

**NEVADA INDIGENT DEFENSE
STANDARDS OF PERFORMANCE**

CAPITAL CASE REPRESENTATION

Standard 1: The Defense Team and Services of Experts in Capital Cases

(a) The Defense Team

The defense team should:

1. consist of no fewer than two attorneys qualified in accordance with Standard 2, an investigator, and a mitigation specialist; and
2. contain at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments.

(b) Expert and Ancillary Services

1. Counsel should:

- (A) secure the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high-quality legal representation at every stage of the proceedings;
- (B) have the right to have such services provided by persons independent of the government; and
- (C) have the right to protect the confidentiality of communications with the persons providing such services to the same extent as would counsel paying such persons from private funds.

2. The appointing authority should specifically ensure provision of such services to private attorneys whose clients are financially unable to afford them.

Standard 2: Appointment, Retention, and Removal of Defense Counsel

(a) Qualifications of Defense Counsel

1. The appointing authority should develop and publish qualification standards for defense counsel in capital cases. These standards should be

construed and applied in such a way as to further the overriding goal of providing each client with high-quality legal representation.

2. In formulating qualification standards, the appointing authority should ensure that every attorney representing a capital defendant has:
 - (A) obtained a license or permission to practice in the jurisdiction;
 - (B) demonstrated a commitment to providing zealous advocacy and high-quality legal representation in the defense of capital cases; and
 - (C) satisfied the training requirements set forth in Standard 3.
3. The appointing authority should ensure that the pool of defense attorneys as a whole is such that each capital defendant within the jurisdiction receives high-quality legal representation. Accordingly, the qualification standards should ensure that the pool includes sufficient numbers of attorneys who have demonstrated:
 - (A) substantial knowledge and understanding of the relevant state, federal, and international law, both procedural and substantive, governing capital cases and skill in the management and conduct of complex negotiations and litigation;
 - (B) skill in legal research, analysis, and the drafting of litigation documents;
 - (C) skill in oral advocacy;
 - (D) skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
 - (E) skill in the investigation, preparation, and presentation of evidence bearing upon mental status;
 - (F) skill in the investigation, preparation, and presentation of mitigating evidence; and
 - (G) skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements.

(b) Workload

The appointing authority should implement effectual mechanisms to ensure that the workload of attorneys representing defendants in death penalty cases is maintained at a level that enables counsel to provide each client with

high-quality legal representation in accordance with the Nevada Indigent Defense Standards of Performance.

(c) Monitoring; Removal

1. The appointing authority should monitor the performance of all defense counsel to ensure that the client is receiving high-quality legal representation. Where there is evidence that an attorney is not providing high-quality legal representation, the responsible agency should take appropriate action to protect the interests of the attorney's current and potential clients.
2. The appointing authority should establish and publicize a regular procedure for investigating and resolving any complaints made by judges, clients, attorneys, or others that defense counsel failed to provide high-quality legal representation.
3. The appointing authority should periodically review the rosters of attorneys who have been certified to accept appointments in capital cases to ensure that those attorneys remain capable of providing high-quality legal representation. Where there is evidence that an attorney has failed to provide high-quality legal representation, the attorney should not receive additional appointments and should be removed from the roster. Where there is evidence that a systemic defect in a defender office has caused the office to fail to provide high-quality legal representation, the office should not receive additional appointments.
4. Before taking final action making an attorney or a defender office ineligible to receive additional appointments, the appointing authority should provide written notice that such action is being contemplated and give the attorney or defender office an opportunity to respond in writing.
5. An attorney or defender office sanctioned pursuant to this Standard should be restored to the roster only in exceptional circumstances.
6. The appointing authority should ensure that this standard is implemented consistently with standard 2, so that an attorney's zealous representation of a client cannot be cause for the imposition or threatened imposition of sanctions pursuant to this guideline.

