

Paulette Brown
President

AMERICAN BAR ASSOCIATION

321 North Clark Street
Chicago, IL 60654-7598
(312) 988-5109
Fax: (312) 988-5100
abapresident@americanbar.org

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The Honorable John Bel Edwards
Governor of Louisiana
P.O. Box 94004
Baton Rouge, LA 70804-9004

Dear Governor Edwards:

I write on behalf of the American Bar Association (ABA) regarding Louisiana's public defense and the challenges the state faces due to budget shortfalls. With more than 400,000 members—including over 6,000 in Louisiana—the ABA is the voice of the legal profession in the United States. Since its inception, the ABA has promoted ethical and effective legal representation for all clients.

Louisiana's \$1.6 billion budget shortfall undoubtedly requires difficult decisions, including cuts to critical services. But public defense is one service that cannot be cut. Already, scores of Louisiana public defenders are saddled with workloads that are, by any measure, excessive. To avoid ethical, constitutional, and statutory violations, the Louisiana Public Defender Board recently announced implementation of statewide service restrictions pursuant to ABA guidelines and state protocol. Cutting nearly 62% of the public defense budget would exacerbate the current workload problem, threatening mass constitutional and ethical violations, as well as likely increasing wrongful conviction and mass incarceration. It also would require additional service restrictions on a scale unprecedented in the history of American public defense. Consequently, the ABA requests that you ensure that Louisiana public defense is sufficiently funded so that attorneys may meet their constitutional and ethical obligations.

This is a critical moment for public defense in the United States. Louisiana has an opportunity to serve as a model for governments balancing budget shortfalls and lawyers' constitutional and ethical duties. The ABA stands ready to assist you.

Louisiana's public defender workloads are excessive.

Significant cuts will exacerbate very difficult challenges faced by Louisiana's public defenders. For years, Louisiana public defenders have carried excessive workloads. *See State v. Peart*, 621 So. 2d 780, 784, 790 (La. 1993) (excessive workloads led to ineffective assistance of counsel); *see also* Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* 102-05, 163-66 (ABA 2011) (history of

excessive workloads in Louisiana); National Association of Criminal Defense Lawyers, *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts* 21 (2009) (some New Orleans defenders handled 19,000 cases per attorney per year). Although there is abundant evidence of excessive workloads, the full extent of the problem is yet unknown. For this reason, the ABA, working with Louisiana accounting firm Postlethwaite & Netterville, is conducting a public defender workload study. The results of this study will be available later this year.

Louisiana public defenders have an ethical, constitutional, and statutory duty to control their workloads.

Ethics

Significant budget cuts will cause Louisiana public defenders to face choices that will be bound by clear ethical restrictions. Louisiana public defenders have an *ethical* duty to maintain reasonable workloads. The Louisiana Rules of Professional Conduct demand competent and diligent legal representation. *See* La. R.P.C. 1.1(a), 1.3; ABA Model Rules 1.1, 1.3. This requires that a lawyer's "workload . . . be controlled so that each matter can be handled competently." La. R.P.C. 1.3, Comment 2; ABA Model Rule 1.3, Comment 2. This mandate applies with equal force to public defenders. *See* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 06-441 (2006). In addition, supervising attorneys must make a reasonable effort to ensure that their lawyers conform to these rules and "take reasonable remedial action" if a supervisee violates them. La. R.P.C. 5.1(b); ABA Model Rules 5.1(b)-(c).

