
CARLOS RIVERA, et al.	:	
Plaintiffs	:	SUPERIOR COURT
v.	:	JUDICIAL DISTRICT OF
	:	HARTFORD/NEW BRITAIN
JOHN ROWLAND, et al.	:	AT HARTFORD
Defendants	:	

NOTICE OF SETTLEMENT

Notice is hereby given to members of the plaintiff class in *Rivera v. Rowland*, No. CV-95-0545629S, and other interested individuals, that the parties to the litigation have agreed to a resolution of the case. The lawsuit, brought on behalf of clients of the Connecticut public defender system, alleged deficiencies in the staffing and operation of that system. During the pendency of this action, defendants have made a number of significant improvements to the public defender system. Among other things, additional funding has been appropriated for the system which ultimately will be used to hire approximately 80 new attorney and support staff. In addition, for the first time since 1983, defendants have increased the rates of compensation paid to special public defenders. They have also adopted attorney caseload goals; developed and implemented a more comprehensive attorney training program; enhanced existing practice guidelines; substantially revised the manner in which they supervise and evaluate attorney performance; and announced their intention to appoint a Director of Special Public Defenders, who will be responsible for the administration and operation of the special public defender program.

In light of these changes, plaintiffs have agreed to withdraw the lawsuit, subject to the Court's approval. By its terms, however, this withdrawal shall have no effect on any claims that may be made by any member of the plaintiff class in direct review of any criminal conviction or adjudication by way of appeal or writ of error, in any sentence review proceeding, in any juvenile delinquency proceeding, or in any habeas corpus proceeding arising out of a criminal or juvenile delinquency conviction or adjudication.

The parties' joint motion to withdraw the lawsuit which describes in further detail the changes and improvements to the public defender system is on file for public inspection at the Office of the Clerk of the Superior Court, Judicial District of Hartford, under the above docket number. In addition, copies of the motion may be obtained by writing to Robin Dahlberg, American Civil Liberties Union, 125 Broad Street, New York, NY 10004.

Any member of the plaintiff class who wishes to oppose approval of the resolution of the lawsuit may submit written objections to the attention of Judge Douglas Lavine in care of the Clerk of the Court, Superior Court, Judicial District of Hartford, 95 Washington Street, Hartford, CT 06106, on or before Wednesday, July 29, 1999.

A court hearing in connection with this matter will be held at 2:00 p.m. on Tuesday, August 3, 1999 in Courtroom 312 of the Superior Court, 95 Washington Street, Hartford, CT.

A class member is an individual who (a) was the subject of a pending criminal or juvenile delinquency proceeding in Superior Court or a pending petition for a writ of habeas corpus on July 2, 1999, **and** (b) was represented in that proceeding or in connection with that petition by a public defender or a special public defender.

Any individual represented by a public defender or special public defender for purposes of appeal only is **not** a member of the class. A person previously represented but not represented on July 2, 1999 by a public defender or special public defender is not a member of the class. Those filing written objections must demonstrate that they are a member of the class by including with their objections the docket number of the pending case(s) or petition(s) and the court(s) in which the case(s) or petition(s) are pending.

THIS NOTICE SHALL REMAIN POSTED IN THIS LOCATION
FOR A PERIOD OF NOT LESS THAN TWO (2) WEEKS.

NO. CV95 - 545629

CARLOS RIVERA

: SUPERIOR COURT

v.

: JUDICIAL DISTRICT OF HARTFORD

JOHN ROWLAND, GOVERNOR, et al

: JULY 2, 1999

JOINT MOTION FOR APPROVAL OF WITHDRAWAL OF ACTION

Plaintiffs, acting on behalf of themselves and the plaintiff class, by and through the undersigned counsel, hereby move for permission to withdraw this action, as required by Conn. Prac. Bk. § 9-9. A proposed withdrawal of action is attached as Exhibit 1.

In this class action lawsuit, plaintiffs alleged that severe understaffing, excessive caseloads, inadequate policies and procedures, and other systemic deficiencies in the Connecticut public defender system made it unlikely that the system's clients would receive constitutionally and statutorily adequate representation in criminal and juvenile delinquency proceedings. Plaintiffs further alleged that unless fundamental changes were made in the system, significant numbers of indigent persons represented by the system were threatened with the deprivation of their rights under the Sixth and Fourteenth Amendments to the United States Constitution, the Connecticut Constitution and various state statutes.

Defendants strongly disagreed with plaintiffs' position. In response to the plaintiffs' claims, defendants asserted that the Connecticut public defender system has continued to provide effective representation to clients in all matters in which public defender representation is provided. Defendants also raised or asserted several legal and jurisdictional defenses. In addition, since this lawsuit was filed, defendants have made a number of changes to the Connecticut public defender system. These include the following:

1. The budget approved by the General Assembly for the fiscal year ending June 30, 1998 included additional funding for the Public Defender Services Commission in the amount of \$1,350,000. This funding was used to increase the staffing of the public defender system by 20 new attorney and support positions, to increase the funds available for outside services, such as expert witnesses, by \$170,000, and to increase the funds available for non-contractual special public defenders by \$345,000.

2. During August 1997 the Habeas Corpus Unit was moved to new space in the Office of the Chief Public Defender in Hartford. The permanent staffing of the unit has increased from 3 full-time attorneys to 4 full-time attorneys and one full-time investigator has been employed.

3. The budget approved by the General Assembly for the fiscal year ending June 30, 1999 included 4 new positions for staffing a new Judicial District office and 2 new positions for a new Juvenile office, both in New Britain.

4. The budget approved by the General Assembly for the July 1999 through June 2001 biennium included increased funding in the amount of \$4,556,370 for FY 2000 and an additional increase of \$2,184,992 for FY 2001. This total includes funding for 29 new permanent positions in FY 2000, including a new Executive Assistant Public Defender position to serve as Director of Special Public Defenders, and funding for an additional 25 new permanent positions in FY 2001. The total also includes an increase in the appropriation for training, and funds for associated expenses, for the purchase of 161 new computers and other equipment, and for an increase in the rates of compensation for special public defenders.

5. The Public Defender Services Commission adopted the following new or revised policies on June 15, 1999: Caseload Goals for Public Defenders; Duties and Responsibilities of Director of Special Public Defenders; Special Public Defender Supervision and Evaluation; Special Public Defender Qualifications and Training; Special Public Defender Compensation Rates; Annual Performance Evaluation of Attorneys; Amendment to Guideline 2.1 of the Public Defender Services Commission's "Guidelines on Indigent Defense" concerning training; and, other changes to the "Guidelines on Indigent Defense". Copies of said policies are appended to this motion as Exhibits 2 through 9.

6. According to the Annual Reports prepared by the Office of the Chief Public Defender between January 1995 and January 1999 the average caseload per attorney in the Judicial District offices has declined from 113 cases per year to 61 cases per year, the average caseload per attorney in the Geographical Area offices has declined from 1045 cases per year to 618 cases per year, and the average caseload per attorney in the Juvenile Matters offices has declined from 716 cases per year to 544 cases per year. In addition, according to the Annual Reports, an attorney has been added to the staff of the Training Department, and additional computers and legal research software have been acquired.

The plaintiffs understand that the proposed withdrawal does not create any legal obligations on the part of any defendant. Nevertheless, in light of the many positive changes in Connecticut's public defender system that have occurred during the pendency of this litigation it

is no longer necessary to proceed with the litigation. Accordingly, subject to appropriate notice to the class, if required by the court, plaintiffs acting on behalf of themselves and plaintiff class move for permission to withdraw this action, in accordance with Conn. Prac. Bk. § 9-9. The defendants join in this motion.

