

WHAT PRIVATE ATTORNEYS CAN DO WHEN APPOINTED BY A COURT TO REPRESENT A POOR PERSON CHARGED WITH A CRIME

Public defender offices across the State of Louisiana are implementing restriction of services protocols due to serious budgetary shortfalls. Restriction of services is the result of inadequate and insufficient funding for the administration of criminal justice. Unlike any other state in the nation, Louisiana relies primarily on traffic ticket revenue to fund public defense. Locally, each public defender office receives \$45 fee from every defendant facing a state, parish or municipal ordinance (except a parking violation) who is convicted, pleads guilty or nolo contendere, or forfeits a bond. Statewide, the amount from locally generated funds, which cannot be moved from the districts, constitutes on average 65% of public defense funding.¹

If you have been appointed to represent a poor person charged with a crime, who otherwise qualifies to be represented by the public defender's office but because that office has implemented restriction of services protocol and cannot provide constitutional, ethical representation, consider the following:

- **Read the LSBA's June 2015 Resolution 8.**
 - The Resolution clearly states that compelling private attorneys to represent indigent persons without compensation raises serious ethical issues, imposes significant financial hardships, and may constitute unconstitutional taking of property by the State.
 - The resolution resolves "that the Louisiana State Bar Association objects to compelling attorneys to provide uncompensated professional services for the benefit of the State and endorses and encourages private litigation that would challenge the constitutionality and lawfulness of appointing attorneys to represent indigent defendants without compensation."
- **File a Motion to Decline [Withdraw From] Court's Appointment.**
 - Louisiana Rules of Professional Conduct requires all attorneys to render "competent" and "conflict-free" representation. Attorneys must constantly use their best professional judgment to determine whether they can and are providing competent and conflict-free representation. If an attorney cannot provide such representation, you must file a Motion to Decline Appointment or Withdraw From Appointment.
 - The Rules of Professional Conduct are black letter law in Louisiana. Failure to abide by these standards directly implicates the requirements of the federal and state constitution.

¹ See LPDB, 2014 Annual Board Report at <http://lpdb.la.gov/Serving%20The%20Public/Reports/txtfiles/pdf/2014%20LPDB%20Annual%20Report.pdf>

- **File a Motion to Determine Source of Funding for a Competent Defense.**

- The Louisiana Supreme Court stated in *State v. Wigley*, 624 So. 2d 425, 426 (La. 1993) that “[u]ncompensated representation of indigent, when reasonably imposed, is a professional obligation burdening the privilege of practicing law in this state, and does not violate the constitutional rights of attorneys.” The Court, however, also stated that requiring attorneys to represent indigents with no recompense is an abusive extension of their professional obligations “when the attorneys must maintain their own practices and continue to meet their other professional and financial obligations.” *Wigley*, 624 So. 2d at 428.
- In accordance with *Wigley*, a state court cannot force appointed counsel to represent an indigent defendant without assurance of reimbursement at minimum for out-of-pocket expenses and overhead costs. Once out-of-pocket and overhead expenses are anticipated and/or identified, the court must then determine whether there is a source of funding to provide reimbursement to appointed counsel.
- In *State v. Citizens*, 898 So. 2d 325, 338-339 (La. 2005), the Louisiana Supreme Court stated:

In order to assure timely representation. . . [a] district judge should appoint counsel to represent an indigent defendant from the time of the indigent defendant's first appearance in court, even if the judge cannot then determine that funds sufficient to cover the anticipated expenses and overhead are likely to be available to reimburse counsel. The appointed attorney may then file a motion to determine funding, . . . and if the trial judge determines that adequate funding is not available, the defendant may then file, at his option, a motion to halt the prosecution of the case until adequate funding becomes available. The judge may thereafter prohibit the State from going forward with the prosecution until he or she determines that appropriate funding is likely to be available.

- According to *Citizen*, the following procedure applies: (1) the court appoints counsel; (2) counsel files a motion to determine funding; (3) a determination regarding a funding source is made; (4) if no funding source is found, counsel moves to halt prosecution.