

Resolution Concerning Excessive Public Defender Caseloads
In Miami-Dade County, Florida

June 5, 2008

The American Council of Chief Defenders (ACCD) is a national organization whose membership includes the leaders of state, county, and city public defender and assigned counsel agencies throughout the United States. The ACCD is dedicated to the preservation of the constitutional right to counsel for poor people charged with criminal offenses, as enunciated by the United States Supreme Court in *Gideon v. Wainwright*, 372 U.S. 335 (1963). The ACCD furthers this goal by providing support and assistance to its member programs, particularly those whose lack of adequate resources or political independence threatens the provision of competent representation that comports with constitutional norms.

Excessive public defender caseloads are of grave concern to the ACCD, because a reasonable caseload is the *sine qua non* of effective public defender representation of indigent clients. No lawyer, no matter how capable or how experienced, can provide effective representation to *any* client, when he or she is saddled with the responsibility of representing far too many clients.

The imperative to limit public defenders' caseloads to a reasonable level that allows them to provide sufficient time and attention to each client's case finds official support in the ABA's *Ten Principles of a Public Defense Delivery System*. Specifically, ABA Principle Number 5 requires simply that: "Defense counsel's workload is controlled to permit the rendering of quality representation."

In August, 2007, the ACCD completed a comprehensive review of the caseload standards established by the National Advisory Commission on Criminal Justice Standards and Goals in 1973 (NAC). The NAC standards called for the caseloads of public defenders not to exceed 150 per year for felony cases, not to exceed 200 per year for juvenile court cases, and not to exceed 400 per year for misdemeanor cases. These limits are exclusive of one another and assume that attorneys are handling a single type of case for the entire year. If there are mixed caseloads, then the standards need to be adjusted to reflect the proportion of each type of case within the total year's caseload.

On August 24, 2007, after full discussion among its membership, our organization issued its ACCD statement on Caseloads and Workloads, which reads, in pertinent part:

The ACCD recommends that public defender and assigned counsel caseloads not exceed the NAC recommended levels of 150 felonies, 400 non-traffic misdemeanors, 200 juvenile court cases, 200 Mental Health Act cases, or 25 non-capital appeals per attorney per year. These caseload limits reflect the maximum caseloads for full-time defense attorneys, practicing with adequate support staff, who are providing representation in cases of average complexity in each case type specified.

Although the ABA's *Providing Defense Services* does not endorse the specific caseload limits of the NAC, they do state in a black-letter standard that defenders should not "accept workload that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations." *ABA Standards for Criminal Justice: Providing Defense Services*, Standard 5-5.3, p.67-68 (3d Ed. 1992) (black-letter standards approved by ABA House of Delegates Aug. 8, 1990).

Of course, attorney workload is more than just caseload. While numerical caseload standards are important, they do not capture the whole picture. "[N]ational caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's non-representational duties) is a more accurate measurement." ABA, *The Ten Principles of A Public Defense Delivery System*, (Feb. 2002) (Report to the ABA House of Delegates No. 107 (adopted Feb. 5, 2002)).

Workload," as used in this standard, is to be distinguished from the more narrow term "caseload." Caseload is the number of cases assigned to an attorney at any given time. Workload is the sum of all the work performed by the individual attorney at any given time, which includes the numbers of cases to which the attorney is assigned, but also includes other tasks for which the attorney is responsible.

ABA Standards for Criminal Justice: *Providing Defense Services*, Standard 5-5.3, p.68 (3d Ed. 1992) (history of standard).

In addition to workload standards, professional associations and courts have adopted attorney performance standards applicable to indigent defense attorneys. A criminal defense attorney's "obligations include, but are not limited to, the responsibilities to keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; communicate effectively on behalf of and with clients; control workload so each matter can be handled competently; The Rules provide no exception for lawyers who represent indigent persons charged with crimes." ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 06-441 (2006).

In recent weeks, the ACCD has learned of the abnormally high workload and caseload levels that have beset the Office of the Public Defender for the 11th Judicial Circuit of

Florida ("PD-11"). In a conference call on May 27, 2008 with the elected Public Defender who heads that office, Bennett H. Brummer, and staff, the members of the ACCD Executive Committee learned that the caseloads currently being handled by the attorneys employed by that office are flagrantly excessive and in violation of long-established maximum allowable caseload standards. ACCD has also reviewed the caseloads of the assistant public defenders who work for PD-11. By any measure, these caseloads are too high and would threaten any lawyer's ability to render effective assistance of counsel, regardless of the experience level of that attorney.

The ACCD has also been apprised of the many local factors that increase case-related workload for PD-11. For instance, interpreters are needed in many cases, making many interviews twice as long and cumbersome. Traveling to jails or crime scenes in Miami-Dade County is subject to serious traffic congestion and delays. The Miami-Dade Department of Corrections lacks the staff and interview space to facilitate client interviews, resulting in wasted attorney time. Turnover in the State Attorney's Office, caused by many of the same forces affecting turnover in PD-11, creates delays and replication of efforts as new prosecutors assume responsibility for, and drop out of, cases. Finally, the Florida Legislature has made available to the prosecution several statutory avenues to increase prison sentences. Such sentencing "enhancements" increase workload by making even a third-degree felony case considerably more serious than it might first appear.

The caseloads in PD-11 far exceed nationally-recognized standards, which the ACCD has recently reaffirmed. Such a situation places the office's lawyers at risk of delivering ineffective and incompetent representation, places the criminal justice system at risk of providing an unfair and unjust adjudication process, places clients at risk of being found guilty when innocent, and places victims and the community at risk of continued victimization by guilty individuals while the innocent sit in prison at taxpayer expense.

In consideration of this information, the American Council of Chief Defenders hereby **RESOLVES:**

(1) that the caseloads of the assistant public defenders employed by the Office of the Public Defender for the 11th Judicial Circuit of Florida, being far in excess of long-established and recently reaffirmed national limits, are so excessive as to frustrate the provision of minimally adequate legal representation to each indigent client, as required by the *Gideon* decision and its progeny;

(2) that the elected Public Defender who heads that office, Bennett H. Brummer, by presenting his proposed certification of conflict of interest and motion for appointment of other counsel, is acting in strict accordance with his ethical responsibilities under the ACCD Ethics Opinion 03-01 (4) (April, 2003) ("[T]he chief executive of a public defense agency is required to decline excessive cases."), and with the Conclusion thereof, which states:

A chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency's attorneys to provide competent, quality representation in every case...

When confronted with a prospective overloading, of cases or reductions in funding or staffing which will cause the agency's attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases.

(3) that the elected Public Defender, Bennett H. Brummer has acted in compliance with the American Bar Association Ethics Committee Formal Opinion 06-441 (2006), which further establishes the ethical responsibility of a Public Defender to seek relief whenever excessive caseloads threaten the provision of competent and diligent representation to every client;

(4) that the American Council of Chief Defenders, whose members understand through their own experiences the complexity and difficulty of case overload situations, offers its continuing availability as a resource upon which the elected Public Defender, Bennett H. Brummer, and his office may wish to draw as it undertakes to address the very serious case overloads presented by the situation that has given rise to this Resolution.

Resolved, this 5th day of June, 2008



Fern M. Laethem, Chair
American Council of Chief Defenders