

Defender Training and Development Standards

PREFACE

The Defender Training and Development Standards (Training Standards) are promulgated by the National Legal Aid and Defender Association (NLADA). In furtherance of its mission of assuring the availability of high quality and competent legal representation to poor people, NLADA advocates for quality indigent defense representation in a variety of ways, including delivery of training programs and the publication of standards and guidelines on many aspects of the delivery of indigent defense services. These *Training Standards*, which should be read in conjunction with NLADA's other criminal defense standards, are another attempt to promote and improve quality and competence in the delivery of criminal defense services to the poor.

Nationally, indigent defense services face increasing complexity and severity in substantive and procedural criminal law, crushing workloads and inadequate resources. All of these factors threaten delivery of the effective legal representation which is guaranteed by the U.S. Constitution. *Broderick; Burke, Indigent Defense Caseloads and Common Sense: An Update* (NLADA 1992); *Klein; Spangenberg, The Indigent Defense Crisis* (American Bar Association 1993). Quality training of all defender staff can improve the representation of indigent clients by making staff members more productive, efficient and effective. The results of a 1994 survey indicate that on average, across subject matters surveyed, 61% of defenders surveyed believed that the training available to them needed moderate to major improvement. *Institute for Law & Justice, 1994*. A number of members of a National Institute of Justice defender focus group identified the need to know "what works" in training as important to defender operations.

Previously published NLADA criminal defense standards and guidelines recognize the importance of training, education and development among defender staff and call again and again for regular, organized, quality defender training. *Performance Guidelines for Criminal Defense Representation, Guideline 1.2* (NLADA 1995); *Standards for the Administration of Assigned Counsel Systems, Standards 4.3-4.4.2* (NLADA 1989); *Standards for the Appointment and Performance of Counsel in Death Penalty Cases, Standards 5.1, 9.1* (NLADA 1988); *Guidelines for Negotiating and Awarding Governmental Contracts For Criminal Defense Services, Guideline III-17* (NLADA 1984); *Standards and Evaluation Design for Appellate Defender Offices, Standard I(k)* (NLADA 1980); *Guidelines for Legal Defense Systems in the United States, Report of the National Study Commission on Defense Services, Guidelines 5.7, 5.8* (NLADA 1976); *Standards for Defense Services, Standard V* (NLADA 1976). Other national standards also recognize the critical importance of legal training generally and training for defenders in particular. *Legal Education and Professional Development--An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (American Bar Association Section of Legal Education and Admissions to the Bar (July 1992); *McCrate, "A Fresh Look at Lawyers' Education,"* 27(1) *Univ. of Richmond L. Rev.* 21 (1992); *Attaining Excellence in CLE* (American Law Institute - American Bar Association Committee on Continuing Professional Education (1991); *ABA Standards for Criminal Justice, Providing Defense Services, Standard 5-1.5* (3rd Ed. 1992) (*Providing Defense Services*); *Courts, Chapter 13, "The Defense," Standards 13.15, 13.16* (National Advisory Commission on Criminal Justice Standards and Goals 1973).

In 1992, the American Bar Association formally established two important national benchmarks for defenders: 1) defenders and their staff should have training, development and education, and 2) the government, which has the constitutional duty to provide

effective counsel for those it chooses to prosecute and who are too poor to hire their own counsel, should fund this training. These benchmarks are found in *Providing Defense Services, Standard 5-1.5, "Training and professional development,"* (1992), which states:

The legal representation plan should provide for the effective training, professional development and continuing education of all counsel and staff involved in providing defense services. Continuing education programs should be available, and public funds should be provided to enable all counsel and staff to attend such programs.

