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Section 7: Standards for Defending Attorneys

The provisions of this section establish the standards for defending attorneys utilizing Idaho's Principles of an Indigent Defense Delivery System (IPIDDS) as outlined in Section 19-850(1)(a)(vii), Idaho Code. IPIDDS, in blue, were adopted by the Idaho Legislature as a guide for defending attorneys and the development of standards. The standards take into consideration case complexity, support services, and travel while striving to meet the constitutional requirements of the Sixth Amendment to the U.S. Constitution. These standards are intended to be used as a model for professional conduct and performance. They may or may not be relevant in the judicial evaluation of effective representation, depending upon the circumstances.

I. The delivery of indigent defense services should be independent of political and judicial influence, though the judiciary is encouraged to contribute information and advice concerning the delivery of indigent defense services.

II. Defending attorneys should have sufficient time and private physical space so that attorney-client confidentiality is safeguarded during meetings with clients.

III. Defending attorneys' workloads should permit effective representation.

A. The caseload of a defending attorney shall allow the attorney to give each client the time and effort necessary to ensure effective representation. Neither indigent defense providers nor defending attorneys should accept caseloads that, by reason of their excessive size, interfere with the rendering of constitutional representation.

B. The Commission has chosen not to set a specific caseload standard at this time until an Idaho workload study can be completed. Counties should encourage defending attorneys not to exceed caseloads that would compromise the effective representation of their clients.

C. If a defending attorney is assigned to represent a group of clients in problem solving courts in addition to individual case assignments, consideration should be given to adjusting the caseload appropriately, recognizing that preparing for and appearing at such calendars requires additional attorney time.

D. Effective supervision is critical to the proper functioning of an indigent defense system. Those attorneys with supervisory responsibilities should carry a reduced caseload in recognition of the additional workload involved in providing meaningful supervision.

E. The increased complexity of practice will require a lower caseload. A caseload should be adjusted downward when the mix of case assignments is weighted toward capital cases, more serious offenses or case types that demand more investigation, legal research and writing, motion practice, use of experts and/or social workers, or other expenditure of time and resources.

IV. Economic disincentives or incentives that impair defending attorneys' ability to provide effective representation should be avoided.

V. Defending attorneys' abilities, training and experience should match the nature and complexity of the cases in which they provide services including, but not limited to, cases involving complex felonies, juveniles and child protection.

A. A defending attorney shall minimally meet the requirements of Idaho Code §19-855 before representing indigent persons or other individuals who are entitled to be represented by an attorney at public expense.

B. A defending attorney shall be familiar with substantive Idaho law, constitutional law, criminal law, ethical rules, criminal procedure, rules of evidence, and local rules and practices. Defending attorneys have a continuing obligation to know the changes and developments in the law and have the ability to recognize collateral consequences.

C. Defending attorneys shall be familiar with current forensic and scientific issues that can arise in a case, including current technology used by law enforcement and other investigative officers, and the legal issues concerning defenses that can be raised. Defending attorneys shall be able to effectively litigate those issues.

D. Defending attorneys shall be familiar with mental health, substance abuse, poverty, education and other psychological, medical and social issues that affect and impact the lives of their indigent clients.

E. Defending attorneys shall be familiar with office technology commonly used in the legal community, and technology used within the applicable court system. Defending attorneys shall be able to thoroughly review materials that are provided in an electronic format.

F. Prior to undertaking the defense of an indigent defendant or other person entitled to an attorney at public expense, counsel should have sufficient experience to provide competent representation for the case. A defending attorney should accept more serious and complex cases only after having had experience and/or training in less complex matters. As such, supervising attorneys should take the experience of a defending attorney into consideration when assigning cases. At a minimum, defending attorneys without adequate experience shall consult with a more experienced defending attorney before handling more complex cases.

G. Defending attorneys should, when possible, consult with more experienced attorneys to acquire knowledge and familiarity with all facets of indigent defense representation, including serving as co-counsel to more experienced attorneys.

H. Upon assignment to a case that requires specialized knowledge, a defending attorney shall acquire at least three (3) continuing legal education hours in the specialized area as soon as reasonably practicable if such training has not been acquired within the last three (3) years. If a training course is not readily available, a defending attorney shall consult with a more experienced defending attorney with such specialized training until a course is available. Specialized areas include, but are not limited to the following:

   a. Juvenile cases;
   b. Child protection cases;

c. Termination of parental rights and guardianship cases;
d. Civil contempt;
e. Mental health commitment cases;
f. Immigration law; and
g. Cases involving significant mental health and/or competency issues.

I. Defending attorneys shall engage in continuing legal education as required in Principle VIII, *infra*.

VI. The defending attorney assigned to a particular case should, to the extent reasonably practicable, continuously oversee the representation of that case and personally appear at every substantive court hearing.

A. A defending attorney should be appointed at the initial appearance and shall be immediately available in-person or through technology to an indigent defendant upon such appointment. At the initial appearance, the defending attorney should make efforts to preserve all of the defendant's constitutional and statutory rights, and seek pre-trial release at the initial appearance under conditions that serve the best interests of the defendant. Further, the defending attorney should encourage the entry of a not guilty plea in all but the most extraordinary of circumstances where a disposition at initial appearance is constitutionally appropriate.

B. In order to successfully advocate on a defendant's behalf at an initial appearance, a defending attorney should obtain information relevant to pre-trial release pursuant to Idaho Criminal Rule 46, and if possible, discuss the charges and possible consequences with the defendant.

C. Once assigned to a defendant's case, to the extent reasonably practicable, a defending attorney shall be present at all critical stages for that defendant. This is sometimes referred to as vertical representation.

VII. There should be reasonable equity between defending attorneys and prosecuting attorneys with respect to resources, staff and facilities.

VIII. Defending attorneys should obtain continuing legal education relevant to their indigent defense cases.

A. Defending attorneys shall annually complete seven (7) hours of continuing legal education courses relevant to the representation of indigent defendants or other individuals who are entitled to be represented by an attorney at public expense. Courses shall include skills training and educational programs in order to maintain and enhance overall preparation, oral and written advocacy, and litigation and negotiation skills. This may include CLE courses in specialized areas as listed in Principle V, *supra.*

B. Defending attorneys shall handle cases that reflect their abilities, training and experience as required in Principle V, *supra*.

IX. Defending attorneys should be regularly reviewed and supervised for compliance with indigent defense standards and, if applicable, compliance with indigent defense standards as set forth in contractual provisions.

X. Defending attorneys should identify and resolve conflicts of interest in conformance with the Idaho rules of professional conduct and other applicable constitutional standards.