



March 25, 2021

Loren Khogali, Esq.
Executive Director
Michigan Indigent Defense Commission
Lansing, Michigan

Re: The Independence Imperative: Sustaining Constitutional, Effective Criminal Indigent Defense Legal Services at the Chippewa County Michigan Public Defender Office

Dear Ms. Khogali:

We write to express concerns and offer support concerning the recent termination of the Chief Public Defender in Chippewa County.

As you know, the National Association for Public Defense (NAPD) is a national organization whose members include public defenders, assigned counsel, contract defenders, and public defender offices. NAPD is dedicated to supporting and improving the delivery of quality and effective criminal indigent defense legal services consistent with Sixth Amendment mandates and state constitutional provisions.

NAPD has worked actively to support the delivery of quality and zealous indigent defense legal services in the Chippewa County area. NAPD awarded a grant to Jennifer France, then the chief public defender in Chippewa County, to offer training for attorneys in her area who provide criminal defense legal services. Following Ms. France's termination without stated reason by Chippewa County's Board of Commissioners, NAPD's Strike Force leader met with Ms. France on several occasions and communicated with her to understand the circumstances surrounding her termination. NAPD also has closely reviewed the federal complaint filed by attorneys representing Ms. France and against the county and two local judges. Based on those efforts, it appears that Ms. France's independence as the public defender may have been interfered with by local government officials.

It is NAPD's further understanding that the Michigan Indigent Defense Commission in adoption of Standard 5 supports the independence of public defenders in their representation of their clients and disapproves of interference with the independence of public defenders. NAPD's Foundational Principles are committed to support for independence of public defenders and public defense reform.¹

¹ *Polk County v Dodson*, 454 US 312, 321 (1981); *Michigan Indigent Defense Commission, Standard 5*, 2020, <https://michiganidc.gov/standards/#tab-id-5>; *NAPD Foundational Principles*, 2017, [https://www.publicdefenders.us/files/NAPD%20Foundational%20Principles_FINAL_March%2016%202017\(1\).pdf](https://www.publicdefenders.us/files/NAPD%20Foundational%20Principles_FINAL_March%2016%202017(1).pdf); *NAPD Statement on Independence of Public Defense Leaders and Programs*, 2017, https://www.publicdefenders.us/files/NAPD_Policy%20Statement%20on%20Independence.pdf

On May 27, 2020, NAPD issued a Policy Statement on Independence that includes the following provision:

Professional and political independence is essential for the meaningful representation of clients, the effective functioning of public defense programs, and assuring the legal adversary system works reliably and produces valid results. Independence is ethically and constitutionally required.

A “public defender is not amenable to administrative direction in the same sense as other employees of the State. . . . A public defender works under canons of professional responsibility that mandate his exercise of independent judgment on behalf of the client.”

Ms. France’s removal as chief defender by the Chippewa County Board without stated reason causes concern. Her abrupt termination substantially and negatively affected the lives of the two hundred plus indigent people who were her clients. There appears to have been no viable transition plan before her departure to provide them the zealous representation to which they are entitled. NAPD understands that the County hired a replacement defender. But it is our understanding that clients continue to call Ms. France because they are uncertain of their representation or unhappy with the replacement defender. We stand ready to support Chippewa County’s new public defender and to offer assistance.

We have some concerns about the appointment of the new defender. It is our understanding that he was in the prosecutor’s office when some of the current defender clients’ cases were brought. This raises potential conflicts of interest. We also have heard a question about whether the current defender has completed the required CLE hours.

Members of our leadership group have observed proceedings in the Chippewa County court since the new defender was installed. They have seen an example of the defender urging that his client stay in custody.

We understand that the Commission, through its regional managers, has methods in place to assess compliance with the MIDC Standards. These include quarterly reporting of required training, evaluation of standards including whether attorneys see their clients within 72 hours, and court watching.

We applaud the MIDC for establishing public defense Standards and monitoring its counties to assess compliance with those Standards. If you would find NAPD’s assistance in this area to be helpful, please let us know. NAPD is particularly concerned about the quality of public defense services and how states measure and ensure that public defenders and assigned counsel provide high quality representation.

In addition, if NAPD can be of assistance regarding best practices on county assessments and termination of chief defenders, and on ways to support the independence of chief defenders, please let us know.