Standard 3: Training

- (a) Funds should be made available for the effective training, professional development, and continuing education of all members of the defense team, whether the members are employed by an institutional defender or are employed or retained by counsel appointed by the court.
- (b) Attorneys seeking to qualify to receive appointments should be required to satisfactorily complete a comprehensive training program in the defense of capital cases. Such a program should include, but not be limited to, presentations and training in the following areas:
 - 1. relevant state, federal, and international law;
 - 2. pleading and motion practice;
 - 3. pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
 - 4. jury selection;
 - 5. trial preparation and presentation, including the use of experts;
 - 6. ethical considerations particular to capital defense representation;
 - 7. preservation of the record and of issues for post-conviction review;
 - 8. counsel's relationship with the client and his family;
 - 9. post-conviction litigation in state and federal courts; and
 - 10. the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science.
- (c) Attorneys seeking to remain on the appointment roster should be required to attend and successfully complete, at least once every 2 years, a specialized training program that focuses on the defense of death penalty cases.

Standard 4: Funding and Compensation

- (a) The appointing authority must ensure funding for the full cost of high-quality legal representation by the defense team and outside experts selected by counsel, as defined by these guidelines,.

- (b) Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of high-quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation.
1. Flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases.
 2. Attorneys employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.
 3. Appointed counsel should be fully compensated for actual time and service performed at an hourly rate commensurate with the prevailing rates for similar services performed by retained counsel in the jurisdiction, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.
- (c) Non-attorney members of the defense team should be fully compensated at a rate that is commensurate with the provision of legal representation and reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.
1. Investigators employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.
 2. Mitigation specialists and experts employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale for comparable expert services in the private sector.
 3. Members of the defense team assisting private counsel should be fully compensated for actual time and service performed at an hourly rate commensurate with prevailing rates paid by retained counsel in the jurisdiction for similar services, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.
- (d) Additional compensation should be provided in unusually protracted or extraordinary cases.

- (e) Counsel and members of the defense team should be fully reimbursed for reasonable incidental expenses.

Standard 5: Obligations of Counsel Respecting Workload

Counsel representing clients in death penalty cases should limit their caseloads to the level needed to provide each client with high-quality legal representation in compliance with the Nevada Indigent Defense Standards of Performance.

Standard 6: Role of the Defense Team

As soon as possible after appointment, counsel should assemble a defense team by selecting and making any appropriate contractual agreements with non-attorney team members in such a way that the team includes:

- (a) at least one mitigation specialist and one fact investigator;
- (b) at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments;
- (c) any other members needed to provide high-quality legal representation; and
- (d) at all stages demanding on behalf of the client all resources necessary to provide high-quality legal representation. If such resources are denied, counsel should make an adequate record to preserve the issue for further review.

Standard 7: Relationship With the Client

- (a) Counsel at all stages of the case should:
 1. make every appropriate effort to establish a relationship of trust with the client and should maintain close contact with the client;
 2. conduct an interview of the client within 24 hours of initial counsel's entry into the case, barring exceptional circumstances;
 3. promptly communicate in an appropriate manner with both the client and the prosecution regarding the protection of the client's rights

3. promptly communicate in an appropriate manner with both the client and the prosecution regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards; and
 4. at all stages of the case, re-advise the client and the prosecution regarding these matters as appropriate.
- (b) Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:
1. the progress of and prospects for the factual investigation, and what assistance the client might provide to it;
 2. current or potential legal issues;
 3. the development of a defense theory;
 4. presentation of the defense case;
 5. potential agreed-upon dispositions of the case;
 6. litigation deadlines and the projected schedule of case-related events; and
 7. relevant aspects of the client's relationship with correctional, parole, or other governmental agents (e.g., prison medical providers or state psychiatrists).

Standard 8: Additional Obligations of Counsel Representing a Foreign National

- (a) Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals.
- (b) Unless predecessor counsel has already done so, counsel representing a foreign national should:
 1. immediately advise the client of his or her right to communicate with the relevant consular office; and

2. obtain the consent of the client to contact the consular office. After obtaining consent, counsel should immediately contact the client's consular office and inform it of the client's detention or arrest.

Standard 9: Investigation

- (a) Counsel at every stage has an obligation to conduct a thorough and independent investigation relating to the issues of both guilt and penalty.
 1. The investigation regarding guilt should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.
 2. The investigation regarding penalty should be conducted regardless of any statement by the client that evidence bearing upon penalty is not to be collected or presented.
- (b) Post-conviction counsel has an obligation to conduct a full examination of the defense provided to the client at all prior phases of the case. This obligation includes at minimum interviewing prior counsel and members of the defense team and examining the files of prior counsel.
- (c) Counsel at every stage has an obligation to assure that the official record of the proceedings is complete and to supplement the record as appropriate.