Competence is the ethical standard for lawyers' work. For purposes of the continuing professional education of lawyers, the ALI-ABA Report entitled, *Enhancing the Competence of Lawyers: The Report on the Houston Conference XI-XII (1981)* states, "legal competence is measured by the extent to which an attorney (1) is specifically knowledgeable about the fields of law in which he or she practices, (2) performs the techniques of such practice with skill, (3) manages such practice efficiently, (4) identifies issues beyond his or her competence relevant to the matter undertaken, bringing these to the client's attention, (5) properly prepares and carries through the matter undertaken, and (6) is intellectually, emotionally and physically capable. Thus, there are five principal elements to legal competence: (1) legal knowledge, (2) legal skills, (3) practice structure, (4) character, and (5) capability." *Id.* at 18. *See also, Providing Defense Services (3rd Ed. 1992), Commentary to Standard 5-1.5* ("Adequate and frequent training programs are a key component in the provision of quality representation by defense attorneys. Criminal law is a complex and difficult legal area, and the skills necessary for provision of a full range of services must be carefully developed. Moreover, the consequences of mistakes in defense representation may be substantial, including wrongful conviction and death or the loss of liberty. . . . To meet the need for training, programs should be established for both beginning and advanced practitioners, and should emphasize substantive legal subjects as well as effective trial, appellate and collateral attack techniques. In defender offices, it is particularly important that there be entry-level training programs, so that new attorneys receive at the outset of their practice an intensive learning experience that will equip them to provide effective representation.")

Continuous improvement and training are critical to competence. As NLADA, ABA and other standards and guidelines recognize, the training of defense attorneys is crucial to the delivery of effective services to the clients served by defender organizations. For any organization, continuous improvement through constant training for staff is essential. In defender organizations this includes not only attorneys but also investigators, secretaries, paralegals, social workers, sentencing specialists, managers, computer systems personnel and other employees. The Standards which follow are broad principles of national practices which every defender organization should equal or exceed.

NLADA's recent tradition has been to publish standards or guidelines with commentary which explains the rationale and authoritative support for the black-letter standards. There is a draft commentary to these *Training Standards* and NLADA is committed to continued work on that draft and the future publication of a finalized commentary to these standards. The black-letter standards are presently being published without commentary because of the critical need for guidelines on the provision of quality training for defender staff in order to improve the effectiveness of legal representation of the poor in times of a continuing shortage of resources and workload crises in indigent defense services.

1. Defender Training¹ Structure & Funding

Standard 1.1 - Training is Essential

The defender organization must provide training opportunities that insure the delivery of zealous and quality representation to clients.

Standard 1.2 - Written Training Plan

Every defender organization must have a clear, written plan, which includes specific goals and objectives, for offering training opportunities to all employees.

Standards 1.3 - Adequate Financial Resources

Defender organizations must have adequate governmental funding for the resources to provide high quality training opportunities consistent with these standards.

Standard 1.4 - Training Director and Staff

The leadership of the organization must ensure that the training efforts are administered and overseen by a person or persons who have training as a specific job duty, and whose other work duties are adjusted to ensure that the training responsibilities can be competently directed. That such person(s) should be provided with resources and staff to accomplish these responsibilities.

Standard 1.5 - Organizational Position of Training Director

The organization's leadership team should demonstrate a firm and consistent commitment to training as an integral part of the office's practice. The person who is responsible for training should be a member of the organization's leadership team or have a meaningful voice in its decisions with regard to the organization's practices.

Standard 1.6 - Director and Staff Qualifications

All employees who have training responsibilities should have abilities, experience and attitudes commensurate with their training responsibilities and assignments.

2. Defender Training Needs Assessment

Standard 2.1 - Regular Needs Assessments

Every defender organization should, on a regular basis, identify and analyze its organizational and employee training needs to ensure that training efforts are responsive to those needs.

Standard 2.2 - Training Needs Assessment for Organization and for Employees

Training needs assessments for the defender organization should be the responsibility of the training director. The supervision and evaluation of employees should include an annual training needs assessment for each employee.

3. Learning Objectives and Curriculum

Standard 3.1 - Organizational Curriculum

The defender organization should have an organizational curriculum on how to provide zealous and quality representation to clients, which includes appropriate learning objectives for all its employees from entry level staff through the most experienced staff. Based upon the needs assessment findings, the defender organization should create a comprehensive curriculum with clear learning objectives for each of its training and development efforts.

