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May 2, 2008



By Federal Express

President Todd H. Stroger and  
Members of the Cook County Board of Commissioners  
County Building  
118 N. Clark Street - Room 537  
Chicago, IL 60602

Re: Resolution of the American Council of Chief Defenders  
regarding Edwin A. Burnette and the need to maintain the independence  
of the Law Office of the Cook County Public Defender

Dear President Stroger and Members of the Cook County Board:

The American Council of Chief Defenders (ACCD) respectfully submits the enclosed resolution in support of Edwin A. Burnette and the need to maintain the independence of the Law Office of the Cook County Public Defender.

The ACCD is a national organization whose membership includes the leaders of state, county, and city public defender and assigned counsel agencies throughout the United States. Mr. Burnette is a leader within the ACCD and among public defenders nationwide.

The action undertaken by the President of the Cook County Board of Commissioners to have Mr. Burnette removed from office appears to arise from a fundamental misunderstanding of the role of the public defender. A public defender's obligations are grounded in the reality that he and his office occupy a unique place in any governmental structure. Unlike other government offices that are properly seen as extensions of the chief executive, the constitutional and ethical obligations of a public defender may at times compel him to protect the office's clients, even in the face of his employer's opposition. When Mr. Burnette advocates for the independence of his office and to keep caseloads within manageable limits, his actions are consistent with the highest standards of the profession. In these circumstances, his advocacy is essential to preserve his office's vital role in our adversarial system; a role that forms the bedrock upon which rests the legitimacy of our criminal justice system.

The citizens of Cook County are fortunate that an attorney with the integrity and courage of Mr. Burnette is their public defender. We urge the Board to retain Mr. Burnette for the benefit of the Cook County community. A representative of the ACCD will be present on May 7 and we request the opportunity to be heard during the course of the hearing.

Respectfully submitted,

Fern M. Laethem, Chair  
American Council of Chief Defenders

Enclosure

**Resolution Concerning the Threatened Firing of Cook County Public Defender  
Edwin A. Burnette by the Board of Commissioners of Cook County, Illinois**

May 2, 2008

The American Council of Chief Defenders (ACCD) is a national organization whose membership includes the leaders of state, county, and city public defender and assigned counsel agencies throughout the United States. The ACCD is dedicated to the preservation of the constitutional right to counsel for poor people charged with criminal offenses, as enunciated by the United States Supreme Court in *Gideon v. Wainwright*, 372 U.S. 335 (1963). The ACCD furthers this goal by providing support and assistance to its member programs, particularly those whose lack of adequate resources or political independence threatens the provision of competent representation which comports with constitutional norms.

**I. Independence:** Nothing threatens a poor person's constitutional right to the effective assistance of counsel so much as raw political interference with the management and operation of a public defender office. In February, 2002, when the American Bar Association (ABA) approved its **Ten Principles of a Public Defense Delivery System**, it recognized this reality by placing independence as the very first among the principles which must be honored, if a public defender office is to comply with its weighty constitutional responsibility.

ABA Principle Number 1 reads as follows:

**The public defense function, including the selection,  
funding and payment of defense counsel, is independent.**

The Commentary to Principle Number 1, with footnotes citing to a plethora of national reports and standards dating back to 1970, elaborates upon the importance of and reasons for the primacy of the principle of independence:

**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. Removing oversight from  
the judiciary ensures judicial independence from undue**

**political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.**

The threatened termination of Public Defender Burnette directly implicates this primary principle of public defense representation. Ed Burnette is a longstanding and highly regarded member of the American Council of Chief Defenders. His selection as a member of the Executive Committee and vice-chair of the ACCD fairly reflects the esteem in which he is held by his public defender peers throughout the United States. Ed is experienced, he is thoughtful, and he is immensely knowledgeable about the provision of effective legal representation which honors the *Gideon* right to counsel. Nothing in Cook County Board President's Resolution, which has been reviewed by our Executive Committee, justifies the termination of this honored and honorable public servant.

**II. Caseloads:** Excessive public defender caseloads are of grave concern to the ACCD, because it is well known and frequently stated that a reasonable caseload is the sine qua non of effective public defender representation of indigent clients. No lawyer, no matter how capable or how experienced, can provide effective representation to *any* client, when he or she is saddled with the responsibility of representing far too many clients.