Standard 10: Duty to Assert Legal Claims

- (a) Counsel at every stage of the case, exercising professional judgment in accordance with these standards, should:
 1. consider all legal claims potentially available;
 2. thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted; and
 3. evaluate each potential claim in light of:
 - (A) the unique characteristics of death penalty law and practice; and

- (B) the near certainty that all available avenues of post-conviction relief will be pursued in the event of conviction and imposition of a death sentence;
 - (C) the importance of protecting the client's rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited; and
 - (D) any other professionally appropriate risks and benefits to the assertion of the claim.
- (b) Counsel who decide to assert a particular legal claim should:
1. present the claim as forcefully as possible, tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law in the particular jurisdiction; and
 2. ensure that a full record is made of all legal proceedings in connection with the claim.

Standard 11: Duty to Seek an Agreed-Upon Disposition

- (a) Counsel at every stage of the case has an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition.
- (b) Counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition. In so doing, counsel should fully explain the rights that would be waived, the possible collateral consequences, and the legal, factual, and contextual considerations that bear upon the decision. Specifically, counsel should know and fully explain to the client:
1. the maximum penalty that may be imposed for the charged offense(s) and any possible lesser-included or alternative offenses;
 2. any collateral consequences of potential penalties less than death, such as forfeiture of assets, deportation, civil liabilities, and the use of the disposition adversely to the client in penalty phase proceedings of other prosecutions of the client as well as any direct consequences of

- potential penalties less than death, such as the possibility and likelihood of parole, place of confinement, and good-time credits;
3. the general range of sentences for similar offenses committed by defendants with similar backgrounds and the impact of any applicable sentencing guidelines or mandatory sentencing requirements;
 4. the governing legal regime, including, but not limited to, whatever choices the client may have as to the fact-finder and/or sentencer;
 5. the types of pleas that may be agreed to, such as a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere, or other plea that does not require the client to personally acknowledge guilt, along with the advantages and disadvantages of each;
 6. whether any agreement negotiated can be made binding on the court, penal/parole authorities, and any others who may be involved;
 7. the practices, policies, and concerns of the particular jurisdiction, the judge and prosecuting authority, the family of the victim, and any other persons or entities that may affect the content and likely results of plea negotiations;
 8. Concessions that the client might offer, such as:
 - (A) an agreement to waive trial and to plead guilty to particular charges;
 - (B) an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;
 - (C) an agreement regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case;
 - (D) an agreement to forgo in whole or part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications;
 - (E) an agreement to provide the prosecution with assistance in investigating or prosecuting the present case or other alleged criminal activity;

- (F) an agreement to engage in or refrain from any particular conduct, as appropriate to the case;
 - (G) an agreement with the victim's family, which may include matters such as a meeting between the victim's family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution; and
 - (H) agreements such as those described in the foregoing subsections respecting actual or potential charges in another jurisdiction.
9. Benefits the client might obtain from a negotiated settlement, including:
- (A) a guarantee that the death penalty will not be imposed;
 - (B) an agreement that the defendant will receive a specified sentence;
 - (C) an agreement that the prosecutor will not advocate a certain sentence, will not present certain information to the court, or will engage in or refrain from engaging in other actions with regard to sentencing;
 - (D) an agreement that one or more of multiple charges will be reduced or dismissed;
 - (E) an agreement that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;
 - (F) an agreement that the client may enter a conditional plea to preserve the right to further contest certain legal issues;
 - (G) an agreement that the court or prosecutor will make specific recommendations to correctional or parole authorities regarding the terms of the client's confinement; and
 - (H) agreements such as those described in the foregoing subsections respecting actual or potential charges in another jurisdiction.
- (c) Counsel should keep the client fully informed of any negotiations for a disposition, convey to the client any offers made by the prosecution, and discuss with the client possible negotiation strategies.

- (d) Counsel should inform the client of any tentative negotiated agreement reached with the prosecution and explain to the client the full content of the agreement along with the advantages, disadvantages, and potential consequences of the agreement.
- (e) If a negotiated disposition would be in the best interest of the client, initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Similarly, a client's initial opposition should not prevent counsel from engaging in an ongoing effort to persuade the client to accept an offer of resolution that is in the client's best interest.
- (f) Counsel should not accept any agreed-upon disposition without the client's express authorization.
- (g) The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting litigation.