BY:

15/
Robin Dahlberg
Reginald Shuford
American Civil Liberties Union
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(212) 549-2500

15/
Ann Parrent
Philip D. Tegeler
Connecticut Civil Liberties Union Foundation
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Attorneys for the Named Plaintiffs
Individually and as Class Representatives

DEFENDANTS

BY: RICHARD BLUMENTHAL
ATTORNEY GENERAL

15/
Robert B. Teitelman
Assistant Attorney General
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
(860) 808-5355

NO. CV95 - 545629

CARLOS RIVERA

: SUPERIOR COURT

v.

: JUDICIAL DISTRICT OF HARTFORD

JOHN ROWLAND, GOVERNOR, et al

: AUGUST 3, 1999

WITHDRAWAL OF ACTION

The parties to this action, acting through their counsel, hereby stipulate and agree that this action be withdrawn, as set forth below:

1. This action is withdrawn.
2. The named plaintiffs and members of the plaintiff class are precluded from reasserting the causes of action for the relief sought in the Second Amended Complaint with respect to the period of time up to and including the effective date of this withdrawal.
3. This withdrawal shall have no effect on any claims that may be made by any of the plaintiffs or any member of the plaintiff class in direct review of any criminal conviction or adjudication by way of appeal or writ of error, in any sentence review proceeding, in any juvenile delinquency proceeding, or in any habeas corpus proceeding arising out of a criminal or juvenile delinquency conviction or adjudication.
4. Defendants will pay to counsel for the plaintiffs costs and attorneys' fees in the total amount of \$400,000 on or before August 17, 1999. Payment of this sum shall fully resolve any and all claims for costs and attorneys' fees of any sort in connection with this action. Other than this payment, both parties shall bear their own fees and costs.

PLAINTIFFS

(individually and as class representatives)

BY: THEIR ATTORNEYS

Robin Dahlberg
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125 Broad Street
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DEFENDANTS

BY: RICHARD BLUMENTHAL
ATTORNEY GENERAL

Robert B. Teitelman
Assistant Attorney General
55 Elm Street, P.O. Box 120
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(860) 808-5355

ORDER

The court, having considered this Withdrawal of Action, and having determined that it is in the interests of justice to permit the withdrawal of this action on the specified terms, hereby ORDERS: The withdrawal of this action is approved and this action is hereby withdrawn, on the terms specified in the accompanying Withdrawal of Action.

Dated at Hartford, Connecticut, this the 3rd day of August, 1999.

By the Court (Lavine, J.)

Judge/ Assistant Clerk

CERTIFICATION

I hereby certify that a copy hereof was hand-delivered this date to all counsel and pro/se parties of record, in accordance with Conn. Prac. Bk. § 10-12, to: Robert B. Teitelman, Assistant Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120.

/s/

Ann Parrent

PUBLIC DEFENDER SERVICES COMMISSION

CASELOAD GOALS FOR PUBLIC DEFENDERS

In order to insure that attorneys within the Division of Public Defender Services are able to render quality representation to all clients and avoid unnecessary delay in the disposition of cases, the Public Defender Services Commission establishes caseload goals for individual attorneys as set forth below. It is the intention of the Commission that said goals be used for purposes of requesting and maintaining adequate resources for the Division through the budgeting process, for allocating resources equitably within the Division, and for assignment of cases in individual offices. Said goals reflect the Commission's view of what is desirable under current circumstances and shall not constitute a limit on the actual number of cases that may be assigned to an individual attorney.

For purposes of these goals, "caseload" shall be defined as the average number of new cases assigned per attorney per fiscal year per individual public defender office or unit. For combined JD/GA offices, an individual attorney shall be counted once for purposes of calculating the average JD and GA caseload per attorney for that office.

Caseload goals for the various types of representation provided shall be as follows:

1. *Judicial Districts. Not to exceed 75 cases.* For purposes of calculating the number of new cases assigned, murder cases and non-death penalty capital felony cases shall be counted as 2 cases, capital felony cases in which the State seeks the death penalty shall be counted as 10 cases, and minor felony, misdemeanor and motor vehicle cases accompanying major felony cases shall be excluded.
2. *Geographical Areas. Not to exceed 450-500 cases, except for GA's 2, 6, & 14, where the goal shall be not to exceed 525-575 cases.* For purposes of calculating the number of new cases assigned, cases that are nolleed or dismissed on the date of appointment and bail only appointments shall be excluded.
3. *Juvenile Matters. Not to exceed 300-400 cases.* For purposes of calculating the number of new cases assigned, cases in which the Juvenile is charged with Violation of a Court Order in a pending case shall be excluded.
4. *Habeas Corpus. Not to exceed 20-25 cases.*

Adopted June 15, 1999

PUBLIC DEFENDER SERVICES COMMISSION

*DUTIES & RESPONSIBILITIES OF
DIRECTOR OF SPECIAL PUBLIC DEFENDERS*

There is established within the Office of Chief Public Defender the position of Director of Special Public Defenders, which position shall be classified at the level of Executive Assistant Public Defender. The Director of Special Public Defenders shall report directly to the Chief Public Defender, and shall have duties and responsibilities including, but not limited to, the following:

1. Administration and management of all Special Public Defender operations and functions within the Division of Public Defender Services.
2. Evaluation of the qualifications of attorneys to serve as Special Public Defenders in accordance with the minimum qualifications established by the Public Defender Services Commission for GA, JD, Juvenile, Habeas Corpus, Appeals and Capital Felony representation.
3. Maintaining a current list of attorneys approved by the Chief Public Defender to serve as Special Public Defenders in accordance with §51-291(11), C.G.S.
4. Actively recruiting qualified criminal defense practitioners to serve as Special Public Defenders on a contractual or individual case basis.
5. Conducting a biennial review of Special Public Defender compensation rates, and recommending appropriate adjustments in said rates to the Chief Public Defender for inclusion in the Commission's biennial budget request.
6. Implementing and conducting a training program for Special Public Defenders in coordination with the Director of Training.
7. Acting as liaison to and as a member of the Standing Committee on Special Public Defenders, responsible for the approval of applicants for Special Public Defender Contracts and the monitoring of Special Public Defender performance under said contracts.
8. Implementation and administration of all Special Public Defender contracts approved by the Public Defender Services Commission.

9. Establishing and maintaining a system for implementing the Commission's policy for Supervision and Evaluation of Special Public Defenders.
10. Investigating all formal complaints against Special Public Defenders, and reporting the results to the Chief Public Defender.
11. Addressing and responding to issues raised by clients concerning Special Public Defenders.
12. Providing support to attorneys in their capacity as Special Public Defenders.
13. Acting upon and approving requests for authorization to incur expenses of defense in individual special public defender cases, in accordance with financial limits established by the Commission.
14. Processing of all invoices for special public defender services, including contractual and non-contractual payments.
15. Monitoring the assigned workload of Special Public Defenders to insure that the number of assigned cases is not excessive and allows for effective representation.
16. Advising the Chief Public Defender on all matters involving or related to Special Public Defenders.

