprisonment, custody, or confinement.

2. Supplemental assistance to be provided shall take into account the employment by the judicial district indigent defender board of other than trial counsel or counsel from within the judicial district to provide services for appeals. A district indigent defender board shall institute and comply with a policy for providing certified counsel in appellate cases in accordance with S.Ct. Rule XXXI.

3. Supplemental assistance to be provided shall take into account the failure of the judicial district indigent defender board to provide local counsel in capital cases. A judicial district indigent defender board shall institute and comply with a policy for providing certified counsel in capital cases in accordance with S.Ct. Rule XXXI.

4. Supplemental assistance to be provided shall consider the cost to a judicial district indigent defender board of specialized scientific testing and expert witnesses.

5. Supplemental assistance to be provided shall consider the administrative expenses and management practices and efficiencies of the judicial district indigent defender board, including its level of cooperation with the Louisiana Indigent Defense Assistance Board.

6. Supplemental assistance to be provided shall consider compensation rates set by the judicial district indigent defender board to remunerate an attorney retained to handle a specific case or class of cases.

7. Supplemental assistance to be provided shall consider the provision by the judicial district indigent defender board of financial, caseload, staffing, and other information reasonably necessary to carry out the enumerated powers of the Louisiana Indigent Defense Assistance Board.

8. Supplemental assistance to be provided shall consider the number of capital and appellate cases, the use of expert witnesses and specialized testing, and other clearly demonstrated needs of a judicial district indigent defender board. The provision of these defense services by a judicial district

indigent defender board shall be handled in accordance with the certification programs mandated by S.Ct. Rule XXXI.

9. Supplemental assistance to be provided shall consider the participation of a judicial indigent defender board in regional defense service centers as provided in R.S. 15:150.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (D), (F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1202 (June 2002).

### **§305. General Certification Guidelines for Capital Appellate and Post-Conviction Counsel**

A. The following standards shall be applied to contract attorney certification under any part of this Rule.

1. The attorney shall be familiar with the practice and procedure of the criminal courts of Louisiana and shall be a member in good standing of Louisiana State Bar Association or admitted to practice pro hac vice.

2. The attorney shall be familiar with the use of expert witnesses and evidence, including but not limited to, psychiatric and forensic evidence.

3. Within one year of an initial application for certification by the Louisiana Indigent Defense Assistance Board, the attorney shall complete a minimum of 12 hours of

*Louisiana Register Vol. 28, No. 06 June 20, 2002, p. 1203*

Board-approved training primarily involving advocacy in the field of capital appellate or post-conviction defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1202 (June 2002).

### **§307. Certification Guidelines for Capital Appellate Counsel**

A. To be certified to serve as counsel in the appeal of a capital case, an attorney shall satisfy the following minimum standards.

1. Be familiar with the practice and procedure of the Louisiana Supreme Court in the appeal of capital cases and the practice and procedure of the United States Supreme Court in the application for writs of certiorari in capital cases;

2. Be an experienced and active trial or appellate practitioner with at least five years experience in the field of criminal defense;

3. Have prior experience within the last five years as counsel of record in the appeal of no fewer than three felony convictions in federal or state court; and

4. Have prior experience within the last five years as counsel of record in the appeal or post-conviction application, in federal or state court, of at least one case where a sentence of death was imposed.

5. In cases in which applicants lack the requirements of A, B, C or D above, the Chair of the Board of the Louisiana Indigent Defense Assistance Board may grant permission for that applicant to be certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1203 (June 2002).

### **§309. Certification Guidelines for Capital Post-Conviction Counsel**

A. To be certified to serve as counsel for purposes of state post-conviction, an attorney shall satisfy the following minimum standards.

1. Be familiar with the substantive law and the practice and procedure of the courts of Louisiana in the review of capital post-conviction applications.

2. Be familiar with federal habeas corpus statutory law, practice and procedure, particularly including federal review of state capital post-conviction procedures.

3. Be an experienced and active trial, appellate, or post-conviction practitioner with at least three years experience in the field of criminal defense; and,

4. Have prior experience within the last three years as counsel of record in a capital post-conviction application, in state or federal court, or at least one case where a sentence of death was imposed, demonstrating clear competence and diligence in the representation provided.

5. In cases in which applicants lack the requirements of A, B, C or D above, the Chair of the Board of the Louisiana Indigent Defense Assistance Board or Director of the Capital Post-Conviction Project of Louisiana may grant permission for that applicant to be certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1203 (June 2002).