The imperative need to limit public defenders' caseloads to a reasonable level that allows them to provide sufficient time and attention to every client's case finds official support in the ABA Ten Principles of a Public Defense Delivery system as well. Specifically, ABA Principle Number 5 requires in simple but unmistakable words that

**Defense counsel's workload is controlled to permit the rendering of quality representation.**

In August, 2007, the ACCD completed a comprehensive review of the caseload standards established by the National Advisory Commission (NAC) on Criminal Justice Standards and Goals in 1973. The NAC standards called for the caseloads of public defenders providing representation in felony cases not to exceed 150 per year, for the caseloads of public defenders providing representation in juvenile court cases not to exceed 200 per year, and for the caseloads of public defenders providing representation in misdemeanor cases not to exceed 400 per year. These limits are exclusive of one another and assume that attorneys are handling a single type of case for the entire year. If there are mixed caseloads then the standards need to be adjusted to reflect the proportion of each type of case within the total year's caseload.

On August 24, 2007, after full discussion among its membership, our organization issued its **ACCD Statement on Caseloads and Workloads**, which reads, in pertinent part:

**The ACCD recommends that public defender and assigned counsel caseloads not exceed the NAC recommended levels of 150 felonies, 400 non-traffic misdemeanors, 200 juvenile court cases, 200 Mental Health Act cases, or 25 non-capital appeals per attorney per year. These caseload limits reflect the maximum caseloads for full-time defense attorneys, practicing with adequate support staff, who are providing representation in cases of average complexity in each case type specified.**

The caseloads in the Cook County's public defender office far exceed these nationally-recognized standards. Such a situation places the office's lawyers at risk of delivering ineffective and incompetent representation, places the criminal justice system at risk of providing an unfair and unjust adjudication process, places clients at risk of being found guilty when innocent, and places victims and the community at risk of continued victimization by guilty individuals while the innocent sit in prison at taxpayer expense.

The ACCD and the American Bar Association have clearly and definitively stated that when caseloads exceed those that public defender lawyers can handle competently, the chief public defender has the absolute ethical duty to protect his clients by seeking a remedy. It was the need to achieve compliance with these caseload standards, comply with his ethical responsibility, and protect his clients' right to counsel that required Public Defender Burnette to take the actions which have now been labeled as grounds for his termination. It is ironic that the Board President's "Proposed Resolution" seeks to blame the Public Defender for failing to comply with the ACCD caseload standards (Proposed Resolution, allegation two, at page three, April 3, 2008), when it is the Board President's own actions that required the filing of litigation by the Public Defender in order to achieve compliance with those standards.

In consideration of this information, the American Council of Chief Defenders hereby RESOLVES :

- (1) That Cook County Public Defender Edwin A. Burnette has acted in strict accordance with his ethical responsibilities under the ACCD Ethics Opinion 03-01 (4), "**Special duties of the chief executive officer of a public defense agency**", (April, 2003) ("[T]he chief executive of a public defense agency is required to decline excessive cases."), and with the Conclusion thereof, which states that:

*A chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency's attorneys to provide competent, quality representation in every case....*

*When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency's attorneys to exceed such*

*capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases.*

- (2) that Public Defender Burnette has acted in compliance with the American Bar Association Ethics Committee Formal Opinion 06-441 (2006), which further establishes the ethical responsibility of a Public Defender to seek judicial relief whenever excessive caseloads threaten the provision of competent and diligent representation to every client;
- (3) that Public Defender Burnette has acted responsibly to ensure the independence of the public defender office and bring the caseloads borne by the attorneys in his office within the levels described in the American Council of Chief Defenders Statement on Caseloads and Workloads (August 24, 2007);
- (4) that the American Council of Chief Defenders urges the Board of Commissioners of Cook County to retain Public Defender Edwin A. Burnette, and thereby preserve the independence and permit the effective functioning of the Law Office of the Cook County Public Defender.

Resolved, this 2nd day of May, 2008

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Fern M. Laethem, Chair  
American Council of Chief Defenders