Adopted June 15, 1999

PUBLIC DEFENDER SERVICES COMMISSION

SPECIAL PUBLIC DEFENDER SUPERVISION & EVALUATION

In order to insure that individual Special Public Defenders are providing adequate and quality representation to indigent clients, the Director of Special Public Defenders shall monitor the performance of Special Public Defenders on an ongoing basis by the following methods:

1. Conduct periodic visits to the various courts for purposes of observing attorneys in court in the performance of their responsibilities as Special Public Defenders.
2. Annually survey the supervising attorneys of all public defender offices as to the performance and reliability of individual contract and non-contract Special Public Defenders.
3. Periodically inquire of judges in the various courts as to the quality of the representation and advocacy provided by individual Special Public Defenders, and their reliability in performing their responsibilities on behalf of their clients.
4. Evaluate the trial skills of individual Special Public Defenders on an on-going basis through personal observation, review of transcripts and/or discussions with trial judges.
5. In consultation with the Chief of Legal Services, evaluate the representation provided by Special Public Defenders handling appeals, including the quality of briefs filed and oral arguments in individual cases.
6. In consultation with the Chief of Habeas Corpus Services, evaluate the representation provided by Special Public Defenders handling habeas corpus matters, including pleadings, case preparation and trial advocacy.
7. In consultation with the Chief of Capital Defense & Trial Services, evaluate the representation provided by Special Public Defenders in capital cases, including the raising of legal issues appropriate to a capital case, case preparation, and advocacy at trial and penalty phase.

8. Review all complaints and habeas corpus petitions filed against Special Public Defenders for indications of any problems or patterns of poor performance on the part of an individual Special Public Defender.
9. Review all grievances filed against a Special Public Defender in which probable cause has been found.
10. Make recommendations to the Standing Committee on Special Public Defenders for the removal of attorneys from the list of approved SPD contractors as a result of unsatisfactory performance.
11. Make recommendations to the Chief Public Defender for removal of attorneys from the list of attorneys available to accept appointments pursuant to §51-291(11), C.G.S. as a result of unsatisfactory performance.

Adopted June 15, 1999

PUBLIC DEFENDER SERVICES COMMISSION

SPECIAL PUBLIC DEFENDER QUALIFICATIONS & TRAINING

The following qualifications and training requirements are established for attorneys serving as Special Public Defenders:

1. Attorneys approved by the Chief Public Defender or the Standing Committee on Special Public Defenders to receive appointments as Special Public Defenders on a contractual or non-contractual basis in the various courts shall meet the minimum qualifications established by the Commission for representation in Geographical Area courts, Judicial District courts, juvenile delinquency matters, appeals, habeas corpus matters, and capital felony cases, as set forth in the attached Appendices.
2. Prior to receiving appointments, a Special Public Defender shall be required to participate in an SPD Basic Orientation course, which will familiarize the attorney with the duties and responsibilities of a Special Public Defender, address basic criminal practice and procedure issues, and review the Commission's *Guidelines on Indigent Defense*. Participation in said course may be waived by the Chief Public Defender or the Director of Special Public Defenders on the basis of prior experience as a Special Public Defender.
3. The Commission shall make ongoing professional education and training programs available to Special Public Defenders, including but not limited to the following:
 - a) Regularly scheduled professional education and training programs presented by the Training Unit of the Office of Chief Public Defender on various topics of criminal law and procedure, as well as other topics relevant to the representation of clients in criminal cases.
 - b) A trial advocacy training program for special public defenders conducted annually by the Director of Special Public Defenders.
 - c) A mentor program, through which experienced criminal defense attorneys are made available on a voluntary basis to provide advice and assistance to special public defenders upon request.

4. All Special Public Defender Contracts shall contain a provision requiring Special Public Defenders to certify annually that they have completed six hours of professional education and training, including public defender, bar and professional association, regional, or national training events and seminars, and taped or multimedia programs.
5. All Special Public Defender contracts shall contain a provision requiring Special Public Defenders to be familiar with the Public Defender Services Commission's *Guidelines On Indigent Defense*, and to observe said guidelines in accordance with their "Purpose", as set forth at p. 1.

Adopted June 15, 1999

PUBLIC DEFENDER SERVICES COMMISSION

Standards For The Appointment Of Special Public Defenders In Geographical Area Courts

Attorneys who are appointed as a special public defender in a criminal matter in Geographical Area (GA) courts should be attorneys who satisfy the following criteria:

1. Are experienced in the field of criminal defense and/or possess sufficient education and training to enable them to adequately represent clients in criminal cases; and,
2. Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to the representation of misdemeanor and felony cases;
3. Are familiar with diversionary programs and alternatives to incarceration that are available; and,
4. For Class B felony cases, meet the criteria set forth in the Standards For The Appointment Of Special Public Defenders In Judicial District Courts.

The Chief Public Defender may consider any other comparable relevant experience or qualifications that demonstrate an ability to adequately represent clients in criminal cases. Such qualifications or experience may be substituted in lieu of any of the criteria set forth above.

Adopted June 15, 1999

PUBLIC DEFENDER SERVICES COMMISSION

Standards For The Appointment Of Special Public Defenders In Judicial District Courts

Attorneys who are appointed as a special public defender in a criminal matter in the Judicial District (JD) courts should be attorneys who satisfy the following criteria:

1. Are experienced and active trial practitioners with at least two years litigation experience in the field of criminal defense; and,
2. Have prior experience as lead or sole counsel in no fewer than two criminal jury or court trials of class D or greater felony cases or four criminal jury or court trials of misdemeanor cases, which cases were tried to verdict or a hung jury, or at least one jury or court trial of class D or greater felony cases and two criminal jury or court trials of misdemeanor cases which were tried to verdict or a hung jury; and,
3. Are familiar with and experienced in the utilization of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence; and,
4. Have specialized training in jury trials or have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to serious felony cases.

The Chief Public Defender may consider any other comparable relevant experience or qualifications that demonstrate an ability to adequately represent clients in serious felony cases. Such qualifications or experience may be substituted in lieu of any of the criteria set forth above.

Adopted June 15, 1999

PUBLIC DEFENDER SERVICES COMMISSION

Standards For The Appointment of Special Public Defenders In Juvenile Matters

Attorneys who are appointed as a special public defender in a delinquency proceeding at the Superior Court for Juvenile Matters should be attorneys who satisfy the following criteria:

1. Are experienced and active practitioners with experience in the field of criminal defense; and,
2. Are familiar with programs available at the juvenile court level for residential and community based treatment including but not limited to psychiatric and/or substance abuse treatment;
3. Have specialized training in the representation of juveniles or have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to juvenile cases; and,
4. For Serious Juvenile Offenses (SJO), have prior experience as lead or sole counsel in no fewer than two trials of juvenile matters, which cases were tried to judgement, or meet the criteria set forth in Paragraph 2 of the Standards For The Appointment Of Special Public Defenders In Judicial District Courts.

The Chief Public Defender may consider any other comparable relevant experience or qualifications that demonstrate an ability to adequately represent clients in juvenile courts. Such qualifications or experience may be substituted in lieu of any of the criteria set forth above.

Adopted June 15, 1999

PUBLIC DEFENDER SERVICES COMMISSION

Standards For The Appointment Of Special Public Defenders For Appeals

Attorneys who are appointed as a special public defender in a criminal appellate matter should be attorneys who satisfy the following criteria:

1. Are experienced and active practitioners with litigation or appellate experience in the field of criminal defense;
2. Possess extensive research and writing skills and the ability to identify appellate issues including, but not limited to, state and federal constitutional issues, criminal procedural issues and evidentiary issues; and,
3. Have specialized training in appellate brief writing, agree to read and study appellate training materials provided by the Legal Services Unit of the Office of Chief Public Defender, or have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to appeal cases.

The Chief Public Defender may consider any other comparable relevant experience or qualifications that demonstrate an ability to adequately represent clients on appeal. Such qualifications or experience may be substituted in lieu of any of the criteria set forth above.