## **Chapter 5. Procedure for Supplemental Assistance and Appointment of Counsel for Indigent Defendants Sentenced to Death**

### **§501. Grant-in-Aid Programs**

A. The Louisiana Indigent Defense Assistance Board may provide direct assistance to judicial district indigent defender boards based on the LIDAB's funding levels, a judicial district indigent defender board's demonstrated need, and compliance with the following guidelines. Grant-in-aid programs established by the LIDAB are intended to provide supplemental assistance to qualifying district indigent defender boards for all criminal and juvenile proceedings where the right to the assistance of counsel provided by the state has been established. All judicial district indigent defender boards willing to comply with the standards, guidelines, and policies of the Louisiana Indigent Defense Assistance Board are eligible to apply for supplemental assistance.

1. Supplemental assistance is available to a judicial district indigent defender board to assist it in improving the quality of indigent defense on a continuing basis. The major goals of these programs are the following:

a. to lower public defender workloads to levels consistent with recognized standards of professionalism and national caseload standards;

b. to increase the availability of trained and qualified attorneys certified to handle capital and appellate matters on behalf of indigent clients;

c. to provide more effective attorney unit support in the form of investigators, paralegals, secretaries, technology, and other forms of office support;

d. to improve criminal defense knowledge and skill through training, specialized continuing legal education, and improved supervision;

e. to defray the costs of expert witnesses and specialized scientific testing; and

f. to improve the process by which an individual is determined to be in need of state-provided defense services.

2. Supplemental assistance provided to a judicial district indigent defender board under these programs may be used for any or all of the following purposes:

a. hiring or retaining attorneys for the provision of defense services;

- b. adjusting attorney salaries in accordance with the guidelines established by the Louisiana Indigent Defense Assistance Board;
- c. defraying the costs of attorney unit support in accordance with the guidelines established by the Louisiana Indigent Defense Assistance Board;
- d. defraying the costs of expert witnesses and specialized scientific testing in accordance with the guidelines established by the Louisiana Indigent Defense Assistance Board; and
- e. defraying the costs of defense-oriented continuing legal education and specialized training programs.

*Louisiana Register Vol. 28, No. 06 June 20, 2002, p. 1204*

3. Supplemental assistance provided to a judicial district indigent defender board under these programs may not be used for any of the following purposes:

- a. the acquisition of land and/or buildings;
- b. the construction or renovation of buildings;
- c. the purchasing of furnishings and/or decorations;
- d. the payment of non-defense-oriented continuing legal education or specialized training programs;
- e. the provision of defense services to an individual not eligible to receive state-provided services;
- f. the payment for out-of-state travel, food, and/or lodging not relating to the defense of a client in a particular case;
- g. the payment for automobile rental, purchase, maintenance, or repair;
- h. the payment for lobbying efforts in the legislature or any other governmental body for funding or changes in the law; and
- i. the payment for any item or service not specifically approved by the Louisiana Indigent Defense Assistance Board in a judicial district indigent defender board's grant application.

4. A judicial district indigent defender board applying for supplemental assistance shall certify the following to the Louisiana Indigent Defense Assistance Board:

- a. that a minimum of \$25 in court costs is assessed and being collected within the district in accordance with R.S. 15:146;
- b. that the district board is willing to comply with the guidelines, policies, and procedures of the Louisiana Indigent Defense Assistance Board relative to the management and administrative practices of district indigent defender boards;
- c. that the district indigent defender board is maintaining monthly, verifiable caseload statistics and will provide them to the Louisiana Indigent Defense Assistance Board on a calendar-year quarterly basis;
- d. that the district indigent defender board is maintaining monthly financial statements, providing total revenues by type, total expenditures by type, fund balances by type, and the amount of compensation paid to staff, contract, and/or appointed counsel and will provide this information to the Louisiana Indigent Defense Assistance Board on a calendar-year quarterly basis;
- e. that the district indigent defender board has prepared an independent financial audit on an annual basis and will provide this audit report to the Louisiana Indigent Defense Assistance Board in a timely manner; and
- f. That the district indigent defender board has submitted complete and accurate information in its application for supplemental assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (D)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1203 (June 2002).

