



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
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MEMORANDUM

DATE: April 6, 2015

TO: Members of the Delaware State House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: S.B. 28 (Office of Defense Services)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 28 which would streamline the operation of the system for providing counsel to indigent defendants in criminal proceedings. Currently, the Public Defender's Office represents approximately 83% of indigent defendants. The balance is provided with a contract attorney through the Office of Conflict Counsel. The bill would consolidate the administrative functions of the Public Defender and Office of Conflict Counsel while still protecting clients from conflicts of interest. SCPD has the following observations.

First, while the bill changes the "Office of the Public Defender" to "Office of Defense Services" (lines 3-5) and the chapter is designated the "Office of Defense Services Act" (line 82), the bill does not amend the title to Chapter 46 which will still read "Chapter 46. Public Defender". The sponsors may wish to add an amendment to change the chapter title.

Second, in line 8, the word "appointed" should be stricken. It is not part of the current statute.

Third, the legislation (lines 37-41) contains limits on salaried attorneys "engaging in the practice of law outside the duties of the Office of Defense Services." In the same section, the limitation is arguably narrower, i.e., barring "engaging in private law practice". The sponsors may wish to clarify the scope of the restriction. For example, could a salaried lawyer receive compensation for serving as a part-time adjunct Law School Professor, writing a legal treatise or article, teaching a seminar, serving as a legislative attorney in the House or Senate, serving as a mediator or arbitrator, or serving as a State administrative hearing officer? Even judges are allowed to teach, lecture, and write. Compare attached Delaware Judges' Code of Judicial Conduct, Canon 3.

Fourth, lines 49-51 merit revision. Literally, the sentence reads that the court may appoint an attorney other than a qualified counsel. This makes no sense. It suggests that the court would appoint someone who is not with the Office of Conflicts Counsel and not a qualified counsel.

Fifth, there are many references to the Office of the Public Defender or Public Defender throughout the Code. See, e.g., Title 11 Del.C. §§8701(b)(6) and 9502; Title 13 Del.C. §2102; and Title 29 Del.C. §3303(a) . Under the bill, there is no longer a “Public Defender”. There is a “Chief Defender” (line 7) and a “Public Defender’s Office” (line 5). Ideally, the other references throughout the Code should be amended to conform to the new language.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations and recommendations on the proposed legislation.

cc: Delaware State Senate  
Mr. Brendan O'Neill, Public Defender  
Mr. Brian Hartman  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

SB 28 office of defense services 3-30-15

## CANON 3

A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties.

### RULE 3.1 Extra-judicial Activities in General.

A judge, subject to the proper performance of judicial duties, may engage in the following law-related activities if in doing so the judge does not cast reasonable doubt on the capacity to decide impartially, independently and with integrity any issue that may come before the judge:

(A) A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice (including projects directed to the drafting of legislation).

Comment:

*In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.*

(B) A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's judicial duties.

Comment:

*Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives.*

(C) A judge may engage in activities to improve the law, the legal system, and the administration of justice.

(D) A judge should not use judicial chambers, resources, or staff to engage in activities permitted by this Canon 3, except for uses that are *de minimis*.

### RULE 3.2 Appearances before Governmental Bodies and Consultation with Government Officials.

(A) A judge may appear at a public hearing before or otherwise consult with an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice to the extent that it would generally be perceived that a judge's knowledge or experience as acquired in the course of the judge's judicial duties provides special expertise in the area.

Comment:

*A judge may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship.*

(B) A judge acting *pro se* may also appear before or consult with such officials or bodies in a matter involving the judge or the judge's legal or economic interest or when the judge is acting in a fiduciary capacity.

### RULE 3.3 Testifying as a Character Witness.

A judge should not testify voluntarily as a character witness.

Comment:

*The testimony of a judge as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Rule, however, does not afford the judge a privilege against testifying in response to an official summons. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.*

### RULE 3.4 Appointments to Governmental Positions.

(A) A judge should not accept appointment to a governmental committee, commission, board, agency or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent the judge's country,