Standard 3.2 - Ethics and Professional Responsibility

The defender organization should offer training and develop materials on ethics and professional responsibility, and should include discussion of ethics and professional responsibility issues as they relate to intended learning objectives in training all employees.

4. Learning Experience and Educational Methods

Standard 4.1 - Selection of Methods

The intended learning objectives in training efforts should determine the selection of instructional methods and strategies, the choice of accompanying program materials, the use of any technological aids which may be appropriate, and the length and location of the training.

Standard 4.2 - Training Staff and Qualifications

Defender organizations' trainers should be qualified by education, intellect, experience, teaching ability, and temperament to provide instruction which promotes the achievement of intended learning objectives. The defender organization should encourage employees to serve as trainers and should provide them with appropriate training.

Standard 4.3 - Materials and Learning Technologies

Defender organizations' trainers should use current learning technologies and media devices to augment the learning experience and promote the achievement of intended learning objectives. The defender organization should distribute instructional and comprehensive reference materials which promote the achievement of intended learning objectives.

Standard 4.4 - Learning as an Ongoing Process

Defender organizations should encourage all employees to continue the learning process outside formal programs offered by the organization.

Standard 4.5 - Ongoing Publications and Distribution of Training Materials

Defender organizations should develop and regularly publish independent training materials. These should include both permanent resources and continuing education on developments in the law. If resources are available, the defender organization should obtain and/or produce and distribute audio tapes, videotapes, and computer assisted instruction for its employees.

Standard 4.6 - Maintenance of Training Resources

Defender organizations should maintain an accessible library of training materials developed by defenders within the organization as well as seek to collect training materials from outside resources which would be of benefit to its employees.

5. Learning Environment

Standard 5.1 - Physical Setting

The physical environment and location for training should be conducive to learning and consistent with achieving intended learning objectives. Defender organizations should have adequate and well-trained staff at the training site to assist the training director with logistics and to facilitate the presentation of training activities.

Standard 5.2 - Joint Training

Defender organizations should, when appropriate, pursue joint training opportunities with other members of the criminal justice system, the legal profession, and the community at large.

Standard 5.3 - Limitations on Use of Defender Resources

Consistent with the duty owed to clients, the adversarial nature of the criminal justice system, and the promotion of full learning, some defender training programs and materials should not be available to non-defenders.

6. Evaluation of Learning; Accreditation

Standard 6.1 - Systematic Evaluation of Programs and Materials

Defender organizations should conduct systematic and continuous evaluations of the effectiveness of its programs and materials to assess content, the achievement of intended learning objectives, program design, methods of instruction, quality of presenters, and impact on the participants' future performance. These regular internal evaluations to training activities should be conducted by the training director for purposes of planning and improving training activities. In addition, the defender organization should seek an independent evaluation of the office's training efforts and the strategic training plan by a person experienced in training.

Standard 6.2 - Defender CLE Accreditation

Defender organizations should strive to satisfy the continuing legal education requirements of its staff. Where appropriate, the defender organization should seek accreditation by the jurisdiction's continuing legal education authority as a continuing legal education provider.

7. Death Penalty Defense and Other Complex and Specialized Practice Areas

Standard 7.1 - Death Penalty Defense

Defender organizations should provide employees responsible for the representation of death penalty clients with all training necessary for high quality service to the client at every stage of the process: pretrial, trial, penalty phase, appeal and post-conviction.

Standard 7.2 - Complex and Specialized Practice Areas²

Defender organizations should provide special training to employees responsible for the representation of clients with complex or especially difficult cases, as well as for those employees handling specialized areas of practice.

8. Organizational Development

Standard 8.1 - Management and Leadership Skills

The defender organization should provide all supervisors and leaders with training in management, supervisory and training skills, as well as in leadership principles.

9. Quality Assurance

Standard 9.1 - Quality Assurance

Defender organizations should develop and implement methods to insure zealous and quality representation for clients.