STATE OF MINNESOTA

IN SUPREME COURT

C8-85-1433

In the Matter of the Petition of the Board of Public Defense and the State Public Defender for an Emergency Order Addressing the Crisis in Public Defense.

ORDER

The Board of Public Defense and the State Public Defender (hereinafter, petitioners) have filed a petition requesting the court in the exercise of its supervisory powers to issue an order requiring:

(1) A presumption that continuances will be granted upon request in public defender cases when the defendant is out of custody, to remain in effect until July 1, 2005, or until further order of this court.

(2) A limitation on appointment of public defenders in Child in Need of Protection or Services (CHIPS) cases to one public defender per case and a prohibition on appointing individual public defenders to representation of more than one party in a CHIPS case, to remain in effect until sufficient funding to provide broader representation is obtained or until further order of this court.

(3) No CHIPS case will be accepted for filing unless the petitioning party represents that the case has been subject to pre-petition screening, or that an emergency exists requiring the immediate commencement of the judicial process.

The accompanying affidavit of service indicates that the petition was served upon the Executive Director of the Minnesota County Attorneys Association, the Attorney General, and the Commissioner of Human Services.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that on or before September 26, 2003, petitioners shall file and serve a supplemental memorandum stating in detail the specific relief requested and how such relief may be implemented. The submission shall address, without limitation, the following questions:

Presumptive Continuances.

- Does the proposal apply to all criminal and juvenile cases?
- Would the presumption apply to all requests for continuances, or would there be limitations based on timing of the request (e.g., day- or eve-of-trial requests), length of continuance requested or multiple continuances requested in the same case?
- Would continuance requests require a motion, the opportunity to respond, and a determination by the district court judge?
- Would continuance requests subject to the presumption be screened by the Chief Public Defender or in some other fashion to prevent abuse?
- What standard should apply to overcome the presumption?
- Is it fair to assume that the proposed continuance presumption will generate the intended savings only if it results in the delay of a significant number of cases, and if so, how do you see the resulting case backlog being cleared?

Limitation on Public Defender Appointments in CHIPS Cases.

- Does the district court have the authority to appoint, at public expense, a non-public defender to represent individuals who have the statutory right to court-appointed counsel, and if so, what governmental entity would be responsible for payment?
- In what percentage of cases, and at what point in the proceedings, does the appointment of a single public defender to represent multiple parties create an actual conflict of interest?

Pre-Petition Screening in CHIPS Cases.

- What does pre-petition screening entail, and to what extent are county child protection agencies involved?
- How many counties have implemented pre-petition screening for CHIPS cases?
- Would a judicial requirement of pre-petition screening violate the constitutional separation of powers?

The submission shall also address the specific full-time-equivalent staff savings and the case unit reduction expected to be realized from each of the three components of requested relief.

IT IS FURTHER ORDERED that a hearing shall be held before this court to consider the petition in Courtroom 300, Minnesota Judicial Center, on October 15, 2003, at 1:00 p.m. A copy of the petition is annexed to this order.

IT IS FURTHER ORDERED that:

(1) All persons, including members of the bench and bar, who desire to present written statements concerning the subject matter of this hearing, but do not wish to make oral presentation at the hearing, shall file 14 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King, Jr., Blvd., St. Paul, Minnesota, 55155, on or before October 8, 2003.

(2) All persons desiring to make an oral presentation at the hearing shall file 14 copies of the material to be so presented with the Clerk of the Appellate Courts together with 14 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before October 8, 2003.

(3) The persons who have been served with the petition, as well as the Association of Minnesota Counties, the League of Minnesota Cities, and the Metropolitan Inter-County Association are invited to make written or oral presentation, commenting upon the petition. The invited persons and entities are requested to (1) state whether they agree with petitioners that current public defender caseloads exceed public defender resources, and (2) if they oppose a particular form of relief requested by petitioners, provide suggested alternative methods of reducing public defender caseloads.

(4) The Clerk of Appellate Courts shall transmit copies of this order to the Association of Minnesota Counties, the League of Minnesota Cities, and the Metropolitan Inter-County Association.

Dated: September 12, 2003

BY THE COURT:

Alan C. Page
Associate Justice

STATE OF MINNESOTA

IN SUPREME COURT

In the Matter of the Petition of the Board of Public Defense and the State Public Defender for an Emergency Order Addressing the Crisis in Public Defense	**PETITION**

To the Honorable Justices of the Supreme Court of the State of Minnesota:

The Board of Public Defense and the State Public Defender petition this Court for an exercise of its supervisory authority over the judicial system to help address an unprecedented crisis in the provision of public defense services. To help reduce the magnitude of this crisis, petitioners respectfully request an order requiring the following:

A. A presumption that continuances will be granted upon request in public defender cases when the defendant is out of custody, to remain in effect until July 1, 2005 or until further order of this Court.

