NAPD

NATIONAL ASSOCIATION FOR PUBLIC DEFENSE

NAPD STATEMENT ON
THE NECESSITY OF MEANINGFUL WORKLOAD STANDARDS
FOR PUBLIC DEFENSE DELIVERY SYSTEMS

This statement was approved by the NAPD Steering Committee on March 19, 2015.

Excessive workloads in public defense delivery systems are an ethical issue.[1] Where they exist, public defense providers have a duty to remedy them; where they do not exist, public defense providers have a duty to avoid them. While this premise sounds simple, public defense providers, with rare exceptions, have been historically unsuccessful in maintaining reasonable workloads. Our most significant impediments to meeting this obligation have been our inability to: 1) define convincingly what constitutes an excessive public defense workload; and 2) demonstrate effectively how and when it exists. Without this information, public defense providers have been unable to persuade funders to provide necessary resources, or alternatively, to prove to judges their need for reduced caseloads. Generally speaking, the result has been a long-standing and widespread epidemic of excessive public defense workloads in jurisdictions across the United States.

With this historical perspective in mind, and in the interest of our clients, ourselves, and justice, NAPD believes the time has come for every public defense provider to develop, adopt, and institutionalize meaningful workload standards in its jurisdiction. In some systems, caseload standards (or a variation thereof) may already exist, courtesy of the National Advisory Commission (NAC) on Criminal Justice Standards, which published maximum annual caseloads for public defense providers in 1973. The American Council of Chief Defenders affirmed the continued viability of the NAC Standards in 2007 while recommending that jurisdictions develop local caseload standards that do not exceed NAC limits.[2] NAPD applauds every jurisdiction that at some point over the past 40 years has recognized the NAC standards as the best available measure of reasonable public defense workloads, and implemented them with rigor and commitment during that time. They are truly pioneers and visionaries in the effort to insure a meaningful Sixth Amendment right to counsel for everyone.

As good as the NAC standards have been, however, our country has seen significant changes in criminal defense practice since 1973, including: 1) scores of new criminal offenses that did not previously exist; 2) ever-increasing complexity in criminal practice, procedure and sentencing laws; 3) an explosion in the number of people charged each year with criminal offenses; and 4) a ballooning

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[1] *See* American Bar Association Formal Ethics Opinion 06-441 ("Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation").
[2] American Council of Chief Defenders on Caseloads and Workloads (August 2007)

system of "collateral consequences" of criminal convictions. Undoubtedly, these changes have drastically increased the amount of time it takes a lawyer to provide effective representation to a client.

For this reason alone, NAPD strongly believes that while the NAC standards remain useful, they must today be considered the "absolute maximums" of acceptable public defense workload standards. Additionally, NAPD believes that any jurisdiction currently using the NAC standards as its public defense workload standard should also have, or implement, an evidence-based method of assessing whether they remain a reliable measure. Finally, NAPD believes that a lawyer's well-spent time is the single most important factor in a client receiving effective and meaningful representation, and as such, NAPD believes meaningful evidence-based standards for public defense workloads can best be derived and institutionalized through ongoing, contemporaneous timekeeping by public defense providers.

Contemporaneous, conscientious, and ongoing timekeeping allows public defense providers to demonstrate concretely what they have (or have not) done for their clients. It also provides public defense providers with the data necessary to assess whether what they *are* doing for clients comports with what they *should be* doing for clients based on professional performance standards. Finally, and perhaps most significantly, it allows public defense providers, funders, judges, and anyone else interested to examine for themselves whether any deficiencies in performance are related to an excessive workload. In this regard, timekeeping provides a cogent, transparent, adaptable, long-term, and data-driven methodology to: 1) develop reasonable public defense workload standards; and 2) modify them when necessary to meet the changing demands of the public defense system. Stated another way, it allows us to "define convincingly what constitutes an excessive public defense workload and demonstrate effectively how and when it exists" – the very impediments that have historically prevented us from achieving reasonable workloads.

Evidence-based standards are the hallmark of 21st century policymakers. Recent history shows us that timekeeping, along with analysis of the data it produces, has led to workload controls, increased funding, and judicial relief from caseloads in jurisdictions where it has been used. While these are not guaranteed results of timekeeping, NAPD believes the practice professionalizes public defense systems, and produces clear and measurable benefits to individual lawyers and clients. Whether a lawyer has worked a sufficient amount of time to provide competent and effective representation to his or her clients is a relevant question to ask, and the answer is something clients are entitled to have. Producing data that helps us manage our workloads and better understand our practices makes us better lawyers. Public defense providers should be committed to professional practices that help the client.

For far too long, public defense providers have accepted crushing workloads that rob clients of their constitutional right to assistance of counsel, and erode the morale of lawyers who cannot possibly meet the demands placed on them. We can no longer operate in a system without meaningful workload standards, and with this statement, we encourage public defense providers in every jurisdiction to develop, adopt, and institutionalize meaningful, evidence-based workload standards in their jurisdictions.

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