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National Legal Aid & Defender Association

BY FEDERAL EXPRESS

February 11, 2011

President Toni Preckwinkle and
Members of the Cook County Board of Commissioners
County Building
118 N. Clark Street - Room 537
Chicago, IL 60602

RE: Professional Independence and Ethical Workloads

Dear President Preckwinkle and Cook County Board of Commissioners:

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 professional and political independence or lack of adequate resources threatens the provision of competent representation that comports with constitutional norms.

The ACCD writes to you today about our concerns about the effect on public defender independence and workloads in Cook County, Illinois of the County's proposal to reduce the funding provided to the Cook County Office of the Public Defender.

Professional independence is an essential national standard for the proper delivery of public defense services. Nothing threatens a poor person's constitutional right to the effective assistance of counsel as much as political interference with the professional operation of a public defender office. The American Bar Association's (ABA) *Ten Principles of a Public Defense Delivery System* (February, 2002)(copy attached) has as its first principle the requirement that "The public defense function, including the selection, funding, and payment of defense counsel, is independent."

In August, 2007, the ACCD completed a comprehensive review of the caseload standards established by the National Advisory Commission (NAC) on Criminal Justice Standards and Goals in 1973. The NAC standards called for the caseloads of public defenders providing representation in felony cases not to exceed 150 per year, for the caseloads of public defenders providing representation in juvenile court cases not to exceed 200 per year, and for the caseloads of public defenders providing representation in misdemeanor cases not to exceed 400 per year. 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.

The *ACCD Statement on Caseloads and Workloads* (August 24, 2007) (copy attached), recognizes maximum ethical workload levels:

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 fulltime defense attorneys, practicing with adequate support staff, who are providing representation in cases of average complexity in each case type specified.

The caseloads in the Cook County's public defender office far exceed these nationally recognized standards. This 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 adjudications, 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.

The ACCD and the ABA definitively find that when caseloads exceed those that public defender lawyers can handle competently, the chief public defender has the ethical duty to protect the office's clients by seeking a remedy. It was the need to achieve compliance with these caseload standards, comply with his ethical responsibility, and protect his clients' right to counsel that requires Public Defender Abishi C. Cunningham to resist budget reductions that seriously impair the right to counsel in Cook County. In an office which already falls short of the national standards, any reduction in budget would make the risks mentioned above a reality. Both the ACCD Ethics Opinion 03-01 (2003) and the American Bar Association Ethics Committee Formal Opinion 06-441 (2006) place responsibility on the Chief Public Defender to take action to avoid caseloads that would endanger his or her client's right to counsel.

A reduction in the funding for public defense will seriously slow the resolution of cases. That means more continuances, more time of defendants in Cook County Jail, at increased costs to taxpayers.

We ask that you insure public defender independence and ethical workloads in Cook County, Illinois by providing adequate funding to the public defender office.

Sincerely,



Edward C. Monahan

Chair

American Council of Chief Defenders