B. A limitation on appointment of public defenders in Child in Need of Protection or Services (CHIPS) cases to one public defender per case and a prohibition on appointing individual public defenders to representation of more than one party in a CHIPS case, to remain in effect until sufficient funding to provide broader representation is obtained or until further order of this Court.

C. A requirement that no CHIPS case will be accepted for filing unless the petitioning party represents that the case has been subject to pre-petition screening, or that an emergency exists requiring the immediate commencement of the judicial process.

This request is based upon the following:

I. <u>Introduction.</u>

This Court has often addressed the fundamental nature of the right to the effective assistance of counsel.[1] It has broadened the federal right to counsel both by applying the Minnesota constitution,[2] and by use of its supervisory powers.[3]

The Court has also emphasized "the crucial role played by public defenders in this state's judicial system."[4] In considering this role, it has recognized that a public defender "may not reject a client, but is obligated to represent whomever is assigned to her or him, regardless of her or his current caseload or the degree of difficulty the case presents."[5]

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[1] *State v. Costello*, 646 N.W.2d 204, 209 (Minn. 2002); *State v. McGath*, 370 N.W.2d 882, 885 (Minn. 1985); *State v. Borst*, 154 N.W.2d 888 (Minn. 1967).

[2] *Friedman v. Commissioner of Public Safety*, 473 N.W.2d 828 (Minn. 1991).

[3] *Cox v. Slama,* 355 N.W.2d 401 (Minn. 1984); *Hepfel v. Bashaw*, 279 N.W.2d 342 (Minn. 1979).

[4] *Kennedy v. Carlson*, 544 N.W.2d 1, 3 (Minn. 1996).

[5] *Dziubak v. Mott* 503 N.W.2d 771, 775 (Minn. 1993).

Since 2000, total public defender case load has increased by more than 14 percent (through 2002) while, during this same period, the state's fiscal crisis has forced a reduction in public defense attorney staff by 20 full-time equivalent positions. This, and the continuation of other trends affecting the public defense system, has created an emergency that imperils the ability of public defenders to effectively represent "whomever is assigned to her or him."

For the reasons discussed in this petition, the relief requested is necessary to enable public defenders to accomplish their crucial role in the state's judicial system.

2. <u>The Petitioners.</u>

The Board of Public Defense is the legal authority responsible for the operation of the public defense system in Minnesota. The Board recommends to the legislature the budget required to operate the statewide defense system, appoints the State Public Defender and Chief Public Defenders, and establishes standards for public defenders including caseload standards. Minn. Stat. § 611.215, subd. 2. There are seven members of the Board of Public Defense, four of whom are attorneys appointed by the Supreme Court and three of whom are public members appointed by the governor. The members of the Board are: R. Peter Madel, Jr. (public member and Board Chair), Laura S. Budd (public member), Molly Haugen (public member), Jonathan Jasper (attorney member), the Honorable A.M. Keith (attorney member), Larry E. Reed (attorney member), and Nancy Vollertsen (attorney member).

The State Public Defender is John Stuart. He is charged with supervising the operation, activities, policies and procedures of the public defense system in Minnesota. Minn. Stat. § 611.24. Mr. Stuart was a trial public defender for more than 11½ years before being appointed State Public Defender in 1989. The mission of the State Public Defender, and the public defense system he supervises, is to provide quality criminal and juvenile legal defense services to indigent clients through a cost effective, independent, responsible and efficient public defender system.

3. <u>The Public Defense System.</u>

In considering solutions to the public defense crisis, it is helpful to understand how the public defense system has evolved. That evolution, both through legislative enactment and the opinions of this Court, strongly supports the current Minnesota model for delivery of public defense services - a state-funded, independent, system made up of a mix of full-time and part-time defenders.

Its History

Minnesota has led the nation in creating the right to counsel for indigent people accused of crimes. Almost 100 years before *Gideon v. Wainwright* established a federal constitutional right to counsel for indigent adults charged with felonies, the Minnesota legislature passed a law requiring counsel for those facing charges punishable by death or a state prison term. In 1917, adult defendants charged with gross misdemeanors also became eligible for counsel

funded by the public. Importantly, that same year the legislature created a public defenders office in counties with a population of 300,000 or more people.[6]

This system of representation depended upon appointed counsel. The county attorney had to certify that the proposed client could not afford an attorney. The Court had to appoint counsel one case at a time. Each county had to pay the bills for cases originating there.