Standard 12: Entry of a Plea of Guilty

- (a) The informed decision whether to enter a plea of guilty lies with the client.
- (b) In the event the client determines to enter a plea of guilty, prior to the entry of the plea, counsel should:
 1. make certain that the client understands the rights to be waived by entering the plea and that the client's decision to waive those rights is knowing, voluntary, and intelligent;
 2. ensure that the client understands the conditions and limits of the plea agreement and the maximum punishment, sanctions, and other consequences to which he or she will be exposed by entering the plea; and
 3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions in court, and providing a statement concerning the offense.
- (c) During entry of the plea, counsel should make sure that the full content and conditions of any agreements with the government are placed on the record.

Standard 13: Trial Preparation Overall

As the investigations mandated by Standard 7 produce information, trial counsel should formulate a defense theory. Counsel should seek a theory that will be effective in connection with both guilt and penalty, and should seek to minimize any inconsistencies.

Standard 14: Voir Dire and Jury Selection

- (a) Counsel should consider, along with potential legal challenges to the procedures for selecting the jury that would be available in any criminal case (particularly those relating to bias on the basis of race or gender), whether any procedures have been instituted for selection of juries in capital cases that present particular legal bases for challenge. Such challenges may include challenges to the selection of the grand jury and grand jury forepersons, as well as to the selection of the petit jury venire.
- (b) Counsel should be familiar with the precedents relating to questioning and challenging of potential jurors, including the procedures surrounding “death qualification” concerning any potential juror’s beliefs about the death penalty. Counsel should be familiar with techniques:
 1. for exposing those prospective jurors who would automatically impose the death penalty following a murder conviction or finding that the defendant is death-eligible, regardless of the individual circumstances of the case;
 2. for uncovering those prospective jurors who are unable to give meaningful consideration to mitigating evidence; and
 3. for rehabilitating potential jurors whose initial indications of opposition to the death penalty make them possibly excludable.
- (c) Counsel should consider seeking expert assistance in the jury selection process.

Standard 15: Defense Case Concerning Penalty

- (a) As set out in Standard 7, counsel at every stage of the case has a continuing duty to investigate issues bearing upon penalty and to seek information that supports mitigation or rebuts the prosecution's case in aggravation.
- (b) Counsel should discuss with the client early in the case the sentencing alternatives available and the relationship between the strategy for the sentencing phase and for the guilt/innocence phase.
- (c) Prior to the sentencing phase, trial counsel should discuss with the client the specific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing.
- (d) Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning penalty that they intend to present to the sentencing or reviewing body or individual, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution's case in aggravation.
- (e) Counsel should consider, and discuss with the client, the possible consequences of having the client testify or make a statement to the sentencing or reviewing body or individual.
- (f) In deciding which witnesses and evidence to prepare concerning penalty, the areas counsel should consider include the following:
 - 1. witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, or would otherwise support a sentence less than death;
 - 2. expert and lay witnesses along with supporting documentation (e.g., school records, military records) to provide medical, psychological, sociological, cultural, or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation or adaptation to prison; to

- explain possible treatment programs; or otherwise support a sentence less than death; and/or to rebut or explain evidence presented by the prosecutor;
3. witnesses who can testify about the applicable alternative to a death sentence and/or the conditions under which the alternative sentence would be served;
 4. witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones; and
 5. demonstrative evidence, such as photos, videos, and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts, and letters of praise or reference.
- (g) In determining what presentation to make concerning penalty, counsel should consider whether any portion of the defense case will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions in limine) to ensure that the defense case concerning penalty is constricted as little as possible by this consideration and should make a full record in order to support any subsequent challenges.
- (h) Trial counsel should determine at the earliest possible time what aggravating factors the prosecution will rely upon in seeking the death penalty and what evidence will be offered in support thereof. If the jurisdiction has rules regarding notification of these factors, counsel at all stages of the case should object to any noncompliance, and if such rules are inadequate, counsel at all stages of the case should challenge the adequacy of the rules.
- (i) Counsel at all stages of the case should carefully consider whether all or part of the aggravating evidence may appropriately be challenged as improper, inaccurate, misleading, or not legally admissible.
- (j) If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:

1. consider what legal challenges may appropriately be made to the interview or the conditions surrounding it;
 2. consider the legal and strategic issues implicated by the client's cooperation or noncooperation;
 3. ensure that the client understands the significance of any statements made during such an interview; and
 4. attend the interview.
- (k) Trial counsel should request jury instructions and verdict forms that ensure that jurors will be able to consider and give effect to all relevant mitigating evidence. Trial counsel should object to instructions or verdict forms that are constitutionally flawed, inaccurate, or confusing and should offer alternative instructions. Post-conviction counsel should pursue these issues through factual investigation and legal argument.
- (l) Counsel at every stage of the case should take advantage of all appropriate opportunities to argue why death is not suitable punishment for their particular client.

Standard 16: Official Presentence Report

If an official presentence report or similar document may or will be presented to the court at any time, counsel should become familiar with the procedures governing preparation, submission, and verification of the report. In addition, counsel should:

- (a) where preparation of the report is optional, consider the strategic implications of requesting that a report be prepared;
- (b) provide to the report preparer information favorable to the client. In this regard, counsel should consider whether the client should speak with the person preparing the report; if the determination is made to do so, counsel should discuss the interview in advance with the client and attend it;
- (c) review the completed report;
- (d) take appropriate steps to ensure that improper, incorrect, or misleading information that may harm the client is deleted from the report; and

- (e) take steps to preserve and protect the client's interests where the defense considers information in the presentence report to be improper, inaccurate, or misleading.

Standard 17: Duty to Facilitate the Work of Successor Counsel

In accordance with professional norms, all persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client and should cooperate fully with successor counsel. This duty includes, but is not limited to:

- (a) maintaining the records of the case in a manner that will inform successor counsel of all significant developments relevant to the litigation;
- (b) providing the client's files, as well as information regarding all aspects of the representation, to successor counsel;
- (c) sharing potential further areas of legal and factual research with successor counsel; and
- (d) cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

Standard 18: Duties of Trial Counsel After Conviction

Trial counsel should:

- (a) be familiar with all state and federal post-conviction options available to the client. Trial counsel should discuss with the client the post-conviction procedures that will or may follow imposition of the death sentence;
- (b) take whatever action(s), such as filing a notice of appeal and/or motion for a new trial, will maximize the client's ability to obtain post-conviction relief;
- (c) not cease acting on the client's behalf until successor counsel has entered the case or trial counsel's representation has been formally terminated. Until that time, Standard 17 applies in its entirety; and
- (d) take all appropriate action to ensure that the client obtains successor counsel as soon as possible.

Standard 19: Duties of Post-Conviction Counsel

- (a) Counsel representing a capital client at any point after conviction should be familiar with the jurisdiction's procedures for setting execution dates and providing notice of them. Post-conviction counsel should also be thoroughly familiar with all available procedures for seeking a stay of execution.
- (b) If an execution date is set, post-conviction counsel should immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available forms.
- (c) Post-conviction counsel should seek to litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high-quality capital defense representation, including challenges to any overly restrictive procedural rules. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review.
- (d) The duties of the counsel representing the client on direct appeal should include filing a petition for certiorari in the Supreme Court of the United States. If appellate counsel does not intend to file such a petition, he or she should immediately notify successor counsel if known and the responsible agency.
- (e) Post-conviction counsel should fully discharge the ongoing obligations imposed by these standards, including the obligations to:
 - 1. maintain close contact with the client regarding litigation developments;
 - 2. continually monitor the client's mental, physical, and emotional condition for effects on the client's legal position;
 - 3. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments; and
 - 4. continue an aggressive investigation of all aspects of the case.

Standard 20: Duties of Clemency Counsel

Clemency counsel should:

1. be familiar with the procedures for and permissible substantive content of a request for clemency;
2. conduct an investigation in accordance with Standard 7;
3. ensure that clemency is sought in as timely and persuasive a manner as possible, tailoring the presentation to the characteristics of the particular client, case, and jurisdiction; and
4. ensure that the process governing consideration of the client's application is substantively and procedurally just, and if not, should seek appropriate redress.