Adopted June 15, 1999

PUBLIC DEFENDER SERVICES COMMISSION

Standards For The Appointment Of Special Public Defenders In Habeas Corpus Cases

Attorneys who are appointed as a special public defender in a habeas corpus matter should be attorneys who satisfy the following criteria:

1. Are experienced and active practitioners with at least two years trial or appellate experience in the field of criminal defense;
2. Have prior experience in the representation of habeas petitioners or prior experience as lead or sole counsel in no fewer than two jury or court trials or two appeals;
3. Are familiar with the civil rules of procedure which govern habeas corpus and the applicable standard for the effective assistance of counsel in criminal matters;
4. Are familiar with and experienced in the utilization of expert witnesses and evidence; and,
5. Have specialized training in the representation of clients in habeas corpus matters, agree to read and study training materials provided by the Habeas Corpus Unit of the Office of Chief Public Defender, or have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to habeas corpus cases.

The Chief Public Defender may consider any other comparable relevant experience or qualifications that demonstrate an ability to adequately represent clients in habeas corpus matters. Such qualifications or experience may be substituted in lieu of any of the criteria set forth above.

Adopted June 15, 1999

PUBLIC DEFENDER SERVICES COMMISSION

QUALIFICATIONS OF ATTORNEYS TO BE APPOINTED AS SPECIAL PUBLIC DEFENDERS IN CAPITAL FELONY CASES

Qualifications

Attorneys who are appointed as lead counsel in capital cases should be attorneys who satisfy the following criteria:

1. Are experienced and active trial practitioners with at least seven years litigation experience in the field of criminal defense; and
2. Have prior experience as lead or sole counsel in no fewer than nine criminal jury trials of serious and complex cases which were tried to verdict or hung jury. If the attorney has experience as lead or co-counsel in a capital case that was tried through the sentencing phase then seven, not nine, prior jury trials are required. Of the nine jury trials which were tried to completion, the attorney should have been lead or sole counsel in at least three cases in which the charge was murder or felony murder; or alternatively, of the nine jury trials, at least one was a murder or felony murder trial and an additional five were felony jury trials of C degree felonies or greater; for attorneys with prior capital felony trial experience one additional felony trial of the seven felony trials was for murder or felony murder; or six were felony jury and court trials of C degree felonies or greater; and
3. Are familiar with and experienced in the utilization of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence; and
4. Have completed a certified training program in the litigation of capital felony defense; or agree to read and study capital felony defense trial training and mitigation preparation and presentation materials compiled by and provided by the Trial Services Unit of the Office of the Chief Public Defender.
5. Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

Attorneys who are appointed as co-counsel in capital cases should be attorneys who qualify as lead counsel or meet the following criteria:

1. Are experienced and active trial practitioners with at least four years litigation experience in the field of criminal defense; and
2. Have prior experience as lead counsel or co-counsel in no fewer than four criminal jury trials of class C or greater felony cases which were tried to verdict or hung jury, including at least one trial in which the charge was murder or felony murder; or have participated as lead or co-counsel in one prior capital felony jury trial tried to completion through the sentencing phase; and
3. Have completed a certified training program in the litigation of capital felony defense; or agree to read and study capital felony defense trial training and mitigation preparation and presentation materials compiled by and provided by the Trial Services Unit of the Office of the Chief Public Defender.
4. Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

An attorney who does not meet these requirements may be appointed or co-counsel if the attorney demonstrated to the Commission that he or she can provide competent representation. The Commission may consider the following:

- a. Experience in the trial of criminal cases;
- b. Specialized post-graduate training in jury trials;
- c. Specialized training in the defense of persons accused of capital crimes;
- d. Any other relevant considerations.

PUBLIC DEFENDER SERVICES COMMISSION

SPECIAL PUBLIC DEFENDER COMPENSATION RATES

Effective July 1, 1999, compensation for attorneys appointed to serve as Special Public Defenders pursuant to §51-293, C.G.S. is established in accordance with §51-291(12), C.G.S., as follows:

Non-Contractual Hourly Rates

Misdemeanor Cases:

In Court	\$35 per hour
Out of Court	\$25 per hour

Felony Cases, Habeas & Appeals:

In Court	\$60 per hour
Out of Court	\$40 per hour

Death Penalty Cases: (Trial, Appeal & Habeas)

All Services	\$60 per hour
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Juvenile Delinquency:

Same hourly rates as for misdemeanor or felony cases,
based upon underlying charge.

Contract Rates

JD Cases	\$500 per case
GA Cases (Excluding Class B felonies)	\$250 per case
Juvenile Cases (Excluding Serious Juvenile Offenses)	\$250 per case
Habeas (Guilty Plea cases only)	\$750 per case

Contract Cases To Trial

Same compensation rates upon commencement of trial as above non-contractual hourly rates.

Said compensation rates shall be reviewed by the Chief Public Defender and the Director of Special Public Defenders at least biennially to consider any adjustment in the rates necessary to insure the adequacy of the rates of compensation paid to Special Public Defenders. In assessing the adequacy of the compensation rates, the Chief Public Defender and the Director of Special Public Defenders shall take into consideration the rates of compensation paid by the Federal District Court for the District of Connecticut to attorneys serving on the CJA Panel of assigned counsel, as well as rates paid within the jurisdiction for other court appointed legal services. Prior to submission of the Commission's biennial budget request, the Chief Public Defender shall report any recommendation for adjustment of the rates to the Public Defender Services Commission to allow for inclusion of a request for increased funding in the Commission's proposed budget.

Adopted June 15, 1999

PUBLIC DEFENDER SERVICES COMMISSION

ANNUAL PERFORMANCE EVALUATION OF ATTORNEYS

All Public Defenders, Supervisory Assistant Public Defenders, Assistant Public Defenders and Deputy Assistant Public Defenders shall be evaluated annually as to their performance in accordance with the following requirements:

1. Supervisory attorneys shall complete a written evaluation of each attorney under their supervision in accordance with criteria established by the Chief Public Defender. Supervisory attorneys shall meet with each attorney to discuss the attorney's performance and review the written report. Said written report shall then be forwarded to the Director of Personnel in accordance with a schedule established by the Chief Public Defender.
2. The Director of Personnel shall develop forms and procedures for conducting attorney performance evaluations.
3. Annual performance evaluation of attorneys shall include assessment of the following:
 - a) Effectiveness in the representation of clients.
 - b) Professionalism in relationships with clients.
 - c) Familiarity with the Public Defender Services Commission's *Guidelines On Indigent Defense* and observance of said guidelines in accordance with their "Purpose", as set forth at p. 1.
 - d) Professionalism in working relationships with colleagues and office support staff.
 - e) Effectiveness in management of time and workload.
 - f) Use of office resources effectively and appropriately.
 - g) Adherence to Commission Policy regarding work hours for attorneys.
 - h) Professional development and achievements.
 - i) Participation in a minimum of twelve hours of professional education and training annually, including public defender, bar and professional association, regional, or national training events and seminars, and taped or multimedia programs..
 - j) Professionalism in working relationships with judges and other court personnel.
 - k) Maintaining positive public image for Office of Public Defender.
 - l) Such other criteria as the Chief Public Defender may determine.

4. In order to conduct annual performance evaluation of attorneys fairly and effectively, supervisors should observe the attorney's courtroom performance and interaction with clients and court personnel during the year, and may review case files to evaluate the attorney's approach to individual cases.
5. Supervisory attorneys shall be evaluated annually by the Chief Public Defender or Deputy Chief Public Defender, or their designee in accordance with the same procedures as set forth in paragraph 1. Annual performance evaluation of supervisory attorneys shall include assessment of the supervisor's management skills, performance of administrative duties, adherence to Commission policies, compliance with directives of the Chief and Deputy Chief Public Defender, and effectiveness in supervising their office.