Constitution

Louisiana public defenders, like public defenders everywhere, also have a *constitutional* duty to maintain reasonable workloads. The Sixth Amendment requires that defense attorneys provide reasonably effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The ABA Criminal Justice Standards, which reflect the prevailing professional norms regarding effective representation, require that criminal defense lawyers investigate, research the law, communicate with clients, negotiate with prosecutors, file appropriate motions, and prepare for court. ABA Defense Function Standards 4-3.1, 4-3.3, 4-3.9, 4-4.1, 4-4.6, 4-5.1, 4-5.2, 4-6.1, 4-6.2, 4-6.3, 4-7.11, 4-8.1 (4th ed., approved Feb. 2015); *see also* *Padilla v. Kentucky*, 559 U.S. 356, 367 (2010) (ABA Standards reflect prevailing professional norms). Regardless of how many clients they represent, attorneys must complete these tasks in each case prior to trial or plea. *See id.* at 4-4.1; 4-6.1(b). Accordingly, attorneys should not carry workloads that interfere with quality representation or professional obligations. *Id.* at 4-1.8(a); *see also* *ABA Ten Principles of a Public Defense Delivery System*, Principle 5 (2002) ("Defense counsel's workload is controlled to permit the rendering of quality representation.").

Statute

Finally, in Louisiana, public defenders have a *statutory* duty to maintain reasonable workloads. Under the Louisiana Public Defender Act, the Louisiana Public Defender Board (LPDB) must adopt rules that ensure "[m]anageable public defender workloads that permit the rendering of competent representation" *See* La. R.S. §

15:148(B)(1)(a). In 2012, LPDB adopted its Service Restriction Protocol, in which it recognized that “excessive caseloads affect the quality of representation” and implicate both ethical obligations and the right to effective assistance of counsel pursuant to the Sixth Amendment. LAC 22:XV.17, § 1701(B)-(C), 813-14 (2012).

ABA Guidelines and Louisiana protocol require service restriction when necessary to achieve reasonable workloads.

When workloads are excessive, public defenders must take steps to ensure compliance with their ethical, constitutional, and statutory duties. The *ABA Eight Guidelines of Public Defense Related to Excessive Workloads* (2009) recommend prompt action, including the following:

- Curtailing new case assignments to the affected lawyers;
- Negotiating formal and informal arrangements with courts or other appointing authorities respecting case assignments; and
- Notifying courts or other appointing authorities that the Provider is unavailable to accept additional appointments.

Eight Guidelines, Guideline 5, 9 (2009). If these actions fail, public defenders must move to stop new case assignments. *Id.* at Guideline 6; *see also* La. R.P.C. 1.16; ABA Model Rule 1.16 (lawyers must decline or withdraw from cases when representation would result in violation of the rules). Similarly, LPDB’s Service Restriction Protocol requires that, when excessive workloads occur and there are no viable alternatives, defenders engage in service restriction. LAC 22:XV.17, § 1709, 815-16 (2012).

Private assigned counsel must be competent and reasonably compensated.

Recently, in conformity with its protocol, LPDB announced implementation of a statewide restriction of services plan. In response, some Louisiana judges have begun drafting private counsel, many of whom have little or no criminal defense experience. The private bar is an important part of public defense provision. *See ABA Ten Principles*, Principle 2 (2002) (“Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.”). However, private counsel must be competent and should receive reasonable compensation for their services. *See Eight Guidelines*, Guideline 5 (allowing “some cases to be assigned to private lawyers in return for reasonable compensation for their services”); *see also ABA Providing Defense Services* (1992) Standard 5-1.6 (“Government has the responsibility to fund the full cost of quality legal representation for all eligible persons”); *Id.*, Standard 5-2.4 (“Assigned counsel should receive prompt compensation at a reasonable hourly rate”).

Louisiana must adequately fund public defense.

This is a critical time for Louisiana with respect to public defense. Actions taken by judges, lawyers, and policymakers now will affect the provision of public defense for years to come. The ABA asks that you do everything in your power to ensure that Louisiana public defense is properly funded so that attorneys may meet their constitutional and ethical obligations.

The ABA appreciates your attention to this urgent challenge and stands ready to assist you. Under your leadership, Louisiana can emerge as a model for public defense reform in the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "Paulette Brown", with a long, sweeping horizontal line extending to the right.

Paulette Brown

cc: The Honorable Bernette J. Johnson, Chief Justice, Louisiana Supreme Court
Senator John A. Alario, Jr., President, Louisiana State Senate
Representative Taylor F. Barras, Speaker, Louisiana House of Representatives