Organization of the modern public defense system was catalyzed by *Gideon.* When Chief Justice Oscar Knutson heard the *Gideon* case was pending, he told a colleague: "We've got to get going! These decisions are going to require action." Ultimately, Chief Justice Knutson testified in the legislature in favor of a bill to establish district systems of public defense, to begin operations on July 1, 1965.[7]

The 1965 public defender act provided far more independence to the lawyers doing the actual work. The judges of each district – excluding Hennepin and Ramsey County, which had established their own systems of indigent defense – could vote to establish a public defender system. If they did, the Judicial Council would appoint a district public defender to hire assistants and handle the cases. Each county in the district would supply money to the public

[6] Act of April 21, 1917, ch. 496, §§ 1-7, 1917 Minn. Laws 835-36 (codified as amended at Minn. Stat. § 611.12 (1988)).

[7] Foster and Anderson Eds., For the Record, 150 Years of Law and Lawyers in Minnesota, p. 217 (MSBA 1999).

defense budget, based on its population.[8] The same bill greatly simplified the provision of appellate counsel by creating the Office of the State Public Defender.

In 1967, the Minnesota Supreme Court extended the right to counsel to people charged with misdemeanors, five years before the U.S. Supreme Court did so in *Argersinger v. Hamlin*. In 1969, § 611.26 was amended to allow the judges in a judicial district to opt in to the district method for misdemeanor and juvenile public defense services. In 1981 the Judicial Council was abolished and replaced by a State Board of Public Defense. In 1985, this Court ruled that once a district had opted into the public defense system, it could not revoke that decision.[9]

In 1989, the legislature assumed the responsibility of providing partial state funding for the public defender system to provide felony and gross misdemeanor representation in all 10 judicial districts. Juvenile and misdemeanor representation was already provided in the 2nd District (Ramsey County) and the 4th District (Hennepin County), and would now also be provided in the 8th District. The legislature appropriated approximately $17,000,000 for district public defense to provide these services. The money was obtained in part from counties which gave up property tax relief in order to have the state assume this responsibility.

In 1993, the legislature provided the funding required for the public defense system to handle juvenile and misdemeanor cases in the 3rd District and

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[8] *See* Minn. Stat. § 611.26 (1965).

[9] *In Matter of the Office of District Public Defender*, 373 N.W.2d 772 (1985).

the 6th District. In 1994, the legislature mandated that the State Board of Public Defense assume responsibility for juvenile and misdemeanor public defense in the remaining Judicial Districts in Minnesota. From that point forward, state employees would provide public defense services to eligible adults and juveniles in 85 counties. County employees, supported by state funds, had the responsibility for providing public defense services in the remaining counties, Hennepin and Ramsey.

In 1995, the State Board of Public Defense won the NLADA and ABA's Clara Shortridge Foltz Award, named after America's first public defender, for its dramatic improvements to public defense in Minnesota.

The Organizational Structure Today

The public defense system has ten trial districts, one for each judicial district, and an appellate office. Each district is supervised by a chief public defender appointed by the Board. The public defense system has 346.75 full time equivalent (FTE) trial lawyers available.[10] It's principal offices are located in Apple Valley, (1st District), St. Paul (2nd District), Rochester (3rd District), Minneapolis (4th District), Mankato (5th District), Duluth (6th District), St. Cloud (7th District), Willmar (8th District), Bemidji (9th District), and Anoka (10th District). The appellate office is in Minneapolis as is the administrative office. The districts also operate 14 smaller offices in small cities such as Owatonna, Crookston, and Brainerd.

[10] This assumes that managing attorneys carry a 25 percent caseload, as recommended by the Spangenberg Group, Weighted Caseload Study for The State of Minnesota Board of Public Defense (1991).

The public defense system places a very heavy emphasis on direct client services and allocates only the minimum resources required for administration of a system with 540 state employees.[11] Central administration consists of the State Public Defender, the Board's Chief Administrator, the Information Services (computers and data collection) Director, one Human Resources Director, a Government Relations Manager, who also handles a part time public defender caseload, a Budget Director and a Training Director. The administrative office also has 3 non-lawyer support staff and 5 network technicians. All the Chief Public Defenders and the manager of the appellate office have caseloads.

4. <u>The Supreme Court's View of Public Defense</u>

This Court has had occasion to directly consider public defense in four opinions that are of importance to the evolution, the philosophy, and the day-to-day operation of the public defense system.

In re Office of Dist. Pub. Defender for the First Judicial Dist., 373 N.W.2d 772 (1985).

This case provided the Court an opportunity to consider the structure of the public defense system. It involved a dispute between the judges of the First Judicial District and the Board of Public Defense about who should be appointed Chief Public Defender. When the judges' preferred candidate was not chosen by the Board, they attempted to withdraw from the public defender system.

