

**Resolution Supporting the Recommendations of
the Commission on the Future of Indigent Defense Services
in its Final Report to the Chief Judge of the State of New York**

WHEREAS, the mission of the New York State Defenders Association (NYSDA) is to improve the quality and scope of publicly supported legal representation to low income people; and

WHEREAS, on July 27, 2000 the Board of Directors of NYSDA adopted Governing Principles for Public Defense Services, previously adopted by the Chief Defenders of New York State on December 16, 1999, necessary to “insure that public defense attorneys in criminal cases provide zealous, high quality representation, free of conflict;” and

WHEREAS, those Governing Principles include requirements that a system for providing public defense services have “a hiring or selection process and a funding or payment system that assures professional independence” and “[a]llow counsel to participate in all aspects of improving the quality, cost, and effectiveness of the entire justice system;” and

WHEREAS, on July 27, 2000 the Board of Directors of NYSDA also adopted Principles Concerning the Governance of a Unified Public Defense System for New York State; and

WHEREAS, those Principles Concerning Governance include the requirements that “[a] unified public defense system providing public defense services in New York must be independent of partisan political control, fully insulated from the legislative, executive and judicial branches, protected by an independent governing board and committed to zealous, competent performance in carrying out services that satisfy individual clients and the client community as a whole;” and

WHEREAS, those Principles Concerning Governance also include the requirements that a unified public defense system “should be brought into existence at the state level,” that “[t]he board of a governing commission or entity should consist of people with intimate experience in the delivery of service and the design of delivery mechanisms [and] should be populated by persons who have broad experience serving the poor,” and that “[r]ace, gender and class of the board should be diverse,” and that “[a]ppointments to the board should be based on functional categories [and that] [i]f appointments are to be made by government officials of the judicial, legislative and executive branches, such appointments should only be made from a pool of candidates previously qualified by such functional descriptions and compiled by a neutral third-party, client-focused group, committee or entity;” and

WHEREAS, on July 27, 2000 the Board of Directors of NYSDA also adopted a Statement on Client Involvement and Satisfaction, Quality Representation and Vigorous Advocacy; and

WHEREAS, on July 27, 2000 the Board of Directors of NYSDA also adopted a Resolution Supporting Fulltime Defender Offices; and

WHEREAS, on July 27, 2000 the Board of Directors of NYSDA also adopted a Resolution Supporting State Aid to Defense Funding in All Counties of New York; and

WHEREAS, on February 9, 2004 the Chief Judge of the State of New York, Judith S. Kaye, announced in her State of the Judiciary address that she had established the Commission on the Future of Indigent Defense Services to “examine the effectiveness of indigent criminal defense services across the State, and consider alternative models of assigning, supervising and financing assigned counsel compatible with New York’s constitutional and fiscal realities;” and

WHEREAS, on July 25, 2004 the Board of Directors of NYSDA adopted Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State, on the recommendation of the Chief Defenders of New York State; and

WHEREAS, those NYSDA standards include an entire section dedicated to the principle of independence of the defense function, including requirements that “[a]ll processes for providing counsel should be free from political influence and conflicts of interest,” that “[l]awyers provided should likewise be independent and conflict-free,” and that “[a]ll local plans and programs for providing public legal services should be independent and free from political influence, while accountable for the provision of high-quality, zealous services;” and

WHEREAS, those NYSDA standards also include a statement that “[g]overnment has the responsibility to fund the full cost of quality legal representation for all eligible persons;” and

WHEREAS, on April 2, 2005 the House of Delegates of the New York State Bar Association adopted Standards for Providing Mandated Representation; and

WHEREAS, those State Bar standards include an entire section dedicated to the principle of independence of the defense function, including requirements that “[t]o guarantee the integrity of the attorney-client relationship, the function of providing mandated representation, including the selection, funding and payment of counsel, shall be independent;” and

WHEREAS, those State Bar standards include an entire section dedicated to the principle of quality assurance, including requirements that “[a]n independent monitoring and enforcement mechanism shall be established for the evaluation of providers of mandated representation” and that such mechanism “shall ensure that all providers of mandated representation meet the standards of quality representation contained herein;” and

WHEREAS, on October 7, 2005 the Board of Directors of NYSDA approved and endorsed Client-centered Representation Standards developed and adopted by the NYSDA Client Advisory Board; and

WHEREAS, on June 18, 2006 the Commission on the Future of Indigent Defense Services (Kaye Commission) issued its Final Report to the Chief Judge of the State of New York; and

WHEREAS, the Kaye Commission report was based on a review of previous examinations of public defense in New York, information received at hearings held around the state, and a study done by The Spangenberg Group for the Kaye Commission, which was the most comprehensive study ever done of mandated representation in New York State; and

WHEREAS, among the prior examinations reviewed was one described as follows in the report: “On November 5, 2003, the Office of Justice Initiatives in the Office of Court Administration brought together, at Pace Law School, criminal defense attorneys, prosecutors, judges, and other stakeholders in the criminal justice system to examine the structure, method of financing, and the quality of representation provided by New York’s public defense system. Experts from across New York State and elsewhere identified a host of major problems in the system and a consensus was reached as to the components for a quality defense system. These are: (1) detailed statewide standards of practice for public defense providers; (2) the provision of meaningful training, supervision, and mentoring of attorneys; (3) parity in salary and resources between the prosecution and the defense; (4) ensuring defender independence; and (5) development of a client-centered ethos;” and

