



August 16, 2016

Houston County Board of Commissioners
200 Carl Vinson Parkway
Warner Robins, Georgia 31088

Dear Commissioners,

We are the National Association for Public Defense (NAPD). We are an association of more than 14,000 public defenders and public defense professionals, including the staff of over 100 organizations from around the nation. Our purpose is to be a “focused voice to address the systemic failure to provide the constitutional right to counsel, and to collaborate with diverse partners for solutions that bring meaningful access to justice for poor people.” It is out of that purpose that we write to you.

We are deeply concerned about the recent employment action. We became aware of the recent employment action through the news media. The more we have learned more about this termination, the more concerned we are that the termination violates national standards related to providing public defense services. In 2002, the American Bar Association House of Delegates passed *its Ten Principles of a Public Defense Delivery System*. The ABA recommended “jurisdictions use these *Principles* to assess promptly the needs of public defense delivery systems and clearly communicate those needs to policy makers.”

We believe that termination of a public defender chief without cause violates Principle #1 of the ABA *Ten Principles*. Principle #1 reads that, “the public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems...The selection of the chief defender and staff should be made on the basis of merit...”

Nick White was not terminated on the “basis of merit.” Rather, he was terminated in order to “move in a different direction.” The head of a public defender office is a vital position. He or she should be chosen, evaluated, and terminated only based upon merit and not politics. The chief defender recruits and trains for excellence. She establishes an office culture that respects clients. She creates office policies that place a premium on quality. Peoples’ lives and futures depend upon the quality of their public defender. Merit should be the only criteria used in the selection and termination of a chief defender, a principle violated in this instance. It would be appropriate and indeed, likely a core responsibility, for the oversight commission to review the performance of the staff it supervises. To our knowledge, no written performance evaluations were done, no corrective action plans were suggested, and no opportunity for review or discussion between the leader of the public defender system and the oversight body was provided prior to termination.

To leave no doubt, the Commission admitted in public statements that the firing was done without cause. The act of terminating the head of the public defender office without cause necessarily implies that the decision was motivated by with “political influence.” By making a

political decision regarding the chief defender, the Commission has violated the principle of independence and cast a shadow over the quality of counsel that will be rendered in the future in Houston County.

Lawyers who supervise other lawyers are bound by the ethical requirements of the legal profession to advocate for sufficient reasons to provide their services effectively.

Excessive workloads harm many public defense systems in the US. Excessive workloads deprive public defenders of the time they need to represent adequately their clients. It renders them constitutionally ineffective, imperiling the administration of justice.

The ABA has taken a strong position against excessive workloads for public defenders. Principle #5 of the ABA *Ten Principles* reads that, "Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels."

Model Rule of Professional Responsibility 5.1(b) states that, "A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct."

ABA Formal Opinion 06-441, relying on 5.1, states that public defender "...supervisors must, working with the lawyers they supervise, monitor the workload of the subordinate lawyers to ensure that the workloads are not allowed to exceed that which may be handled by the individual lawyers. If a supervisor knows that a subordinate's workload renders the lawyer unable to provide competent and diligent representation and the supervisor fails to take reasonable remedial action, the supervisor is responsible for the subordinate's violation of the Rules of Professional Conduct."

ABA *Eight Guidelines of Public Defense Related to Excessive Workloads* requires the public defense provider to avoid "excessive lawyer workloads and the adverse impact that such workloads have on providing quality legal representation to all clients."

Together, these ethical rules clearly state that when the chief public defender determined that his attorneys had too many cases to provide an ethical level of representation to their clients, he was ethically obligated to bring that fact to the attention of the Houston County Commission. This Commission, by terminating the chief public defender for his advocacy of reasonable workloads, has abandoned its responsibilities as a "provider" and caused the attorneys working for the Houston County Public Defender Office to commit ethical violations.

We are concerned when a chief public defender is not accorded fundamental due process.

Due process is fundamental in our society and in public defense. Public defense staff should be accorded due process in all employment actions. Most public defense organizations maintain a system of progressive discipline, the right to be heard, and the right to challenge wrongful termination. It has come to our attention that the chief defender was called into a meeting of the Houston County Commission and terminated on the spot. He had never received a negative evaluation. He was never given a performance improvement plan. He was not given the opportunity to change behavior the Commission found offensive. He was not told why he was being terminated. Instead, he was terminated with no protection, and no opportunity for appeal. NAPD is deeply troubled by these actions. That the oversight body could trample the rights of its staff without reason makes us gravely concerned for the direction it wants to take the public defense system responsible for safeguarding the rights of the vast majority of criminal defendants in Houston County.

We are concerned that neither the public defender staff nor the judiciary was consulted in the decision to terminate the chief defender. What was the basis for the termination? We have learned from the news media that the Commission wanted to "go in a different

direction.” The chief defender was not told what he had done to merit termination. Nor did the Commission seek information from the staff of the public defender office nor the judiciary regarding management effectiveness or leadership or legal ability. This demonstrates that this termination occurred for political reasons rather than based upon a meritorious claim.

We are concerned that the clients served by the Houston County Public Defender’s office were not considered in the termination decision. At the heart of an effective public defender system is the client, the poor persons accused of a crime. Were clients served by the Houston County Public Defender’s Office represented effectively? Did the Commission meet with any clients to obtain their input? Did the Commission terminate a leader who was leading an office that provided a high quality defense to its clients? These are reasonable, fundamental questions that the Commission should have asked, answered, and reported with transparency prior to taking the action of terminating the leader of the public defender office.

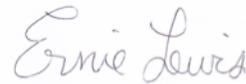
We are concerned that the future of an excellent public defender office is now threatened by this action. The Houston County Public Defender’s Office is well regarded throughout the state and by public defense experts of national renown. The media has reported that the Commission wants to move in a “different direction” with a new leader. It is absolutely unclear what that different direction will be. In the absence of good reasons and clear vision, NAPD is concerned that the Commission wants to dismantle one of Georgia’s most effective public defender offices, by making an example of the public defender chief’s efforts to seek the resources he needed in order to deliver justice to Houston County.

NAPD encourages the Houston County Commission to consult with their county attorney to determine what steps should be taken next. We encourage them to decide to preserve an office with an excellent reputation and to step back from their act of termination. We further encourage them to seek out best practices to providing for the important constitutional right to counsel in Houston County.

Sincerely,



Mark Stephens
Chair of the NAPD Steering Committee



Ernie Lewis
Executive Director of NAPD

Cc: Hon. Bryan Tyson, Executive Director, Georgia Public Defender Council

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