### **§503. Appointment of Appellate and Post-Conviction Counsel in Death Penalty Cases**

A. The Louisiana Indigent Defense Assistance Board, through its director, shall, within 30 days of formal notice from a court having jurisdiction over the appeal of the capital case of an indigent, cause to have counsel enrolled to represent the defendant on direct appeal.

B. The Louisiana Indigent Defense Assistance Board, through its director, shall, within 30 days of finality of an indigent capital defendant's appeal, cause to have counsel enrolled to represent the defendant for purposes of state post-conviction proceedings.

C. To the extent funding is available, the Louisiana Indigent Defense Assistance Board may create, manage, and/or contract with a separate entity, with such staff and support personnel as are necessary, to provide counsel to represent capital defendants on direct appeal to the Supreme Court of Louisiana and/or to seek post-conviction relief, if appropriate, in state and federal court, subject to Paragraph E below.

D. In the event staff counsel of said separate entity is not available for appointment on an appeal or in post-conviction proceedings, the Louisiana Indigent Defense Assistance Board shall cause to have counsel enrolled certified by it in accordance with the applicable provisions of §§107-110 below, provided that in no event shall contract counsel be remunerated at a rate in excess of salary levels of any staff attorneys of said entity as determined by the Louisiana Indigent Defense Assistance Board.

E. Counsel appointed by the Louisiana Indigent Defense Assistance Board may accept appointments from a federal court to represent capital defendants, provided funding for these defense services is provided by the appointing federal court and provided no state-appropriated funds are expended for the representation of capital defendants in federal court.

F. Any attorney who desires to be certified under the guidelines of this Rule shall do so in accordance with the policies and procedures established by the Louisiana Indigent Defense Assistance Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E) - (F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1204 (June 2002).

### **§505. Monitoring and Removal of Certification of Capital Appellate and Post-Conviction Counsel**

A. Attorneys certified by the Louisiana Indigent Defense Assistance Board within the guidelines of this Rule shall be monitored to ensure eligibility.

1. An attorney who fails to maintain his or her status and educational requirements as defined in §107 above shall not be considered certified for purposes of appointment in capital cases, provided an attorney may seek re-certification once the criteria of that section are satisfied.

2. Where there is compelling evidence that an attorney has inexcusably ignored basic responsibilities of an effective lawyer, resulting in prejudice to an indigent client's case, the attorney shall not be considered certified for purposes of appointment in capital cases. In this instance, an attorney shall be given an opportunity to respond in writing to specific charges of ineffectiveness.

3. Representation of a capital client establishes an inviolable attorney-client relationship. Thus, an attorney's eligibility to represent an indigent client may not be reviewed, except by a court of proper jurisdiction, on the basis of conduct involving a case in which the attorney is presently actively representing the client.

4. An attorney decertified under this Rule shall not be re-certified unless the decertification is shown to have been erroneous or it is established to the satisfaction of a majority of the Board that the cause of the failure to meet basic responsibilities has been identified and corrected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1204 (June 2002).

### **§507. Workload**

A. The following standards shall serve as guides to attorneys eligible for appointment as capital appellate or post-conviction counsel.

1. Attorneys accepting appointments pursuant to this Rule should provide each indigent client with quality representation in accordance with constitutional and professional standards. Capital counsel should not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

2. To determine maximum workload, an attorney should consider, among other factors, quality of representation, speed of turnover of cases, percentage of cases being litigated, extent of support services available, court procedures, and involvement in complex litigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1205 (June 2002).

### **§509. Support Services in Capital Appellate and Post-Conviction Cases**

A. Counsel appointed in accordance with this Rule shall secure all proper and necessary support services, including, but not limited to, investigative, expert, mitigation, and any other support services necessary to prepare and present an adequate defense. An attorney should use all available support services and facilities needed for an effective performance at every stage of the proceedings. Counsel should seek financial and technical assistance from all possible sources, provided expenses are within the guidelines established by the Louisiana Indigent Defense Assistance Board.

B. Funds to pay for reasonably necessary services, to the extent funds are available, shall be provided only upon a written showing to the director or supervisor of any entity responsible for capital appellate or capital post-conviction representation pursuant to §106, specifically identifying the nature of the services, the cost of such services, and the need for such services.

C. A written application for support services which requests funding in excess of the Louisiana Indigent Defense Assistance Board's established guidelines must be submitted to the Louisiana Indigent Defense Assistance Board, through its Director, for review and must be accompanied by specific justification for additional funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:1205 (June 2002).

Edward R. Greenlee  
Director

0206#012