



ORLEANS PUBLIC DEFENDERS

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December 11, 2015

Honorable Arthur Hunter, Jr.
Section K
Orleans Parish Criminal District Court
2700 Tulane Avenue
New Orleans, LA 70119

Dear Judge Hunter:

In June, I informed all criminal justice stakeholders and decision makers that the Orleans Public Defenders Office (“OPD”) will institute a Restriction of Services (“ROS”) Plan in Fiscal Year 2016. On July 1, 2015, the first day of FY2016, OPD entered into ROS, and OPD’s ROS plan was officially approved by the Louisiana Public Defender Board on December 1, 2015. OPD continues to be in ROS.

As part of its ROS plan, OPD implemented a number of cost cutting measures, including a hiring freeze and cuts to its operational expenses. As stated in my June notice and letter, I expected workload for OPD staff to rise over time to unacceptable levels. In the past five months, OPD has experienced accelerated attrition, particularly at the more senior attorney level. This attrition, coupled with the ongoing hiring freeze, means that too few attorneys now bear the responsibility of defending far too many defendants. Our workload has now reached unmanageable levels resulting in a constitutional crisis. OPD’s staff is now too under-resourced and overburdened to provide constitutional and ethical representation to many defendants charged with crimes in our city, and OPD will soon be forced to decline representation in those cases.

On November 20, 2015, Judge Arthur Hunter took testimony on the question of whether OPD can provide constitutional, ethical representation for its clients. Five witnesses testified, including three experts on ethics and criminal defense practices.¹ Those witnesses reviewed OPD’s practices and caseloads, as set forth in the affidavits of myself, six staff attorneys, and one staff investigator. Those affidavits are attached to this letter.² The unanimous conclusion was that, in light of current caseloads, OPD cannot provide constitutional, ethical representation to its clients.

Specifically, the experts at the hearing concluded that, due to lack of resources and excessive caseloads, OPD attorneys regularly violate the following Louisiana Rules of Professional Conduct: 1.1 Competence, 1.3 Diligence, 1.4 Communication, 1.6 Confidentiality of Information, 1.7 Conflict of Interest: Current Clients, 1.16 Declining or Terminating Representation, 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers, and 5.2 Responsibilities of a Subordinate Lawyer.

¹ The witnesses were myself, State Public Defender James Dixon, professor Ellen Yaroshefsky, professor Robert Boruchowitz, and Barry Scheck.

² Transcripts of the testimony of the witnesses will be provided when a full transcript of the hearing is completed and made available to OPD.

The Rules of Professional Conduct are black letter law in Louisiana.³ Further, failure to abide by these standards directly implicates the requirements of the United States and Louisiana Constitutions. Both of those constitutions require indigent defendants be appointed competent counsel to represent them. Ethically, attorneys must not accept additional duties of representation when such an acceptance would prevent them from providing competent representation to either their current or their prospective clients.

In addition to the ethical and constitutional concerns placed on my staff attorneys, as Chief District Defender, my responsibilities are governed by the Louisiana Public Defender Board Trial Court Performance Standards, as codified in the Louisiana Administrative Code.

According to LAC 22:XV.707, General Duties of Defense Counsel:

E. When counsel's caseload is so large that counsel is unable to satisfactorily meet these performance standards, counsel shall inform the district defender for counsel's judicial district and, if applicable, the regional director, the court or courts before whom counsel's cases are pending. If the district defender determines that the caseloads for his entire office are so large that counsel is unable to satisfactorily meet these performance standards, the district defender shall inform the court or courts before whom cases are pending and the state public defender.

The American Bar Association has also promulgated rules regarding the appropriate course of action when attorneys have excessive caseloads.

Standard 4-1.8 of the Criminal Justice Standards for the Defense Function, entitled "Appropriate Workload" reads:

A defense counsel whose workload prevents competent representation should not accept additional matters until the workload is reduced, and should work to ensure competent representation in counsel's existing matters. Defense counsel within a supervisory structure should notify supervisors when counsel's workload is approaching or exceeds professionally appropriate levels. . . . If workload exceeds the appropriate professional capacity of a publicly-funded defense office or other defense counsel, that office or counsel should also alert the court(s) in its jurisdiction and seek judicial relief.

Since the November 20th hearing, OPD has experienced additional attrition at its most senior practice level. As Chief Defender, I cannot ethically assign cases to attorneys who lack the requisite experience and training to represent defendants charged with serious offenses.

As a result and in compliance with my obligations pursuant to LAC 22:XV.707 and ABA Criminal Justice Standard 4-1.8, OPD will be declining representation in certain felony cases in Criminal District Court at their First Appearance in Magistrate Court. Further, systemic and specific notice will be forthcoming. I expect OPD to begin declining cases by mid-January 2016. Declination of appointment will continue on if the case is accepted and assigned to a section of the Criminal District Court. Defendants who are billed at large without arrest will also be declined starting the week of January 11, 2016. Additionally, OPD will begin immediately declining cases assigned as a consequence of private counsel withdrawal.

OPD anticipates its inability to accept appointment will continue until caseloads decrease to acceptable levels or until additional funding is provided that would permit OPD to lift its hiring freeze to hire additional experienced attorneys. We regret the hardships these service restrictions will undoubtedly cause, but this is not a problem of OPD's making. OPD needs adequate, stable

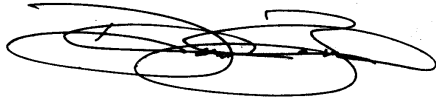
³ *Walker v. DOT*, 817 So. 2d 57 (La. 2002); *Leenerts Farms, Inc. v. Rogers*, 421 So. 2d 216 (La. 1982).

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and reliable funding and resources. Our user-pay criminal justice system is inadequate, unpredictable and unreliable, and hinders OPD's ability to keep up with the growing demands of our criminal justice system. Failure to provide those resources means the problems outlined above will recur, and the criminal justice system in our city will continue to present constitutional and ethical concerns about the rights of New Orleans's indigent citizens.

If you have any questions, please do not hesitate to contact my office at 504-827-8204 or email me at dbunton@opdla.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Derwyn D. Bunton', with a stylized flourish at the end.

Derwyn D. Bunton
Chief District Defender