Adopted June 15, 1999

PUBLIC DEFENDER SERVICES COMMISSION
*AMENDMENT TO GUIDELINE 2.1 OF THE
PUBLIC DEFENDER SERVICES COMMISSION'S
"GUIDELINES ON INDIGENT DEFENSE"*

PART II. TRAINING

Guideline 2.1 Training.

- (a) Counsel should be familiar with substantive criminal law, criminal procedural law, the Connecticut Rules of Practice and the prevailing customs or practices of the court in which he/she practices.
- (b) Counsel has a continuing obligation to stay abreast of changes and developments in criminal law and criminal procedure.
- (c) Counsel has a continuing obligation to continue his/her legal training, professional development and education through the weekly review of the Connecticut Law Journal and other legal periodicals. Counsel should also participate in public defender, bar and professional association, regional, or national training events and seminars, and taped or multimedia programs. Public defenders, assistant public defenders, and deputy assistant public defenders employed by the Commission should complete a minimum of twelve hours of such training annually. Special public defenders should complete a minimum of six hours of such training annually.
- (d) Newly appointed attorneys shall be required to participate in the following training activities during their first year as employees of the Division of Public Defender Services:
 - (1) *A New Attorney Training Program* conducted by the Training Department covering the duties and responsibilities of a public defender, ethics of defense practice, basic criminal practice and procedure, and a review of the Connecticut Public Defender Services Commission *Guidelines on Indigent Defense*. Said Training Program shall be conducted over a twelve-month period in accordance with a curriculum developed by the Training Department.
 - (2) *A Trial Advocacy Program* conducted by the Training Department covering the development of basic trial skills for criminal defense.

- (3) *A Mentor Program* through which newly appointed attorneys will be paired with an experienced attorney for the first six months of employment. The mentor will be available to meet periodically with the new attorney and to provide advice and assistance as necessary to support the new attorney during this transition period.
- (4) The Chief Public Defender may vary any of the requirements of this section based on the prior experience of the newly appointed attorney.
- (e) Supervisory attorneys shall be provided with management training on a regular periodic basis.

Adopted June 15, 1999

GUIDELINES ON INDIGENT DEFENSE
Connecticut Public Defender Services Commission

PURPOSE:

These guidelines are intended to encourage public defenders and special public defenders contracted by the Division of Public Defender Services to perform to a high standard of representation and to promote professionalism in the representation of clients. These guidelines are intended to be used as a guide *for* the representation of clients. *However, the obligations due a client are not limited by the guidelines articulated here; attorneys are also expected to use their individual professional judgment in representing clients. If that judgment mandates a departure from the guidelines, the attorney should be aware of and be able to articulate the reasons that a departure from the guidelines is in the client's best interests.*

These guidelines should be used by attorneys in evaluating and improving their own performance and by supervising attorneys in evaluating staff performance. However, these guidelines are not intended to be used as criteria for the judicial evaluation of performance or alleged misconduct of defense counsel to determine the validity of a conviction.

PART I. GENERAL GUIDELINES

GUIDELINE 1.1. Role of Defense Counsel.

(a) Counsel should zealously represent and advocate for each client and render effective assistance of counsel.

(b) *To ensure the preservation, protection and promotion of the client's rights and interests, counsel should:*

- (1) *be proficient in the applicable substantive and procedural law;*
- (2) *acquire and maintain appropriate experience, skills and training;*
- (3) *devote adequate time and resources to the case;*
- (4) *engage in the preparation necessary for quality representation;*
- (5) *endeavor to establish and maintain a relationship of trust and open communication with the client;*
- (6) *keep the client informed and seek the lawful objectives of the client; and*
- (7) *make accommodations where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.*

(c) Counsel should adhere to the Rules of Professional Conduct and other guidelines of professional conduct stated in statutes, rules, court decisions, codes or canons.

(d) Counsel should act with reasonable diligence and promptness in representing clients.

(e) All counsel should abide by the policies adopted by the Connecticut Public Defender Services Commission and the Chief Public Defender in regard to the representation of a client.

GUIDELINE 1.2. Role of Defense Counsel in Juvenile Matters.

(a) Counsel should abide by the guidelines enumerated in Guideline 1.1.

(b) The duty to keep the client informed may extend, in the case of a juvenile client, to a parent or guardian whose interests are not adverse to the juvenile's, subject to the requirements of client confidentiality.

(c) Counsel in juvenile matters often has occasion to counsel the client and, in some cases, the client's family with respect to related non-legal matters (e.g. education, family, therapy, etc.), which should be discharged to the best of counsel's training and ability or with appropriate assistance of other professions by referral.

(d) Whenever the nature and circumstances of the case permit, counsel should explore the possibility of an early diversion from the formal juvenile court process through other community resources. Participation in non-judicial stages of the juvenile court process may well be critical to such diversion, as well as to protection of the client's rights.

(e) Counsel should be prepared to assist in securing appropriate legal or other services for the client in matters arising from or related to the juvenile proceedings.

(f) Counsel should be familiar with dispositional alternatives and services, should investigate the client's social educational and psychological history, and should advocate a plan approved by the client generally proposing the least restrictive alternative.

(g) In any case in which a judicial detention hearing will be held regarding a juvenile client, counsel should be prepared to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place of and criteria used for detention, and any noncompliance with procedures for referral to court or placement in detention. Counsel should also be prepared to present evidence with regard to the necessity for detention and, to the extent possible, a plan for pretrial release of the juvenile client.

(h) In the dispositional phase of a delinquency proceeding, counsel should take appropriate steps to evaluate and augment the recommendations of the state so that the ultimate disposition is tailored to the client's individual needs.

(i) Counsel should explain the nature of the disposition hearing, the issues involved, and the alternatives available to the court. Counsel should also explain fully and candidly the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the client's responsibilities under the proposed dispositional plan. Counsel should not

make or agree to a specific dispositional recommendation without a client's consent.

(j) Counsel should exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the client's history or condition or the history or condition of the client's parents. In general, counsel should not disclose information or conclusions contained in such reports to the extent that, in counsel's judgment based on knowledge of the client and the client's family, revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.

(k) When a dispositional decision has been reached by the court, it is counsel's duty to explain the nature, obligations, and consequences of the disposition to the client and his or her family, and to urge upon the client the need for accepting and cooperating with the dispositional order.

GUIDELINE 1.3. Representation after Disposition.

(a) Counsel's responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. Counsel should be prepared to counsel and render or assist in securing appropriate legal services for the client in matters arising from the original proceeding.

PART II. TRAINING

GUIDELINE 2.1. Training and Experience.

(a) Counsel should be familiar with substantive criminal law, criminal procedural law, the Connecticut Rules of Practice and the prevailing customs or practices of the court in which he/she practices.

(b) Counsel has a continuing obligation to stay abreast of changes and developments in criminal law and criminal procedure.

(c) Counsel has a continuing obligation to continue his/her legal training, professional development and education through the weekly review of the Connecticut Law Journal and other legal periodicals. Counsel should participate in public defender, bar and professional association, regional, or national training events and seminars, [as well as training] and taped or multimedia programs. Public defenders, assistant public defenders, and deputy assistant public defenders employed by the Commission should complete a minimum of twelve hours of such training annually. Special public defenders should complete a minimum of six hours of such training annually.