[11] In relating this number to the number of FTE lawyers, it must be kept in mind that there are many part-time employees in the public defense system. The state employees consist of 10 chief public defenders, 350 attorneys and managing attorneys, 16 dispositional advisors, 34 investigators, 63 legal secretaries and office managers, 15 paralegals, and 33 law clerks.

In ruling they could not, this Court reviewed the public defender statute, Minn. Stat. § 611.26 (1984), and emphasized that the system the judges wished would "conflict with the policy favoring professional independence of defense counsel embodied in Standard 5-1.3 of the American Bar Association's Standards for Criminal Justice." *Id.* at 776-7.[12] The Court concluded that:

> The control sought by the judges of the First Judicial District over the appointment of the district public defender, evidenced by their insistence that the board appoint their recommended candidate and by their response to the failure of the board to so appoint, is contrary both to the statute and to the policy favoring the professional independence of defense counsel who serve indigent clients.

Id. at 777.

Dziubak v. Mott, 503 N.W.2d 771 (Minn. 1993).

Dziubak brought a legal malpractice action against his public defenders. In this context, the Court considered whether immunity from malpractice was appropriate for public defenders. The Court recognized that a "public defender is appointed to protect the best interests of her or his client and must be free to exercise independent, discretionary judgment when representing the client without weighing every decision in terms of potential civil liability." *Id.* at 775. What distinguished a public defender from a private lawyer, and what prompted the Court to provide malpractice immunity to public defenders, was a recognition of two critical factors.

[12] This standard, is now embodied in ABA Standards for Criminal Justice: Providing Defense Services, § 5-1.3, Third Edition (1992).

First, “a public defender may not reject a client, but is obligated to represent whomever is assigned to her or him, regardless of her or his current caseload or the degree of difficulty the case presents.” *Id.* The Court noted that a caseload study of public defender offices had revealed that “[P]ublic defenders in Minnesota, with few exceptions, are working substantially above capacity with insufficient time to devote to their cases and their clients. Workload is too high in every district given the current level of staff. * * * And things are getting worse in this regard.” *Id.* (*quoting* The Spangenberg Group, Weighted Caseload Study for The State of Minnesota Board of Public Defense at 20 (1991)).

Second, “public defenders are limited in their representation by the resources available to their office. Public Defender offices are grossly under-funded.” *Id.* at 776.

Kennedy v. Carlson, 544 N.W.2d 1 (Minn. 1996).

A chief public defender brought an action seeking a declaratory judgment that the Minnesota public defender funding statutes violated the constitutional rights of indigent criminal defendants to the effective assistance of counsel by not providing sufficient funding for his office. Summary judgment had been granted in his favor. This Court’s analysis began with a recognition of the “crucial role played by public defenders in this state's judicial system,” and that it was “concerned that adequate funds be available for public defense services to indigent juveniles and adults.” *Id.* at 3. The Court concluded that there had not been a substantial showing of injury in fact to either the public defender or the office’s clients and reversed the summary judgment order.

In re Stuart 646 N.W.2d 520 (Minn. 2002).

A public defender sought discharge from a case where the defendant had an unencumbered interest in real property worth more than $100,000. In its analysis, the Court considered the constitutional right to counsel as well as its prior decisions concerning the public defense system:

> It is out of this concern for the right to counsel that we must jealously guard the resources of the SPD, and not provide counsel to those who are able to afford an attorney. The right to counsel necessarily encompasses the right to effective assistance of counsel, which requires time and preparation. When an ineligible defendant is provided with services by the public defender, those finite resources are improperly diverted from the representation of other clients of the public defender. Almost ten years ago we recognized that state funding for the Board of Public Defense has not kept pace with the increased workloads and responsibilities of our public defender system. *Dziubak v. Mott*, 503 N.W.2d 771, 775 (Minn.1993) ("Workload is too high in every [public defender] district given the current level of staff.") (quoting The Spangenberg Group, Weighted Caseload Study for the State of Minnesota Board of Public Defense 20 (1991)). The SPD asserts that not only has this situation not improved, it has perhaps gotten worse. For these reasons, qualification of applicants is essential so that the resources of the public defender system are not unnecessarily depleted by people who, in their own right, can obtain legal counsel with their own resources. Therefore, courts must not appoint counsel for a defendant who is financially capable of retaining counsel on his own but refuses to hire an attorney.

In re Stuart, 646 N.W.2d at 524-5.

5. <u>The Public Defense System Crisis.</u>

Public defense is in crisis. That crisis directly affects the ability of the public defense system to fulfill its primary mission of providing quality criminal and juvenile legal defense services to indigent clients. The crisis has been spawned by several factors, none of which is within the control of the Board of Public Defense or the State Public Defender.

