



## CHAPTER 12: PUBLIC DEFENDER COMMISSION

### PART 14: INTERIM CASE REFUSAL PROTOCOL

#### 10.12.14.1 ISSUING AGENCY:

New Mexico Public Defender Commission.

[10.12.14.1 NMAC - N, 8/28/18]

#### 10.12.14.2 SCOPE:

Applies to all employees of the New Mexico public defender department and to its contract attorneys.

[10.12.14.2 NMAC - N, 8/28/18]

#### 10.12.14.3 STATUTORY AUTHORITY:

N.M. Const., Article VI, Section 39; Subsection B of Section 31-15-2.4 NMSA 1978.

[10.12.14.3 NMAC - N, 8/28/18]

#### 10.12.14.4 DURATION:

Permanent.

[10.12.14.4 NMAC - N, 8/28/18]

#### 10.12.14.5 EFFECTIVE DATE:

August 28, 2018, unless a later date is cited at the end of a section.

[10.12.14.5 NMAC - N, 8/28/18]

#### 10.12.14.6 OBJECTIVE:

The objective of Part 14 of Chapter 12 is: to create guidelines for the department to use when excessive attorney workloads would make acceptance of additional clients by the affected attorneys ethically irresponsible or would violate the New Mexico rules of professional conduct or the constitutional rights of clients.

[10.12.14.6 NMAC - N, 8/28/18]



#### **10.12.14.7 DEFINITIONS:**

"The 2007 report" means the report published by the New Mexico sentencing commission in 2007 on a workload study conducted in conjunction with the national center for state courts.

[10.12.14.7 NMAC - N, 8/28/18]

#### **10.12.14.8 DEPARTMENT COLLECTION AND REPORTING OF INFORMATION REGARDING ATTORNEY CASE ASSIGNMENTS AND TIME KEEPING:**

- A.** Each office of the public defender department shall maintain a continuing record of the case assignments per year for each attorney employed by that office.
- B.** This record shall include for each case assignment the nature of the charges, whether the case includes felony charges or charges only misdemeanors, and whether the case involves a juvenile respondent.
- C.** The department shall maintain similar records of cases it assigns to contract attorneys.
- D.** The chief public defender or the chief's designee shall review case assignment reports for department attorneys and contract attorneys on a quarterly basis, and these reports shall include the information described in Subsections A and B of 10.12.14.8 NMAC.
- E.** The department shall institute mandatory timekeeping by department attorneys and contract attorneys as soon as possible.
- F.** The department shall maintain records of the time recorded by department attorneys and contract attorneys in working on their assigned cases.
- G.** The time records described in Subsection F of 10.12.14.8 NMAC shall include the identity of the client and the nature of the attorney's work for each unit of time recorded.
- H.** These time records shall be provided upon request to the chief or the chief's designee.

[10.12.14.8 NMAC - N, 8/28/18]

#### **10.12.14.9 DUTY OF THE CHIEF TO INVESTIGATE EXCESSIVE WORKLOAD LEVELS:**

- A.** When reported case assignments for three or more months show the attorneys of a particular office have or a contract attorney has case assignments in excess of quarterly standards derived from the 2007 report, the chief shall conduct an investigation. In conducting this investigation, the chief shall review available attorney time records for the period during which workloads for the affected attorneys have exceeded the 2007 report's quarterly standards.
- B.** In conducting this investigation, the chief shall also obtain information from the affected office and attorneys and staff regarding the attorneys' ability to provide competent representation to existing clients.



- C. In deciding whether the affected office and attorneys can provide competent representation to existing clients, the chief shall consider whether the affected offices and attorneys consistently are able to comply with the department's 2016 performance standards.
- D. After the investigation described above, the chief should determine whether additional case assignments would create a significant risk that the affected office's and attorneys' obligation to provide competent representation to existing clients would materially limit their representation of additional clients.
- E. If the chief determines that a significant risk exists that the affected attorneys' duty to existing clients would materially limit their representation of additional clients as described in Subsection D of **10.12.14.9**NMAC, the chief then shall determine whether administrative measures are reasonably available that would alleviate that risk short of refusing additional case assignments.
- F. If the chief determines such administrative measures are reasonably available, the chief shall institute these measures and evaluate their effectiveness on a quarterly basis as long as affected attorney workloads exceed the 2007 report's quarterly standards.
- G. In the event of multiple investigations, the chief shall decide the priority in which they are conducted and what further steps are taken.