(d) Newly appointed attorneys shall be required to participate in the following training activities during their first year as employees of the Division of Public Defender Services:

- (1) **A New Attorney Training Program** conducted by the Training Department covering the duties and responsibilities of a public defender, ethics of defense practice, basic criminal practice and procedure, and a review of

the Connecticut Public Defender Services Commission *Guidelines on Indigent Defense*. Said Training Program shall be conducted over a twelve-month period in accordance with a curriculum developed by the Training Department.

- (2) A *Trial Advocacy Program* conducted by the Training Department covering the development of basic trial skills for criminal defense.
- (3) A *Mentor Program* through which newly appointed attorneys will be paired with an experienced attorney for the first six months of employment. The mentor will be available to meet periodically with the new attorney and to provide advice and assistance as necessary to support the new attorney during this transition period.
- (4) The Chief Public Defender may vary any of the requirements of this section based on the prior experience of the newly appointed attorney.

(e) Supervisory attorneys shall be provided with management training on a regular periodic basis.

(f) *Prior to undertaking the defense of one accused of a crime, counsel should have sufficient training or experience to provide competent representation for that case. Where appropriate, counsel should consult with more experienced attorneys to acquire knowledge and familiarity with all facets of criminal representation.*

PART III. LAWYER-CLIENT RELATIONSHIP

GUIDELINE 3.1. Establishment of Relationship.

(a) Counsel should seek to establish a relationship of trust and confidence with the client.

(b) *As soon as practicable after being appointed, counsel or counsel's representative should contact the client and conduct an initial client interview.*

(c) Counsel should schedule confidential legal visits with the incarcerated client when necessary to provide effective representation and maintain effective communication with the client by mail or telephone.

(d) *Counsel should preserve client confidences and should not knowingly disclose confidential information obtained during the course of representation, unless authorized to do so by the client or the court or as otherwise permitted by law or the Rules of Professional Responsibility.*

(e) *Counsel should ensure that barriers to communication with the clients, such as differences in language or literacy, are overcome. Counsel should make accommodations where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.*

GUIDELINE 3.2. Duty to Keep Client Informed.

(a) Counsel should keep the client informed of any developments in the case and the progress of the preparation of the defense, and provide sufficient information to permit intelligent participation in decision making by the client.

(b) Counsel should comply with reasonable requests for information from the client and reply to client correspondence and telephone calls.

(c) Counsel should inform and explain to the client that he/she has the constitutional right to plead not guilty; to be tried by a judge or a jury; to the assistance of counsel; to confront and cross-examine witnesses against him/her; to testify and, to not be compelled to incriminate him/herself.

(d) Counsel should explain to the client the court procedures.

(e) Counsel should explain the attorney-client privilege to the client and explain to the client that he/she is not required to speak to anyone regarding the case without counsel present.

GUIDELINE 3.3. Protecting Confidentiality.

Counsel should ensure that confidential communications between defense counsel and the client are conducted in privacy, including reasonable efforts to compel court and other officials to make necessary accommodations for private discussions between counsel and clients in courthouses, lock-ups, jails, prisons, detention centers, and other places where clients must confer with counsel.

GUIDELINE 3.4. Initial Client Interviews

(a) Counsel should conduct a client interview as soon as practicable after being appointed by the court, in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel's representation and the case proceedings. Counsel should conduct the initial interview with the client sufficiently before any court proceeding so as to be prepared for that proceeding.

(b) To the extent possible, counsel should prepare for an initial interview with the client by reviewing petitions and/or charging documents, police and other investigative agency reports, and the reports of pretrial detention agencies, where applicable.

(c) To the extent possible, counsel should obtain the following types of information from the client at the initial interview:

- (1) the facts surrounding the allegations against or affecting the client;*
- (2) any possible witnesses who should be located;*

- (3) *any evidence of improper conduct by police or other investigative agencies; juvenile or mental health departments or the prosecution which may affect the client's rights;*
- (4) *any evidence that should be preserved; and*
- (5) *evidence of the client's competence to stand trial and/or mental state at the time of the offense.*

(d) As applicable, counsel should convey the following types of information to the client:

- (1) *the nature of the allegations, what the state must prove, and maximum potential sentence;*
- (2) *an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney;*
- (3) *a general procedural overview of the likely progression of the case;*
- (4) *the procedures that will be followed in setting the conditions of pretrial release, if applicable to the type of proceeding and the particular client;*
- (5) *an explanation of the type of information that will likely be requested in any interview that may be conducted by pretrial release, family services personnel, or others what information the client should and should not provide;*
- (6) *the importance of maintaining contact with counsel and the need to notify counsel of any change of address;*
- (7) *the names and contact information regarding counsel and staff assisting with the case;*
- (8) *when counsel will see the client next;*
- (9) *realistic answers, where possible, to the client's questions; and*
- (10) *any arrangements that will be made or attempted for the satisfaction of the client's needs, including medical or mental health attention and contact with family or employers.*

GUIDELINE 3.5. Control and Direction of the Case.

(a) Counsel should advise the client of those decisions that are ultimately for the *client*, which are:

- (1) what pleas to enter;

- (2) whether to accept a plea agreement;
- (3) whether to waive a jury trial;
- (4) whether to testify in his/her own behalf;
- (5) whether to appeal;
- (6) whether to apply for sentence review.

(b) Counsel should also advise the client of the client's right to assert certain defenses that include extreme emotional disturbance or insanity, when applicable.

(c) Counsel should advise the client of the existence of any lesser-included offense.

(d) Counsel should advise the client that strategic and tactical decisions will be made by counsel.

(e) Counsel should discuss a client's decision whether to testify at trial.

(f) *Counsel should fully advise the client of the advantages and disadvantages of either a court trial or a jury trial.*

PART IV. CONFLICTS OF INTEREST

GUIDELINE 4.1. Conflicts.

(a) Counsel should adhere to the Rules of Professional Conduct regarding conflicts of interest.

(b) Counsel should be cognizant of the existence of any potential and actual conflicts of interest which would impair counsel's ability to represent a client, such as if the representation of one client's interests are materially adverse to those of a current or former client.

(c) Except for preliminary matters such as arraignment or an initial hearing; counsel should not represent a client when a conflict of interest exists between co-defendants or multiple defendants such that the representation of one client *will be directly adverse* to the other client.

(d) Counsel should not represent a client if the representation of that client *may be materially limited* by the lawyer's responsibilities to another current or former client or to a third person, or by the lawyer's own interests, unless:

- (1) The lawyer reasonably believes the representation will not be adversely affected; and
- (2) The client consents after consultation, which consent should be documented by

counsel in counsel's file. When the representation of multiple clients in a single matter is undertaken, the consultation should include explanation of the implications of the common representation and the advantages and risks involved.

(e) Counsel who has formerly represented a client should not thereafter use information relating to the former representation to the disadvantage of a former client unless the information has become generally known or the ethical obligation of confidentiality otherwise does not apply.

(f) Counsel should not withdraw solely on the basis of a personality conflict with the client or a difference of opinion as to how to proceed in the case, unless required by the Rules of Professional Conduct.

(g) The filing or existence of a habeas corpus petition or grievance against counsel in regard to his/her quality of representation shall not create a conflict of interest *per se*. Withdrawal by counsel from the representation of a client under such circumstances should occur if ordered by the court upon motion by the client or if counsel is of the opinion that the filing or existence of the habeas corpus petition or grievance will interfere with counsel's ability to adequately represent the client.

(h) Counsel should withdraw upon the filing of a civil lawsuit against counsel by a client alleging malpractice, a finding of probable cause in connection with a grievance complaint, or if counsel has been scheduled to testify at a habeas corpus trial in which (1) counsel is the subject of the claim of ineffective assistance of counsel which has been raised in the petition; and (2) the pleadings have been closed.

