

By Mr. Scaccia of Boston, petition of Angelo M. Scaccia for legislation to improve the appointment and assignment of counsels to the indigent. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Four.

AN ACT TO IMPROVE THE APPOINTMENT AND ASSIGNMENT OF COUNSEL TO THE INDIGENT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 | Section 34D of Chapter 221 of the General Laws, as appearing in
2 | the Tercentenary Edition, is hereby amended by striking out every-
3 | thing after the first paragraph and inserting in place thereof the
4 | following: —

5 | (2) Said committee may accept gifts, grants or contributions
6 | from any source, whether public or private, and may enter into
7 | contracts to provide or receive services with any federal, state,
8 | county or municipal entity, with any group or individual, whether
9 | profit or non-profit, or with any non-profit or voluntary charitable
10 | group, corporation, association or organization, including any bar
11 | association, to effectuate the intent of this section.

12 | (3) Said committee shall adopt such rules and regulations as
13 | may be necessary for the conduct of its affairs and may from time
14 | to time amend or revise the same.

15 | (4) Said committee shall establish, supervise and maintain a
16 | system for the appointment or assignment of counsel at any stage
17 | of a criminal proceeding in any court of the commonwealth, pro-
18 | vided the laws of the commonwealth or the rules of the supreme
19 | judicial court require that the defendant in such proceeding be
20 | represented by counsel, and provided further that such defendant
21 | is unable to obtain counsel by reason of his inability to pay. Said
22 | committee may also establish a system for the provision of counsel

23 in any pre-arraignment procedure. A justice or associate justice
24 shall assign the Massachusetts defenders committee, as hereafter
25 provided, after receiving from the probation officer a written report
26 containing the probation officer's opinion as to the defendant's
27 ability to pay for counsel, except as provided in paragraph twelve
28 of this section.

29 (5) In carrying out its duties as prescribed in paragraph four
30 hereof, the committee shall:

31 A. Utilize its existing staff, which shall be known hereafter as
32 the "public defender division." Said division shall be assigned to
33 represent indigent defendants in all criminal cases, except that:

34 1. Such division shall not be assigned to represent more than
35 one defendant in any matter before any court on the same case;

36 2. Such division shall not be assigned to represent any defend-
37 ant in which there is a conflict of interest with any of its clients;

38 3. Such division shall not be assigned to represent individuals
39 charged with matters classified as "children in need of services,"
40 General Laws chapter one hundred and nineteen, section thirty-
41 nine E, or "care and protection," General Laws chapter one
42 hundred and nineteen, section twenty-four.

43 4. Such division shall not be assigned to those cases where an
44 individual is before the Probate and Family Court Department or
45 the Housing Court Department for criminal contempt or where
46 representation is mandated by law in the aforementioned depart-
47 ments.

48 5. Such division shall not be assigned to any misdemeanors
49 unless in conjunction with a felony appointment and shall not
50 ordinarily be appointed to any juvenile cases except in the juvenile
51 court departments of Boston, Bristol, Roxbury, Springfield and
52 Worcester.

53 B. Establish, supervise and maintain an orderly system for the
54 appointment of private counsel, hereafter called the "private coun-
55 sel division." The committee shall give preference to providing
56 such private counsel by entering into contractual agreements with
57 any state, county or local bar association or voluntary charitable
58 group, corporation or association; the committee may also con-
59 tract with such other organized groups of attorneys as may be
60 formed to afford representation to indigent defendants. Neither

61 individuals nor members or participants in any group, corporation
62 or association with whom the committee may contract under this
63 section or paragraph twelve shall be considered to be or have any
64 rights as state employees.

65 1. Such division shall be appointed for all individuals accused of
66 crimes and in need of counsel who, through their inability to pay
67 for counsel, must have counsel appointed or assigned to them, but
68 who, pursuant to the provisions of the preceding paragraph, are
69 not to be represented by the public defender division.

70 2. Such division shall be available for appointment to represent
71 an individual charged with a matter classified as "children in need
72 of services," General Laws chapter one hundred and nineteen,
73 section thirty-nine E, or "care and protection," General Laws
74 chapter one hundred and nineteen, section twenty-four.

