

Overview of Standards and Performance Criteria

Performance standards are critical in setting forth what constitutes effective legal representation of criminal defendants and Family Court litigants. The New York State Office of Indigent Legal Services has established several sets of performance guidelines to advance its statutory purpose to “monitor, study and make efforts to improve the quality of services” provided under County Law article 18-B. See Executive Law § 832 (1). These ILS performance standards should be read alongside other relevant state and national guidelines. As set forth below, ILS has also issued financial eligibility standards.

The **Standards for Establishing and Administering Assigned Counsel Programs** are comprehensive guidelines—available as black letter standards, as well as in a version including commentary—that identify the elements of an effective assigned counsel program. Published in 2019, these standards were created by a statewide working group of providers led by the ILS Director of Quality Enhancement for Criminal Defense Trials. They set forth both county and ACP responsibilities and include a section summarizing the elements of effective representation by an assigned attorney. While these standards draw from existing guidelines, they are unique. ILS is well-positioned to make such standards, given its authority to approve or disapprove assigned counsel plans (see County Law § 722 [3] [b], [c], [d]) and to allocate State funding to such programs, pursuant to the statewide expansion of the historic *Hurrell-Harring* settlement (see Executive Law § 832 [4]).

[Link to ILS ACP Standards page](#)

In 2012, ILS published **Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest**, to meet its duties and responsibilities under Executive Law § 832 (3) (d). In identifying critical elements of any conflict defender office, these succinct criteria incorporate many provisions of the New York State Bar Association Standards for Providing Mandated Representation. In 2013, these ILS standards were extended to encompass all trial-level representation. County Law § 722 (3) (b) requires ILS to employ its conflict

standards when considering approval of an office of conflict defender.

[Link to ILS Conflict and Trial Level Criminal Defense Standards page](#)

While the above standards apply to representation in both criminal and family matters, certain aspects of parental representation warrant separate treatment. Further, a high priority is placed on quality representation in the area of child welfare, such as proceedings regarding abuse and neglect, permanency, and the termination of parental rights. Thus, in 2015, ILS published its **Standards for Parental Representation in State Intervention Matters**. Developed by a statewide working group of providers led by the ILS Director of Quality Enhancement for Parent Representation, these standards set forth qualifications and duties of counsel at every stage of the proceedings. While the focus is on child welfare matters, many provisions transcend such proceedings and apply to all types of Family Court proceedings.

[Link to ILS Parental Representation Standards](#)

Some aspects of the above standards are relevant to appeals, but ILS also promulgated guidelines dedicated exclusively to appellate representation.

Appellate Standards and Best Practices were developed by a statewide working group of appellate providers led by the ILS Director of Quality Enhancement for Appellate and Post-Conviction Representation. Published in 2015, these guidelines treat the qualifications, duties, and special ethical considerations applicable to attorneys providing appellate representation in criminal defense and Family Court matters.

[Link to ILS Appellate Standards page](#)

In addition to developing the above guidance for effective mandated representation, ILS has promulgated comprehensive **Standards for Determining Financial Eligibility for Assigned Counsel**. Such statewide standards were established in accordance with Executive Law § 832 (3) (c), under the leadership of the ILS *Hurrell-Harring* Chief Implementation Attorney and the ILS Director of Quality Enhancement for Parent Representation. The standards set forth “criteria and procedures to guide courts in determining whether a person is eligible” for publicly funded representation and include presumptions of eligibility. See Executive Law § 832 (3) (c). In devising the standards, ILS issued surveys to judges and providers, conducted public hearings, elicited written commentary, and drew guidance from many relevant reports and codes. The ILS eligibility standards were initially promulgated in 2016 and were revised in 2020 to apply to all mandated representation matters.

[Link to Eligibility Standards page](#)

Last updated on March 15, 2021.

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