Caseload growth

The state public defense system has a clear statutory mandate. It must provide the services specified in Minn. Stat. § 611.14 and Minn. Stat. § 611.25. In essence, public defenders must provide trial representation to adults and juveniles in misdemeanor, gross misdemeanor and felony cases, to juveniles over 10 years of age in CHIPS cases, and appellate representation to adults and juveniles in gross misdemeanor and felony cases. In recent years, fulfilling its responsibility to provide quality representation to its clients has become increasingly difficult due to the steady increase in these cases and other cases in which public defenders provide representation.

The Board of Public Defense case load standard for a full-time public defender caseload is 400 case units per year, a unit approximating the work involved to provide representation in one misdemeanor case. A-1. This standard is based both on the Spangenberg Group, Weighted Caseload Study for The State of Minnesota Board of Public Defense (1991), and the American Bar Association Standards for Criminal Justice: Providing Defense Services, § 5-5.3, Third Edition (1992). A-1.[13]

[13] The ABA standard states that public defenders should not accept workloads that interfere with the rendering of quality representation or that lead to a breach of professional obligations. It also states that if workload reaches the point where quality representation is compromised, or professional obligations cannot be met, the public defense organization "must take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments." *Id.* at § 5-5.3(b). The Commentary to § 5-5.3 articulates numerical standards, including 400 misdemeanor cases per year or 150 felony cases per year. This numerical standard had first been adopted by the National Advisory Commission on Criminal Justice Standards and Goals, Courts (1973). Interestingly, the Commentary also notes that the ABA Special Committee on

In 2000, public defenders reported working a total of 280,357 case units, an average of 757 case units per full-time equivalent (FTE) lawyer.[14] In 2001, the total case load was 294,569 case units, with an average of 795 case units per FTE. In 2002, the total number of case units was 320,222, an average of 864 per FTE. An average of 915 case units per FTE is projected for 2003. One result of this high case load is that in 2002 public defenders worked 53,000 hours more than those reflected by the organization's FTE complement. A-1.[15]

Many of these extra hours fall on the backs of part-time public defenders. The impact on these lawyers is particularly acute because they are often located in rural communities, are the only public defenders available in the area, and have private practices that are adversely affected by the extra hours required by their "part-time" public defender work. A letter from part-time defender Bruce Biggins to his supervisors reflects the plight of these lawyers. A-4.

In addition to the growth in caseload, defender resources have been strained by several other factors. Since 1997, 18 new judgeships have been

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Criminal Justice in a Free Society had recommended this set of numerical standards, but had reduced the acceptable number of misdemeanor cases per year from 400 to 300 because the earlier standards had been adopted before the full impact of the U.S. Supreme Court's decision in *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (requiring counsel in any case in which imprisonment may be imposed).

[14] The Board of Public Defense statistics presented in this petition are reflected in the affidavit of Kevin Kajer, the Chief Administrator of the Board of Public, which is found at A-1of this petition.

[15] The growth in case load is graphed at A-3.

established. This added 18 new courtrooms that public defenders need to staff. No additional public defender staffing accompanied the increase in judgeships.

Prison population, which reflects both an increase of serious felony prosecutions and increased sentences, has soared over the last 10 years. The adult inmate population averaged about 3500 in 1992. In 2002 it averaged nearly 7000.

Increased cost of insurance

Public defense shares with other employers the burden of large annual increases in the cost of health insurance for its employees. Insurance costs rose 13 percent in fiscal 1997, 21 percent in 1998, 21 percent in 1999, 19 percent in 2000, 19 percent in 2001, 16 percent in 2002 and 24 percent in fiscal 2003. Insurance cost increases that occurred in January of 2002 and January of 2003 have added $1,600,000 to the annual financial obligations of the public defense system; none of this has been addressed through additional funding. A-2.

Staff reductions

The state's fiscal crisis and the increasing cost of health insurance have led to reduction in attorney staff. The reduction has been forced by both the attrition that occurred following the unallotment-based hiring freeze, and through layoffs. The number of FTE assistant public defenders has been reduced by 20 since 2002. A-2.

CHIPS cases and the Children's Justice Initiative

There has been a significant increase in the number of CHIPS cases. CHIPS cases are particularly difficult for the public defense system to handle because several individuals in a single case may have the right to counsel. In 1995, public defenders handled 4,055 CHIPS cases. In 2002, public defenders handled 10,278 CHIPS cases. The average number of public defenders per CHIPS court filing has increased from .7 in 1994 to 1.7 in 2002. A-2.

The case pressures on public defenders has increased beyond what is reflected in these statistics. The advent of the Children's Justice Initiative (CJI) has fast-tracked the judicial process in CHIPS cases in many counties. CJI places additional service expectations on public defense including earlier appointment of public defenders, a "no continuance policy," and vertical representation whereby public defenders "stay with the same family." Minnesota State Courts, 2001-02 Annual Report, p. 3. While CJI goals are laudable, at present staffing levels the public defense system cannot fulfill the role envisioned for it in CJI and still meet its constitutional and statutory obligations.

