

~~Performance Standard~~ 3.2 - Accepting Appointments - Conflicts

Counsel must be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client.

Counsel should identify those potential clients for whom representation would constitute an ethical conflict as soon as possible. Conflicts will include, but are not limited to, the following situations:

1. representation of co-defendants;
2. when the defendant was represented at the trial level by the appellate counsel or by a counsel in the same public defender office as the appellate counsel, and it is asserted by the client that trial counsel provided ineffective representation, ~~or~~ it appears to the appellate counsel that trial counsel provided ineffective representation, or appellate counsel is likely to be a necessary witness;
3. when it is necessary for the appellate attorney to interview or examine in a post-conviction evidentiary hearing another client of the attorney's office in an effort to substantiate information provided by the first client; or
4. when, in the pursuit of an appeal or post-conviction hearing, it is necessary to assert for the first time that another client of the office committed perjury at trial.

When a case assignment is made, the attorney should conduct an initial intake interview/consultation with the client where the attorney first inquires as to whether

the client knows of any other parties or defendants who are, or who may become clients of the attorney. The attorney should then (assuming that no conflicts have as yet been identified) ask about the specifics of the case, which may lead to the identification of other conflicts. If a conflict is identified, the interview should end at that point.

If there is a conflict, the attorney should submit a conflict form to the lead attorney for that judicial district, or to the Commission, if there is not a lead attorney, and a different attorney will be assigned. If the attorney has made an appearance before the court, the attorney should also move the court to withdraw, and/or submit a substitution of counsel, whichever is the court's preference.

If a conflict develops later during the course of representation, counsel has a duty to notify the client and move to withdraw from the matter.

~~*Commentary: A portion of this standard was previously adopted by the Commission at its October 27, 2006 meeting as "Policy Regarding Conflicts."*~~

*Adapted from: ND Commission on Legal Counsel for Indigents Minimum Attorney Performance Standards - Criminal Matters, Performance Standard 3.2; NLADA Standards and Evaluation Design for Appellate Defender Offices (1980), II (E). American Bar Association Model Rules of Professional Conduct 3.7: Lawyer as Witness*

~~*See also: "Policy on Assignment of Conflict Cases by Public Defender Offices," adopted by the Commission at its October 27, 2006 meeting; "Policy on Withdrawal," adopted by the Commission at its March 16, 2007 meeting.*~~

*Form: "Conflict Reassignment."*