75 3. Such division shall be available for appointment in those
76 cases where an individual is before the Probate and Family Court
77 Department or the Housing Court Department for criminal con-
78 tempt or where representation is mandated by law or rule in the
79 aforementioned departments.

80 (6) The committee shall establish standards for the public
81 defender division and the private counsel division which shall
82 include but not be limited to:

83 (a) vertical or continuous representation at the pre-trial and
84 trial stages by the attorney either assigned or appointed, whenever
85 possible;

86 (b) required participation by each attorney in an approved
87 course of training in the fundamentals of criminal trial practice,
88 unless the attorney has a level of ability which makes such partici-
89 pation unnecessary;

90 (c) specific caseload limitation levels;

91 (d) investigative services;

92 (e) a method for the provision of social services or social service
93 referrals;

94 (f) availability of expert witnesses to participating counsel; and

95 (g) clerical assistance, interview facilities, and the availability of
96 a law library to participating counsel.

97 (7) The committee shall monitor and evaluate compliance with
98 the standards and the performance of counsel in its divisions in

99 order to insure the competent representation of defendants in all
100 courts of the commonwealth and shall establish a procedure for the
101 review and disposition of client complaints.

102 (8) The committee shall establish rates of compensation payable
103 to the private counsel division and those attorneys appointed
104 pursuant to paragraph twelve of this section, subject to appropria-
105 tion, that shall be paid to all counsel who are appointed or assigned
106 to represent indigents in accordance with the provisions of this
107 section. Such rates of compensation shall be reviewed periodically
108 at public hearings held by the committee at appropriate locations
109 throughout the state, and notice shall be given to all state, county
110 and local bar associations and other interested groups of such
111 hearings by letter and publication in advance of such hearings.
112 Such periodic review shall take place not less than once every two
113 years.

114 (9) All invoices regarding the appointment or assignment of
115 counsel shall be processed for payment within thirty (30) days of
116 receipt of such invoices duly certified by the justice hearing said
117 matter. All invoices processed for payment shall be processed in a
118 manner prescribed by the committee.

119 (10) The committee shall appoint a chief counsel, whose responsi-
120 bilities and duties shall be defined by the committee and shall
121 include, but not be limited to, the overall supervision of the work-
122 ings of the various divisions of the committee. The committee shall
123 further appoint two deputy chief counsel, whose duties shall be
124 defined by the committee, one of whom shall supervise the public
125 defender division and the other who shall supervise the private
126 counsel division. The committee shall also prescribe the proce-
127 dures for the appointment of all legal and non-legal staff of the
128 public defender division and for the procurement of suitable
129 accommodations as may be required to effectuate the purpose of
130 this section. The chief counsel shall authorize the certification of all
131 payments under section twenty of chapter twenty-nine of the
132 General Laws of Massachusetts. All legal and non-legal staff of the
133 public defender division shall be full time. The chief counsel and
134 deputy chief counsel shall likewise devote full time to their duties.
135 The chief counsel shall be paid at a rate commensurate with the
136 several district attorneys throughout the state. The salaries of the

137 deputy chief counsel shall be established by the committee. All
138 other legal staff of the public defender division shall be paid at a
139 rate commensurate with assistant district attorneys throughout the
140 state. The counsel and other employees appointed by the commit-
141 tee shall not be subject to the provisions of chapter thirty-one.

142 (11) All appeals and related post-conviction remedies of indi-
143 gent defendants shall be assigned to the public defender division,
144 except in cases of conflict of interest, which shall be handled by
145 appointed counsel as provided in paragraph twelve.

146 (12) In the extraordinary case where an attorney associated with
147 the public defender or private counsel division is unavailable for
148 assignment or appointment the justice or associate justice before
149 whom the indigent in need of counsel is brought shall so certify and
150 shall appoint counsel according to the laws of the commonwealth
151 and applicable rules of court. Such appointed counsel shall be paid
152 by the committee in accordance with the provisions of this section.

The following is a list of the names of the persons who were members of the Board of Directors of the National Board of Fire Underwriters in the year 1915. The names are arranged in alphabetical order.

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