

LOS ANGELES COUNTY PUBLIC DEFENDER FELONY READINESS PROTOCOL

This protocol outlines the process by which an attorney's first felony assignment is to be determined. For purposes of this protocol, a first felony assignment is deemed to be an adult felony trial court assignment.

This protocol does not apply to juvenile court assignments. Attorneys assigned to juvenile court who have not previously been deemed felony ready are subject to this protocol. This protocol does not apply to attorneys hired directly as DPDIIIs.

To be assigned to felonies, attorneys must first be determined "Ready," that is, having the necessary skills, knowledge, and motivation to handle a felony caseload. Once assessed "Ready for Felonies," the attorney is placed in the Ready for Felonies Pool. The goal of this system is to ensure that each attorney has the opportunity to be considered for a felony assignment after being deemed fully capable of handling a felony caseload, notwithstanding that attorney's tenure in the office.

Target Group for Ready for Felonies Determinations

1. All attorneys who were hired as DPDIs who are not currently assigned to an adult felony assignment (this includes misdemeanor and juvenile assignments) and who are not currently assessed Ready for Felonies will be evaluated quarterly to determine whether they are Ready. Typically, attorneys are not Ready for Felonies until they have been promoted to DPD II and have at least three years of experience as a deputy public defender. These attorneys must be evaluated to determine whether they are Ready for Felonies when they attain at least three years of experience as a deputy public defender, although a Head Deputy is not precluded from making this determination sooner.

Management Guidelines: Ready for Felonies Assessments

The Head Deputy bears the responsibility of determining whether attorneys under their supervision are deemed Ready for Felonies. Although a Deputy-in-Charge may assist in this endeavor, the Head Deputy is in a superior position to perform the function of assessing the felony readiness of attorneys under their supervision.

One of the main functions of the Head Deputy is to evaluate the performance of the attorneys to ensure that our clients receive effective assistance of counsel. This task is particularly critical as applied to less experienced, less independent attorneys who are still developing their skills and have not yet been assessed Ready for Felonies. Rather than waiting for the annual Performance Evaluation, Head Deputies are encouraged to provide more frequent feedback to the attorneys under their supervision to assist them in

developing their skills. This procedure does not require Head Deputies to do any more than they are already expected to do in preparing for annual Performance Evaluation reports. Thus, this procedure for determining felony readiness is consistent with the Head Deputy's fundamental duty to observe and evaluate attorneys.

Along with evaluating performance, the Head Deputy has the obligation to coach and mentor the attorneys, and to assist in their continued growth and development. In evaluating whether the attorney is Ready for Felonies, the Head Deputy must personally observe attorneys in areas critical to this process. Though the Deputy in Charge may assist in this endeavor, the Head Deputy is in a superior position to perform this duty, and ultimately, the Head Deputy bears the responsibility for rating the attorney.

Felony Readiness Assessment Criteria

In making the determination that an attorney is Ready for Felonies, Head Deputies and their immediate supervisors, are reminded that the determination cannot be made by resorting to a simple numerical formula (e.g., 25 jury trials completed to verdict equals Ready for Felonies) but, rather, Head Deputies are encouraged to consider the entire skill set that the attorney must possess in order to handle a felony caseload successfully. Head Deputies should be guided by the attorney's demonstrated proficiencies in all assignments in the office, and the numerous factors which are set forth in the Performance Evaluations, including but not limited to:

1. **Trial Experience:** The attorney's trial experience, including the number of jury trials conducted through deliberation, juvenile adjudications and court trials; the nature of the charges; the attorney's demonstrated mastery of fundamental trial skills and creativity;
2. **Case Representation Experience:** The attorney's experience handling more complex misdemeanor cases, serious juvenile cases, charges with priors, multi-count cases;
3. **Case Preparation Skills:** The attorney's skill and track record in appropriately and thoroughly preparing cases for trial and juvenile adjudication including but not limited to the appropriate use of investigators and experts; how well the attorney prepares witnesses and clients to testify; development of effective strategies for handling the case, etc.;
4. **Calendar Management Skills:** Whether the attorney effectively manages a calendar, including demonstrated proficiency in the critical skill of navigating a high-volume calendar, and possesses good organizational skills including competent file documentation;
5. **Case Negotiation Skills:** Whether the attorney demonstrates effective case negotiation skills and knowledge of alternative sentencing options; whether the attorney appropriately prepares for case disposition and sentencing including investigation of the client's background;

6. **Legal Research and Writing Skills:** The extent to which an attorney keeps current on the law, demonstrates effective issue spotting and research skills, and conducts an effective motion practice including the preparation of original written motions;
7. **Client Relations:** Whether the attorney maintains appropriate client relations, e.g., returns phone calls, conducts jail visits and video conferences, develops effective attorney-client relationships, and demonstrates the ability to represent difficult clients;
8. **Level of Training:** Participation in training relevant to a felony practice to include substantive law, procedure and sentencing issues, including calculating maximum exposure and understanding collateral consequences;
9. **Role/Attitude as a Deputy Public Defender:** Whether the attorney is effective, confident, appropriately assertive in the courtroom, and provides backup, coverage, and courtroom assistance to colleagues whenever the need arises. Regardless of the attorney's unique style or personality (whether soft-spoken or aggressive) what matters is that the attorney zealously advocates for the rights of their clients despite resistance from prosecutors, judges, witnesses, or the public.