PART V. PRETRIAL RELEASE

GUIDELINE 5.1. Pretrial Release.

(a) When a client is in custody, counsel should explore with the client the pretrial release of the client under the conditions most favorable to the client and attempt to secure that release.

(b) Counsel should obtain information regarding the client, including family and community ties, immigration status, school or employment history, physical and mental health, participation in community programs, past criminal and delinquency record, the ability of the client, relatives or third parties to meet any financial conditions of release, and the names of individuals or other sources that counsel can contact to verify the information provided by the client.

(c) Where appropriate, counsel should make a proposal concerning conditions of release that are least restrictive with regard to the client. Counsel should assist the client in contacting parents, spouse, relatives or other persons who may assist the client or provide third party surety.

(d) If the court sets conditions of release, counsel should explain to the client the conditions of release and potential consequences of violating such conditions. If the court sets as a condition of release that security be posted, counsel should explain to the client the available options and procedures for posting security.

(e) Where the client is not able to obtain release under the conditions set by the court or where new information becomes available, counsel should consider pursuing modification of the conditions of release under available procedures. When appropriate, counsel should also pursue the client's right to review under applicable law.

(f) Where the client is unable to obtain pretrial release, counsel should inform the court and the jail or juvenile detention facility personnel about any medical, psychiatric, or security needs of the client.

PART VI. PRETRIAL PREPARATION

Guideline 6.1. Preliminary Preparation.

(a) Counsel should examine and seek copies of all pertinent and available court documents.

(b) Counsel should research and review the relevant statutes and caselaw to identify:

- (1) the elements of the charged offense(s);*
- (2) any defects in the charging instrument, such as statute of limitations or double jeopardy; and*
- (3) the available defenses, ordinary and affirmative, and whether notice of any defense is required and any specific timelines for giving such notice.*

(c) Counsel should take advantage of any opportunity for the earliest possible discovery, including review of the files of the State's Attorney and police reports or other documents in their possession.

(d) Counsel should seek preservation and/or discovery of any evidence likely to become unavailable unless special measures are taken.

GUIDELINE 6.2. Investigation.

(a) Counsel should conduct a thorough investigation prior to trial, including investigation of potential witnesses, physical evidence and the scene of the crime.

(b) Where appropriate, counsel should obtain the assistance of experts and other professionals to provide consultation and testimony regarding issues in the case, evaluations of clients and others, and testing of physical evidence.

(c) During investigation and trial preparation, counsel should develop and continually reassess a defense theory of the case

Guideline 6.3. Formal Discovery.

(a) Counsel has a duty to pursue as soon as practicable discovery procedures provided by applicable law. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations.

(b) Counsel should consider seeking discovery of the following items:

- (1) potential exculpatory information;
- (2) the names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;
- (3) all oral and/or written statements by the *client* and details of the circumstances under which the statements were made;
- (4) the prior criminal *and/or delinquency* record of the client and any evidence of other misconduct that the prosecutor may intend to use against the client;
- (5) all *physical evidence, including* books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
- (6) all results or reports of *and underlying data regarding* relevant physical or mental examinations, scientific tests, experiments *and comparisons*.
- (7) statements of co-defendants;
- (8) *reports or notes of searches or seizures and the circumstances of any such searches or seizures.*

GUIDELINE 6.4. Pretrial Motions.

(a) Counsel should file pre-trial motions and memoranda and briefs in a timely fashion, as necessary to protect the client's rights after consideration of the statutes, caselaw and constitutional provisions.

(b) *Before filing a pretrial motion, counsel should consider any potential adverse effects that might result from the filing of the motion.*

(c) *Counsel* should file a motion for a bill of particulars prior to trial, except when tactical reasons exist for not doing so.

PART VII. PLEA NEGOTIATIONS.

GUIDELINE 7.1. Discussions with the Client Concerning Plea Negotiations.

(a) *After interviewing the client and developing a thorough knowledge of the law and facts of the case, counsel should discuss with the client all alternatives, including the possible resolution of the case through a negotiated plea of guilty. Counsel should make it clear to the client that the ultimate decision to enter a plea of guilty has to be made by the client.*

(b) Counsel should advise the client with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.

(c) Counsel should caution the client to avoid communication about the case with witnesses or other individuals, except with the approval of counsel.

(d) Counsel should explain to the client the evidence that the state has and elicit from the client all relevant information in regard to the aspects of the case, including but not limited to, background information concerning the defendant, his/her prior convictions and the events surrounding the offenses charged.

(e) Counsel should discuss with the client any ongoing plea negotiations and convey all offers to the client.

(f) Counsel should discuss with the client the advantages and disadvantages of accepting a plea agreement.

(g) Counsel should discuss with the client any rights that are waived by acceptance of a plea agreement.

(h) Counsel should discuss with the client the nature of the charge to which he/she would be entering a plea, the possible maximum and/or mandatory sentences which the client is exposed to as a result of the plea and any other questions that the court may raise during the plea canvass.

GUIDELINE 7.2. Conduct of Plea Negotiations.

(a) Counsel should not accept or reject any plea agreement without the authorization of the client.

(b) Counsel should not intentionally understate or overstate the risks, hazards, or prospects of the case to exert undue influence on the client's decision as to his/her plea.

GUIDELINE 7.3. Prerequisites for Guilty Pleas.

(a) *Before counsel advises the client to plead guilty, counsel should be satisfied as to the following:*

- (1) *That the client admits guilt, or believes that there is a substantial likelihood of conviction at trial, and believes that it is in his/her best interests to plead guilty under the plea agreement rather than risk the consequences of conviction after trial (North Carolina v. Alford);*
- (2) *That the client understands all aspects of the plea agreement, and understands all consequences of a plea of guilty under the agreement;*
- (3) *That the state would be able to prove the charge(s) against the client at trial;*
- (4) *That a plea of guilty by the client is voluntary, and intelligent, with full understanding of the nature of the charge and the consequences of the plea;*
- (5) *That the client understands the rights he/she is waiving, including the right to trial by jury, the right to assistance of counsel at trial, the right to compulsory process, the right to confrontation of witnesses, the right to testify and privilege against self-incrimination, and the state's burden of proof beyond a reasonable doubt;*
- (6) *That the client understands the terms of the plea agreement and the consequences of conviction, including the maximum possible sentence faced by the client, any mandatory minimum sentence faced by the client.*

(b) In addition, if applicable and to the extent possible, counsel should advise the client of:

- (1) *the potential liability faced by the client for enhanced punishment after a subsequent conviction, the client's probation and parole eligibility, and the likelihood of potential civil liabilities arising out of conviction for this particular offense;*
- (2) *collateral consequences of conviction, e.g. deportation and civil disabilities.*

PART VIII. TRIAL

GUIDELINE 8.1. TRIAL PREPARATION

(a) Counsel should conduct a thorough independent investigation prior to trial, including investigation of potential witnesses, physical evidence and the scene of the alleged crime.

(b) To the extent possible, counsel should obtain expert reports, witness statements, police and law enforcement reports and any other potential information relating to the offense.

(c) Counsel has a duty to pursue as soon as practicable discovery procedures provided by the rules of the jurisdiction and to pursue such information through discovery methods as may be available to supplement the factual investigation of the case. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations.

(d) Counsel should consider seeking discovery of the following items:

(i) potential exculpatory information;

(ii) the names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;

(iii) all oral and/or written statements by the accused, and the details of the circumstances under which the statements were made;

(iv) the prior criminal record of the accused and any evidence of other misconduct that the government may intend to use against the accused;

(v) all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;

(vi) all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;

(vii) statements of co-defendants.