WHEREAS, also among the materials reviewed by The Spangenberg Group and the Kaye Commission were materials and information provided by NYSDA, which also provided materials and information for the November 5, 2003 summit; and

WHEREAS, the Kaye Commission report included a set of findings and recommendations; and

WHEREAS, among those findings is that “New York’s current fragmented system of county-operated and largely county-financed indigent defense services fails to satisfy the state’s constitutional and statutory obligations to protect the rights of the indigent accused;” and

WHEREAS, also among those findings is that “[t]he current method of providing indigent defense services in New York imposes a large unfunded mandate by the state upon its counties, results in a very uneven distribution of services and compromises the independence of defense providers;” and

WHEREAS, among the recommendations set out in the Kaye Commission report is the overall recommendation that “[t]he delivery of indigent defense services in New York State should be restructured to insure accountability, enforceability of standards, and quality of representation” and that “[t]o this end there should be established a statewide defender office consisting of an Indigent Defense Commission, a Chief Defender and Regional Defender and Local Defender Offices, a Deputy Defender for Appeals, and a Deputy Defender for Conflict Defense;” and

WHEREAS, the Kaye Commission report states that “[t]he Commission’s ultimate conclusion, based on all the information that has been presented to us, is that the delivery system most likely to guarantee quality representation to those entitled to it is a statewide defender system that is truly independent, is entirely and adequately state funded, and is one in which those providing indigent defense services are employees of entities within the defender system or are participants in an assigned counsel plan that has been approved by the body established to administer the statewide defender system;” and

WHEREAS, on April 27, 2007, the Board of Directors of NYSDA adopted a list of Defender System “Must Haves” drafted by the Chief Defenders of New York; and

WHEREAS, that “Must Haves” list contains the following: “1. Statewide Defense Commission; 2. Appointment process and structure that ensures political independence of the PD Commission and the entire statewide public defense system; 3. Power of the Commission to bring lawsuits to enforce overall quality and adequate funding of the system and to insure the political independence of the Public Defender system; 4. Strong, detailed, specific standards, such as those promulgated by the New York State Bar Association or the Standards adopted by the New York State Defenders Association on July 25, 2004 and also including specific caseload limits; 5. Family Court representation included; 6. Independence in the conflict system; 7. Independence in the appellate system; 8. Adequate and full State funding, with no reduction in existing level of funding for any county and/or region; 9. Fair and consistent level of quality throughout the state; 10. Legitimate and fair opportunity for existing programs to contract with or become part of the state system if they are in substantial compliance with the standards; 11. Local offices in each county, staffed by attorneys, so as to ensure ready access to attorneys on the parts of all clients, including those in rural upstate areas; 12. Regional and local heads of offices must have significant independence in the operation of the local office. In addition, there must be a system to require input from the local chiefs regarding state-wide policy issues; 13. Requirement that State Defender/Commission regularly review local offices for compliance with standards and method to enforce compliance; 14. All employees who become part of a new system, either by becoming state employees or through contracting with the Commission, to be held harmless regarding salary, retirement and other benefits; 15. Adequate and ongoing training for all levels of staff; 16. Adequate support services, including, but not limited to, investigators, experts and social workers; and 17. Salary and benefit parity with DAs and ADAs;” and

WHEREAS, numerous individuals and entities have announced support for the recommendations of the Kaye Commission, including the New York State Bar Association, the Committee for an Independent Public Defense Commission, the Committee for Modern Courts, the New York State Association of Criminal Defense Lawyers, the League of Women Voters of New York State, and The Justice Fund; and

WHEREAS, the above-described actions of the NYSDA Board reflect NYSDA’s continuing commitment to its mission and, in support of that mission, to reform the public defense system in New York State, particularly but not exclusively in regard to the principles of high-quality representation, independence of the defense function at every level, enforceable standards, adequate funding of defense services and parity of defense resources and the resources of opposing government counsel, and client satisfaction; and

WHEREAS, the findings and recommendations in the Kaye Commission report address those principles, and those principles being consistent with the Association’s mission and Board actions;

IT IS HEREBY RESOLVED that the New York State Defenders Association supports the recommendations of the Kaye Commission.

IT IS FURTHER RESOLVED that the New York State Defenders Association supports legislation to implement those recommendations.

IT IS FURTHER RESOLVED that copies of this resolution be sent to the Chief Judge of the State of New York, the Governor of the State of New York, the Majority Leader of the New York State Senate, the Speaker of the New York State Assembly, the Chairs of the Codes and Judiciary Committees of the New York State Senate and Assembly, to The Justice Fund, and to other appropriate instrumentalities.

ADOPTED UNANIMOUSLY BY THE BOARD OF DIRECTORS OF THE NEW YORK STATE DEFENDERS ASSOCIATION.

July 22, 2007
Saratoga Springs, NY