Impact on Ability to Serve Clients

These factors have directly affected the ability of the public defense system to represent its clients adequately.

The impact of the crisis in the public defender system on the justice system is serious. The Legislative Auditor asked district judges to report what they considered to be the factors responsible for delay in the criminal justice system. The factors reported by 70 percent of judges were "too few public

defenders" and attorneys having "too little time to prepare." January 2001 Legislative Auditor's Program Evaluation Report on the District Court, p. 78. Fewer judges (66 percent) identified "too few judges" as a cause for delay. *Id.*

"Too few public defenders" has had a troubling impact on people of color. In its landmark report in 1993, this Court's Race Bias Task Force noted that:

> The fact that public defender caseloads are so consistently heavy works to the detriment of people of color as well. People of color often report feeling that their public defenders care little about them and lack the time to give their cases the attention they require.

Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report, May 1993, p. 40. One of the recommendations made by the Task Force was that sufficient public defender funding be provided to reduce caseloads to the ABA standards for criminal defense. *Id.* at 43. The exact opposite has happened. The average public defender now has a caseload more than double that recommended by the ABA and the Board of Public Defense weighted caseload study .

The steadily increasing caseload pressure has eroded the quality of public defense services. One reflection of this is the resignation of experienced public defenders who can no longer endure the pressure of their caseloads and the demands of the courts to move cases through the justice system. A-8, A-11. Public defenders report that they simply cannot handle the number of cases they are responsible for. A-8.

The reality of this is starkly reflected in a January 2003 resignation letter submitted by Rockwell J. Wells, a 9th District Public Defender. A-8. Mr. Wells reported that in the 11 months prior to his resignation he had handled 727 cases

including 135 felonies, 53 gross misdemeanors, 343 misdemeanors, 136 adult probation violations and 27 juvenile cases. He said: “The anxiety, stress and depression brought on by my caseload eventually convinced me that my job was killing me.” He resigned to become an assistant county attorney. Unfortunately, Mr. Wells’ situation is not unique. In recent weeks, the type of pressure he reports has resulted in additional resignations of experienced public defenders. A-11.

Another reflection of these pressures is the increase in ethical complaints about public defenders serious enough to prompt investigation by the Lawyer’s Board. Chief Public Defender Fred Friedman, who represents public defenders in discipline matters, reports that complaints “against public defenders by clients and judges to the Board of Professional Responsibility have increased.” A-11. Chief Public Defender Friedman also reports that judges have become increasingly frustrated with public defenders’ inability to avoid scheduling conflicts and have chosen to address their frustration by imposing fines on public defenders. A-11.

6. <u>Actions of the Board of Public Defense to Address Crisis</u>

The Board of Public Defense has attempted to address this crisis by consistently asking for funding to increase the number of pubic defenders. During the 2003 legislative session, the Board asked for an additional 102 FTE lawyers for district, trial level, defense. A-2. In the absence of required funding, the Board has adopted the following priorities:

a. Constitutionally mandated criminal defense services for in-custody clients.

b. Statutorily mandated criminal defense services for in-custody clients.

c. Constitutionally mandated criminal defense services for out-of-custody clients.

d. Statutorily mandated criminal defense services for out-of-custody clients.

e. Other statutorily mandated services.

f. Other services as approved by the Board of Public Defense.

7. <u>Temporary Measures for Reducing the Magnitude of the Crisis.</u>

Supervisory Powers

The Supreme Court may exercise its supervisory authority to insure the fair administration of justice.[16] It has used this authority to correct injustice arising from the peculiar facts of an individual case.[17] More importantly, in the context of the requests made in this petition, it has used its authority to address broad problems in the criminal justice system.[18]

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[16] *State v. Costello*, 646 N.W.2d 204 (Minn. 2002); *See also* Minn. Stat. § 2.724, subd. 4 (granting "general supervisory authority" to the Chief Justice over the state courts).

[17] *Shorter v. State*, 511 N.W.2d 743 (Minn. 1994).