(e) Counsel should obtain the assistance of experts where necessary.

(f) During investigation and trial preparation, counsel should develop and continually reassess a defense theory of the case.

(g) Counsel should file appropriate pre-trial motions and memoranda or briefs in a timely fashion, as necessary to protect the defendant's rights after consideration of the statutes, caselaw and constitutional provisions. Counsel should file a motion for a bill of particulars prior to trial, except when tactical reasons exist for not doing so.

(h) Counsel should request a continuance if he/she determines that he/she is not prepared for trial.

(i) Counsel should develop an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden.

(j) Counsel should be familiar with and prepared to address legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

GUIDELINE 8.2. VOIR DIRE.

(a) Counsel should be familiar with the voir dire process and the exercise of both challenges for cause and peremptory challenges and should conduct a thorough voir dire. *Counsel should tailor voir dire questions to the issues of the case.*

(b) Counsel should be alert to any irregularities in the composition or selection of the venire and be prepared to raise proper challenges to those irregularities. Counsel should be alert to prosecutorial misuse of peremptory challenges and, where appropriate, should seek remedial measures from the court for such misuse.

GUIDELINE 8.3. OPENING STATEMENT.

(a) If the court allows an opening statement, it should be confined to a statement of the issues in the case and the evidence counsel believes in good faith will be available and admissible at trial. *Other objectives may include providing an overview of the defense theory of the case, identifying weaknesses in the prosecution case, and emphasizing the prosecution's burden of proof.*

GUIDELINE 8.4. EVIDENCE.

(a) Counsel should be prepared to cross-examine prospective witnesses for the State, be familiar with the applicable law and procedures concerning impeachment, and be alert to issues relating to witness credibility, including bias and motive for testifying.

(b) Counsel should prepare all defense witnesses for direct and possible cross-examination.

(c) Counsel should consider the advantages and disadvantages before entering into stipulations concerning the prosecution's case.

(d) Counsel should discuss with the client all of the considerations relevant to the client's decision to testify, and prepare the client for direct and cross-examination if he/she chooses to testify.

(e) Counsel should advise the client of the client's right to assert certain defenses, if applicable, including extreme emotional disturbance or insanity, and should know the burden of proof or the burden of production the defense must bear.

GUIDELINE 8.5. CLOSING ARGUMENT

(a) Counsel should present closing argument and object to any improper argument by opposing counsel. *Whenever the prosecution exceeds the scope of permissible argument, counsel should request a mistrial, or seek cautionary instructions unless tactical considerations suggest otherwise.*

GUIDELINE 8.6 REQUESTS TO CHARGE/PRESERVATION FOR APPEAL.

(a) Counsel should submit requests to charge to the court and take appropriate steps to preserve the record when necessary. *During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions and, if necessary, request additional or curative instructions. If the court proposes giving supplemental instructions to the jury, counsel should request that the judge state the proposed instructions to counsel before they are delivered to the jury.*

(b) Counsel should endeavor throughout the trial process to establish a proper record for appellate review and should request that all trial proceedings be recorded. *Where appropriate, counsel should make an offer of proof as to evidence deemed by the trial court to be inadmissible. Counsel*

should request precise rulings from the court on all objections and make every effort to obtain for the record the reasons for the court's rulings.

PART IX. SENTENCING

GUIDELINE 9.1. Sentencing.

(a) Prior to sentencing, counsel should discuss with the client the maximum sentence that may be imposed which may include any period of probation, any special conditions of probation which may include treatment or restitution, and any fine which may be imposed.

(b) Counsel should inform the client of the nature of the presentence investigation process and the client's right to waive the presentence investigation if appropriate.

(c) For the purposes set forth in Connecticut Practice Book Section 912, counsel or counsel's representative should be present during the Office of Probation's interview of the client in the presentence investigation process when requested by the client, or when, in counsel's opinion, counsel's presence is required to protect the interests of the client, or when otherwise appropriate.

(d) With the client's consent, counsel should provide information and documents to the probation officer preparing the presentence report.

(e) Counsel should review the presentence investigation report with the client and request that any necessary corrections be made to the presentence investigation report in writing and in accordance with Connecticut Practice Book Section 919(1).

(f) Counsel should request a copy of the corrected report for his/her file and for the parole board.

(g) Counsel should advocate the best possible disposition for sentencing on behalf of the client. *In advocating his/her position, counsel should take whatever steps are necessary, including, where appropriate, the presentation of witnesses and other evidence.*

(h) *Where appropriate, counsel should carefully prepare the client and/or witnesses to address the court.*

(i) *Counsel should verify that the client understands the sentence, including any conditions of probation. Counsel should advise the client as to what is required in order to comply with the obligations that are imposed.*

PART X. POST-CONVICTION

GUIDELINE 10.1. Sentence Review.

(a) At sentencing, counsel should insure that the court informs counsel's client of his/her right

to sentence review.

(b) Counsel should take all necessary steps to preserve the client's right to sentence review.

(c) Counsel should represent the client before the Sentence Review Division unless waived by the client or excused by the Sentence Review Division for exceptional reasons in accordance with Practice Book Section 937. The fact that the client's appeal has been transferred to another public defender or a special public defender does not relieve counsel of the duty to represent the client before the Sentence Review Division.

GUIDELINE 10.2. Appeal.

(a) Counsel should inform the client of his/her right to appeal.

(b) Counsel should take all necessary steps to preserve the client's appellate rights:

(c) In any case involving conviction after trial and imposition of a sentence of incarceration or a suspended sentence of incarceration, there shall be a presumption that an appeal should be filed on behalf of a client. If it is the opinion of the attorney that all potential issues in the appeal would be wholly frivolous, those issues should normally be addressed in accordance with the procedures set forth in Practice Book Section 949 through 956. Under Section 953, after the appeal has been filed, counsel should submit an *Anders* brief identifying anything in the record that might arguably support the appeal following a review of the trial transcript. Under circumstances when a defendant deems it in his/her best interests not to appeal a conviction, the final decision not to appeal must be made by a defendant knowingly, intelligently, and after full consultation with counsel. In any case in which an accused wishes to waive his/her right to appeal, a waiver should be made before the court on the record or in a writing signed by the defendant in which he/she affirmatively states his/her desire not to appeal so as to ensure that the decision is voluntary.

(d) Counsel should cooperate in providing information to appellate counsel in regard to the trial proceedings in accordance with the requirements of the Division's policy regarding the handling of appeals.

(e) Counsel should not withdraw his/her appearance from the trial court file, even though the appeal has been transferred to the appellate office or another public defender or special public defender.

GUIDELINE 10.3. HABEAS CORPUS

(a) Counsel should abide by the Connecticut Practice Books rules in regard to Habeas Corpus Sec. 23-21 et seq.

(b) Counsel should conduct the initial interview of the client, obtain and review all relevant documents and transcripts and conduct relevant investigation in a timely manner.

- (c) Counsel should file any appropriate motions and memoranda with the court, when necessary, in accordance with the Practice Book rules or in accordance with the court's scheduling orders.
- (d) Counsel should file the Amended Petition as soon as is practicable.
- (e) Counsel should be diligent in protecting the client's rights to have the Amended Petition heard in a timely manner.
- (f) Counsel should take all necessary steps to preserve the client's appellate rights.
- (g) Counsel shall be responsible for the filing of any appeal from the dismissal of a habeas corpus matter unless the client has expressly waived said appeal.

Adopted June 15, 1999

