

LOUISIANA PUBLIC DEFENDER BOARD



EQUAL JUSTICE FOR ALL

John Bel Edwards Judge Robert J. Burns (Ret.) James T. Dixon, Jr.
Governor Chairman State Public Defender

TO: ALL LOUISIANA PUBLIC DEFENDERS
FROM: LOUISIANA PUBLIC DEFENDER BOARD
RE: WORKLOAD STUDY AND STATEWIDE CASE REFUSAL MOTIONS
DATE: MARCH 18, 2016

As all of you know, in 1963, beginning with its famous *Gideon* decision, the United States Supreme Court made clear that all states, including Louisiana, have a constitutional duty to provide a lawyer for persons unable to pay for one when charged with criminal offenses or prosecuted in juvenile delinquency proceedings. More than a half century later, Louisiana has yet to fulfill this fundamental constitutional mandate.

As a result, our criminal courts are now in a state of near total collapse and public safety is imperiled. Unlike the rest of the country, a wholly inadequate and unpredictable system of parish fines and fees funds much of the cost of this constitutional obligation.

Faced with the current daunting challenge, we have taken the following actions that we want to communicate to each of you.

First, public defenders in five of our offices, including New Orleans and Baton Rouge, have instituted permanent timekeeping. This pilot program will soon become a statewide duty of every Louisiana public defender and will enable the LPDB to determine in much greater detail what its public defenders actually do.

Also, we have retained Louisiana's largest accounting and consulting firm, Postlethwaite & Netterville (P&N), and the American Bar Association (ABA), to perform a study of the workload of Louisiana's public defenders. This study is based upon a methodology developed by the Rand Corporation, and will determine the amounts of time that Louisiana public defenders need in order to

provide reasonably effective representation to their clients and comply with their ethical duties to provide competent and diligent legal services.

The P&N/ABA study will apply ABA standards that have been agreed upon by highly respected prosecutors, judges, defense lawyers, and law professors. The vast majority of the funds required for this study are being provided by a private foundation, so the cost to the state of Louisiana is minimal.

As a result, the LPDB soon will be the only agency in Louisiana's criminal justice system able to report to the people of Louisiana what its lawyers are *actually doing* and what they *should be* doing with the taxpayer money they receive for their work. The LPDB will then be the most accountable, the most reliable, the most responsible and most transparent actor in Louisiana's criminal justice system.

Louisiana public defenders are now implementing our Restriction of Service Rule and telling the courts that because they have too many cases they cannot provide reasonably effective assistance of counsel to each of their clients as required by law, and so they must decline new appointments. This action is not only courageous, but it is in the highest traditions of the American legal profession and in complete accord with the duty of lawyers to ensure that they are providing ethically and constitutionally adequate representation to their clients. To fail to take this action is to risk wrongful convictions of accused persons, which has occurred all too frequently in Louisiana and other states.

Two recent state Supreme Court decisions, in Missouri in 2012 and Florida in 2013, also support the kind of action Louisiana public defenders are taking. Consistent with the ethical duties of lawyers, both courts confirmed that when public defenders have workloads that are so excessive that they can no longer represent their clients competently, they must decline further appointments. And if a trial judge orders such a public defender to provide representation that would be unethical, that trial judge's order should be reversed by an appellate court.

The final P&N/ABA workload study report is due to be published this September. We know that Louisiana ranks near the bottom of the states in terms of per capita funding for indigent defense. So should the study conclude that

Louisiana needs more public defenders, we will have the data and analytics developed in the P&N/ABA workload study necessary to support that position. We will then publish a Statewide Maximum Caseload Rule authorizing case refusal motions when the P&N/ABA data and analytics demonstrate that we have reached our maximum caseloads. This rule will be a lot like our existing Restriction of Services Rule, with one notable exception: it will have reliable data and analytics produced by the P&N/ABA report that will provide compelling evidence for case refusal motions.

We are taking these actions to support all of our District Defenders and every public defender in Louisiana, as each of them courageously resists the calls from every other branch of government that they abandon their sworn commitment to abide by the Louisiana Rules of Professional Conduct that compel them to refuse to accept excessive workloads and to insist that they maintain their ability to provide competent and effective representation to each of their clients.

Stephen F. Hanlon, General Counsel for the National Association for Public Defense (“NAPD”), will assist us in these matters. Mr. Hanlon has been doing indigent defense work around the country for the past twenty years. He is currently the Project Director for our workload study, as well as similar studies in Colorado, Tennessee and Rhode Island. He was the Project Director for the workload study done in Missouri, available at www.indigentdefense.org, the study upon which these studies are based. Mr. Hanlon was also the lead counsel for the Missouri State Public Defender in the Missouri Supreme Court case referred to above.

In addition, Dean Emeritus Norman Lefstein of Indiana University, the foremost authority in the country on the delivery of indigent defense services will assist us in these matters. Professor Lefstein previously has served as an expert witness in indigent defense litigation in Louisiana and in a number of other state and federal jurisdictions. The vast majority of the funds required for this effort are being provided by a private foundation, so the cost to the state of Louisiana is minimal.

We will keep you periodically advised of our efforts in these matters. A Preliminary Report on the P&N/ABA workload study will be published in early June, 2016, and we will make that report available to you as soon as it is available.