[18] *See e.g. State v. Costello*, 646 N.W.2d at 214 (prohibiting questioning of witnesses by jurors); *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994) (mandating recording of custodial interrogation); *State v. Williams*, 525 N.W.2d 538, 549 (asserting the ability to monitor and scrutinize sentencing practices to insure that defendants of color are not given harsher sentences); *Cox v. Slama*, 355 N.W.2d 401 (Minn. 1984) (establishing right to counsel at state expense in child support contempt cases with real possibility of incarceration); *Hepfel v.*

The circumstances presented in this petition create a broad problem for the criminal justice system that is as challenging as any this Court has addressed in the past. Just as this Court has used its supervisory power to rise to past challenges, it must do so here. Implementation of the measures requested will help alleviate this crisis. They will do so in the following manner:

Continuances for out-of-custody clients

The prioritization plan adopted by the Board of Public Defense recognizes that those most in need of immediate help are those in the physical custody of the state. Individuals who are in pretrial detention are often those charged with more serious offenses and/or those who have had prior encounters with the criminal justice system. This element of the proposed order will permit public defenders to focus their available time upon the clients who stand accused of the most serious offenses. This will not only assist the public defense system to continue to function, it will facilitate the judicial process and the prosecution function by focusing limited resources upon the most serious cases.

The order requested would establish a presumption that continuances shall be granted upon request when the defendant is a public defender client and is out of custody. It would permit a trial court to deny a continuance when it believes there is good cause to do so, but this Court's order should make it clear

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Bashaw, 279 N.W.2d 342 (Minn. 1979) (establishing right to counsel at state expense in paternity actions); *State v. Borst*, 154 N.W.2d 888 (establishing right to counsel at state expense in misdemeanor cases where incarceration a possibility).

that the presumption that favors continuances will be rebutted only in unusual circumstances.

The use of a presumption to address a problem of this nature is not unprecedented. In *State v. Peart,* 621 So.2d 780 (La.1993), the Court addressed a seriously under-funded New Orleans public defense system. It concluded that "the provision of indigent defense services . . . is in many respects so lacking that defendants who must depend on it are not likely to receive the reasonably effective assistance of counsel the constitution guarantees." *Id.* at 783. The Court mandated pretrial hearings for indigent criminal defendants and imposed a presumption of ineffectiveness of counsel. Unless the presumption could be rebutted, trial was barred.[19] Interestingly, the Court noted that Peart's lawyer, who was deemed presumptively ineffective, had "represented 418 defendants during a 7-month period." *Id.* This is an average of 60 clients per month. Compare this to Mr. Wells' report that he had represented individuals in 727 cases in an 11 month period – an average of 66 clients per month.

The presumption requested is a temporary measure. It is hoped that sufficient funding will eventually be obtained to make immediately available the quality representation envisioned by this Court as fundamental to an effective system of public defense. Unfortunately, that cannot be accomplished now without deferring less pressing and less serious matters until there is time

[19] Similarly, in *State v. Smith*, 681 P.2d 1374, 1378 (Ariz. 1984), the Court created a presumption that the Sixth Amendment was violated when convictions were obtained and a low-bid system for selecting public defenders was in place.

available to provide representation in those cases. This request implicates a number of rules and statutes that are listed at A-12 of this petition.[20]

Limitation on CHIPS appointments

CHIPS representation has been particularly difficult for public defenders because several individuals can have a right to counsel in a single case.[21] As noted, in 2002 an average of 1.7 defenders were required for each CHIPS filing. As also discussed, the problem of managing limited public defense resources to provide this service has been aggravated by the advent of the Children's Justice Initiative (CJI). The simple reality is this: there are not enough public defenders to continue to provide representation to multiple parties in CHIPS cases and also fulfill the constitutional and statutory responsibilities of the public defense system. Limiting public defender representation to one lawyer per CHIPS case will help public defenders to continue to provide effective representation in these matters, albeit on a more limited scale, and still meet their statutory responsibilities.

If this Court issues the order requested, it should also direct trial courts not to appoint individual public defenders to represent more than one person in a CHIPS case. A bright-line rule will avoid placing public defenders in conflict situations and assure that the spirit as well as the letter of this service limitation is honored. This request implicates a number of rules and statutes that are listed at A-16 of this petition.

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[20] These are the rules and statutes that petitioners have identified as being implicated. There may be additional rules and statues relevant to this measure, and to each of the other measures requested in this petition.

[21] Minn. Stat. § 260C.163, subd. 3.

Pre-filing screening of CHIPS petitions

This measure will preserve judicial and prosecution assets as well as public defender assets. It requires that district court administrators not accept CHIPS petitions for filing unless the petitioner represents in the petition that the case has been subject to a pre-petition screening process. Pre-petition screening of CHIPS cases has already been implemented in a number of counties including Olmsted County. It has resulted in fewer CHIPS filings in those counties because it facilitates the resolution of issues and concerns without invoking the judicial process. Implementing this measure on a statewide basis will further reduce the number of CHIPS cases being litigated.

Petitioners recognize that there are some cases in which the interests of the child or children require immediate judicial involvement. In such cases, the petitioner would assert that pre-petition screening was not appropriate because the welfare of the child required the immediate involvement of the court or, as permitted by Minn. Stat. § 260C.148, that an emergency filing is necessary based upon allegations of acts of domestic child abuse. This request implicates a number of rules and statutes that are listed at A-18 of this petition.