[**10.12.14.9** NMAC - N, 8/28/18]

**10.12.14.10 DETERMINATION BY THE CHIEF TO REFUSE ADDITIONAL CASE ASSIGNMENTS  
BASED ON EXCESSIVE WORKLOADS:**

- A. If the chief determines that reasonably available administrative measures would fail or have failed to alleviate the risk described in Subsection E of **10.12.14.9** NMAC, the chief shall state in writing that accepting additional cases would be ethically irresponsible.
- B. The chief's determination under Subsection A of **10.12.14.10** NMAC shall include a summary of the facts and copies of all documents considered while preserving from disclosure confidential client and personnel information except as otherwise provided by law.
- C. The chief shall continue to monitor affected office and attorney workloads on a monthly basis and shall report in writing when quarterly workloads drop below the 2007 report standards.
- D. When quarterly workload levels have dropped below the 2007 report standards, the chief shall determine on a monthly basis whether the affected office and attorneys are able to represent additional clients in an ethically responsible manner as described in Subsection A of **10.12.14.10** NMAC and shall maintain a record of this determination and the facts supporting it.

[**10.12.14.10** NMAC - N, 8/28/18]



**10.12.14.11 NOTICE TO AFFECTED COURTS OF CASE REFUSAL; MOTIONS TO WITHDRAW;  
AND NOTICES OF RENEWED AVAILABILITY:**

- A.** When the chief determines that affected office and attorney workloads make it ethically irresponsible for affected offices and attorneys to accept additional case assignments as described in Subsection A of **10.12.14.10** NMAC the chief shall prepare a notice of case refusal.
- B.** The notice of case refusal shall state that it would be ethically irresponsible for affected office and attorneys to accept additional cases at the present time and shall bear the chief's signature.
- C.** The Notice shall have attached to it a copy of the chief's written determination and supporting documents as provided in **10.12.14.10** NMAC.
- D.** The chief shall deliver a copy of the notice to the chief district judge of the affected jurisdiction; all affected courts within that jurisdiction; and the administrative office of the courts.
- E.** Notwithstanding the above provisions, if the chief determines it would be ethically responsible, case assignments may continue to be accepted for cases involving homicides, violent felonies, sexual offenses, and juvenile respondents.
- F.** The affected attorneys shall promptly move to withdraw from case assignments that occurred after the chief's determination, subject to the exceptions listed in Subsection E of **10.12.14.11** NMAC.
- G.** The affected office and attorneys shall continue to be unavailable to accept new cases except as provided herein until such time as the chief determines pursuant to Subsection C of **10.12.14.10** NMAC and Subsection D of **10.12.14.10** NMAC that workload levels have fallen below 2007 report standards and it would be ethically responsible to accept additional cases.
- H.** The chief shall provide a copy of his monthly determination of continued unavailability pursuant to Subsection C of **10.12.14.10** NMAC and Subsection D of **10.12.14.10** NMAC to all parties listed in Subsection D of **10.12.14.11** NMAC until such time as he determines it would be ethically responsible for the affected office and attorneys to accept additional case.
- I.** When the chief determines as provided above that the affected office and attorneys are able to accept additional cases, the chief shall issue a notice of renewed availability, which shall bear the chief's signature.
- J.** The notice of renewed availability shall be delivered to the chief district judge of the affected jurisdiction; all affected courts within that jurisdiction; and the administrative office of the courts.
- K.** Upon communication of the chief's notice of renewed availability, the office and attorneys previously disqualified from accepting additional cases shall begin accepting new cases under normal case assignment procedures.

[**10.12.14.11** NMAC - N, 8/28/18]