We urge the MIDC to examine the circumstances surrounding the termination of the Chippewa County chief defender including the relevant MIDC contract(s) and communications between the chief defender and County officials, to determine whether the independence of the chief defender was violated such that measures should be taken, at least, to prevent future similar incidents. We further urge the MIDC to ascertain whether there is a viable plan to assure ongoing competent representation for the defender’s clients and the

effectiveness of the current representation being provided by counsel. Finally, we would also urge MIDC to examine its standards, rules, and Michigan statutes to determine if additional reforms are needed to address the various issues raised by the firing of Ms. France.

NAPD appreciates the meaningful and substantial steps that the Commission, with support from the legislature and the Governor, has taken in advancing quality indigent defense legal services in Michigan. Please let us know if there is a way for NAPD to assist the Commission at this time or in the future.

Thank you for your consideration.

Sincerely,



Derwyn Bunton
Chair, NAPD Steering Committee

ON BEHALF OF THE NAPD STEERING COMMITTEE

DERWYN BUNTON, CHAIR
District Defender, Orleans Public Defenders,
New Orleans, LA

CARLOS J. MARTINEZ, VICE-CHAIR
Public Defender, Miami-Dade Public Defender,
Miami, FL

ANTHONY J. BENNEDETTI
Chief Counsel, Committee for Public Counsel
Services, Boston, MA

NANCY BENNETT
(Retired) Deputy Chief Counsel for the Private
Counsel Division of CPCS, Boston, MA

KEIR BRADFORD-GREY
Chief Defender, Philadelphia Defender's
Association, Philadelphia, PA

DEEPAK BUDWANI
Chief Financial and Administrative Officer, County of
Santa Barbara Public Defender,
Santa Barbara, CA

GEOFF BURKHART
Executive Director, Texas Indigent Defense
Commission, Austin, TX

AMY P. CAMPANELLI
Chief Defender, Cook County Office of the Public
Defender, Chicago, IL

PAUL B. DEWOLFE
State Public Defender, Office of the Public
Defender, Baltimore, MD

HERBERT DUZANT
Investigator, Federal Defender, District of
Nevada, Las Vegas, NV

EMILY HUGHES
Professor, University of Iowa College of Law,
Iowa City, IA

MARTESHA L. JOHNSON
Chief Defender, Metropolitan Public Defender,
Nashville, TN

JUSTINE M. LUONGO
Attorney-in Charge of the Criminal
Practice, Legal Aid Society of New York,
New York, NY

KATE MASON
Circuit Public Defender, Augusta Circuit,
Georgia Public Defender Council,
Augusta, GA

AISHA MCWEAY
Executive Director, Still She Rises,
Tulsa, OK

ED MONAHAN
(Retired) Public Advocate,
Department of Public Advocacy, Frankfort, KY

ELIZABETH MILLER
Assistant Director, Office of the Ohio
Public Defender, Columbus, OH

JUSTINE OLDERMAN
Executive Director, Bronx Defenders, Bronx, NY

CHANTÁ PARKER
Managing Director, Neighborhood Defender
Service of Detroit, Detroit, MI

CHRIS RAPILLO
State Public Defender, Connecticut Division
of Public Defender Services, Hartford, CT

MANOHAR RAJU
Public Defender, San Francisco Public Defender's
Office, San Francisco, CA

CYDNI SANCHEZ
Deputy Chief Public Defender
Law Offices of the New Mexico Public Defender
Albuquerque, NM

MARK STEPHENS
(Retired) District Defender, Knox County
Public Defender's Community Law Office,
Knoxville, TN

STEPHANNE C. THORNTON, LICSW
Criminal Justice Specialist,
Public Defender Services,
Charleston, WV

DOUG WILSON
City Public Defender, Aurora City
Municipal Public Defender,
Aurora, CO

BRENDON WOODS
Chief Public Defender, Alameda County
Public Defender, Oakland, CA

TIM YOUNG
Director, Office of the Ohio Public Defender,
Columbus, OH

LORINDA MEIER YOUNGCOURT
Trial Attorney, Federal Defender,
District of Eastern Washington & Idaho,
Spokane, WA

Note: NAPD Steering Committee Member Chantá Parker abstained from voting on this letter.