Quarterly Assessments

Head Deputies are required to make quarterly assessments regarding the felony readiness status of eligible attorneys subject to this protocol and report the findings to their immediate supervisor when that attorney is deemed Ready for Felonies. The Head Deputy is responsible for making the initial assessment that the attorney is Ready for Felonies. However, the Head Deputy's recommendation is subject to review. The procedure for reporting the Ready for Felonies status will be as follows:

1. If a Head Deputy deems an attorney subject to this protocol Ready for Felonies, the Head Deputy reports the felony-readiness assessment to their immediate supervisor;
2. The Head Deputy's immediate supervisor reviews the Head Deputy's assessment for compliance with this protocol within two weeks of receipt of the assessment from the Head Deputy and, if in agreement with the Head Deputy's determination, approves the felony readiness assessment.
3. The Head Deputy notifies the Leadership Team that the attorney has been deemed Ready. For purposes of this protocol, Leadership Team includes, Chief Deputy, Chief of Staff, Assistant Public Defenders, and Division Chiefs;
4. The Leadership Team is responsible for maintaining a pool of Felony-Ready Attorneys that is accessible to all Head Deputies;
5. All Ready for Felonies assessments will be reported quarterly, within 30 days after the end of the quarter, as follows: **April 30**, for the quarter ending March 31; **July 30**, for the quarter ending June 30; **October 30**, for the quarter ending September

30; and **January 30**, for the quarter ending December 31. Thus, all attorneys on a Ready for Felonies Pool will have one of four dates in a given year: **March 31, June 30, September 30, and December 31**;

6. As felony assignments become available, Head Deputies will fill those assignments with people who are in the Ready for Felonies Pool, with consideration given to the attorney's stated preferences and consideration given to attorneys who have been in the Ready for Felonies Pool the longest.

Documentation and Counseling

When an attorney is deemed Ready for Felonies, the Head Deputy shall communicate this to the attorney and document the felony-readiness assessment. Head Deputies may assign felony "handoffs" to misdemeanor attorneys who have been assessed "ready" for a felony assignment.

When an attorney subject to this protocol is assessed Not Ready for Felonies, the Head Deputy is not required to forward the Not Ready assessment to their immediate Supervisor. In these instances, the Head Deputy shall offer to meet with the attorney and inform that attorney of the assessment and advise the attorney of the specific reasons for the assessment (e.g., needs more trials, more attention to motion work, better client relationship, etc.). The Head Deputy shall document this meeting including the date the Head Deputy advised the attorney of the assessment and the reasons supporting the assessment. The documentation may be brief, (e.g. "attorney needs to try more cases, attorney needs to demonstrate better use of investigations", etc.)

Change in Status from "Ready" to "Not Ready"

There may be situations when an attorney has previously been assessed Ready for Felonies, but subsequently is determined to be Not Ready. The same or a different Head Deputy may make such a determination in consultation with that Head Deputy's immediate supervisor. It is imperative that such change in status be fully documented in a memo. The memo shall be provided to the assessment Head Deputy's immediate supervisor. It is critical that the Head Deputy meet with the attorney and counsel them about any issues that have caused the change of assessment from Ready for Felonies to Not Ready for Felonies. The same procedure will be employed regardless of whether it is the same or a different Head Deputy that changes the assessment in consultation with their immediate Supervisor. The Ready for Felonies Pool shall be modified to reflect the change in felony-readiness assessment.

Head Deputy Communication

A practice of open communication between Head Deputies regarding the performance issues of attorneys who have been transferred is strongly encouraged. Since attorneys are transferred from one assignment to another at various stages of development, the receiving and sending Head Deputies should communicate with one another to discuss the attorney, including the strengths and weaknesses of their performance. For example,

if the sending Head Deputy believes that the attorney needs more attention in the area of investigations, the receiving Head Deputy is placed on notice and may choose to monitor the issue and give the attorney support in this area. While the receiving Head Deputy is not bound by the previous Head Deputy's assessment, it is anticipated that in most instances Head Deputies will generally make the same assessments.

Assignment of Adult Felony Trial Matters to Misdemeanor Attorneys Not Yet Deemed Ready for Felonies

There may be a small number of misdemeanor attorneys who, although not ready for the responsibilities of a full adult court felony calendar, are sufficiently trained and experienced to handle a specific lower-grade, adult-court felony trial. Assigning such a felony trial to such an attorney may occur when necessary to meet operational needs. It shall not occur simply to showcase a particular attorney or to give felony trial experience to a particular attorney who has not been assessed Ready for a felony assignment.

It is recognized that from time to time circumstances necessitate a felony case proceeding to trial within the statutory time or without further continuance where the assigned attorney is not available to try the case. Examples are situations where the court has indicated no further continuances; where the client refuses to waive time and there is no cause to continue the case other than that the assigned attorney is not available; or where strategic reasons exist for trying the case without delay.

In such situations the Head Deputy shall:

1. Make an initial determination as to whether a second attorney has sufficient time to become prepared to try the case;
2. If so, the case may first be assigned to a felony attorney within the branch;
3. Alternatively, the Head Deputy may assign the case to a misdemeanor attorney who has been assessed Ready for a felony assignment;
4. If none of the above attorneys are available, and the Head Deputy has identified a misdemeanor attorney who has not yet been deemed felony ready to try the case, that Head Deputy may make such a case assignment in consultation with their immediate supervisor.