8. <u>Conclusion and Request for Relief.</u>

This Court must act. The relief requested is a reasonable measure for addressing a terrible problem. Anything less than the relief requested will fail to vindicate this Court's firmly held positions on the right to counsel and the importance of an effective public defense system.

Respectfully Submitted by:

_____ _____

Dated John M. Stuart
State Public Defender
License No. 0106756

331 2nd Ave. S., Suite 900
Minneapolis , MN 55401
Phone: (612) 349-2565

_____ _____

Dated Kevin Kajer
Chief Administrator
Board of Public Defense

331 2nd Ave. S., Suite 900
Minneapolis , MN 55401
Phone: (612) 349-2565

On Behalf of Petitioners

STATE OF MINNESOTA

IN SUPREME COURT

In the Matter of the Petition of the Board of Public Defense and the State Public Defender for an Emergency Order Addressing the Crisis in Public Defense	**AFFIDAVIT OF KEVIN KAJER**

Having first been sworn upon his oath, Kevin Kajer states the following is true to the best of his knowledge and belief:

1. I am the Chief Administrator of the Board of Public Defense.

2. The Board has adopted case load standards. The standards are based both upon the Spangenberg Group, Weighted Caseload Study for The State of Minnesota Board of Public Defense (1991), and the American Bar Association Standards for Criminal Justice: Providing Defense Services, § 5-5.3, Third Edition (1992). The standard is 400 case units per year, with a unit approximating one misdemeanor case.

3. Each public defender employed by the Board is required to report specific data on each case he or she handles. Board of Public Defense data reflects the following: In 2000, public defenders reported working a total of 280,357 case units, an average of 757 case units per full-time equivalent (FTE) lawyer. In 2001, the total case load was 294,569 case units, with an average of 795 case units per FTE. In 2002, the total number of case units was 320,222, an average of 864 per FTE. An average of 915 case units per FTE is projected for 2003. Between 2000 and 2002 case load grew by more than 14 percent.

4. The State's fiscal crisis and the growth in the cost of employee health insurance has resulted in a reduction in the number of trial level public defenders employed by the Board by 20 FTE positions from our complement in 2000. In 2002 public defenders worked 53,000 hours more than those reflected by the organization's FTE complement.

5. The growth in employee health insurance costs has been 13 percent in fiscal 1997, 21 percent in 1998, 21 percent in 1999, 19 percent in 2000, 19 percent in 2001, 16 percent in 2002 and 24 percent in fiscal 2003. Health insurance cost increases in January of 2002 and January of 2003 have added $1,600,000 to the Board's annual financial obligation.

6. Board of Public Defense statistics reflect that the average number of public defenders per CHIPS filing has increased from .7 in 1994 to 1.7 in 2002. In 2002, public defenders handled 10,278 CHIPS cases.

7. During the 2003 legislative session, the Board asked for an additional 102 FTE lawyers for district, trial level, defense. No additional staffing was provided.

Further Affiant Sayeth Not

_____
Kevin Kajer
Chief Administrator, Board of Public Defense

Subscribed and Sworn to)
Before Me This___ day) ss
of August, 2003)

_____
Notary Public

Year	FELONY
CY2000	48362
CY2001	53651
CY2002	64374

Year	GM +OTHER
CY2000	63282
CY2001	65938
CY2002	67208

Year	MISD
CY2000	56653
CY2001	60170
CY2002	68410

Year	JUV
CY2000	59405
CY2001	64645
CY2002	68870

Year	CHIPS
CY2000	52655
CY2001	50165
CY2002	51360

Year	TOTAL
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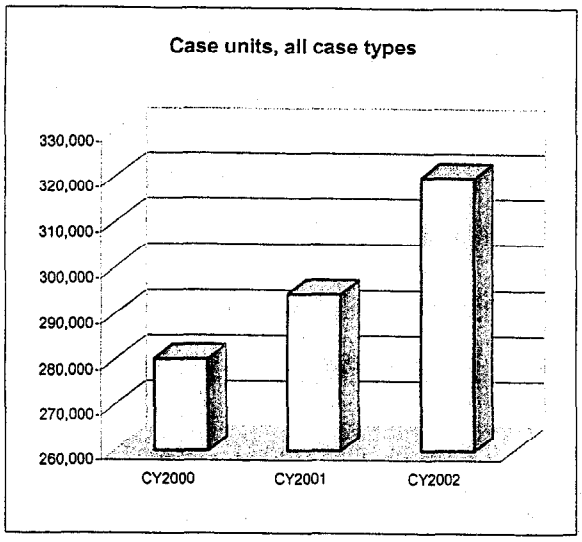
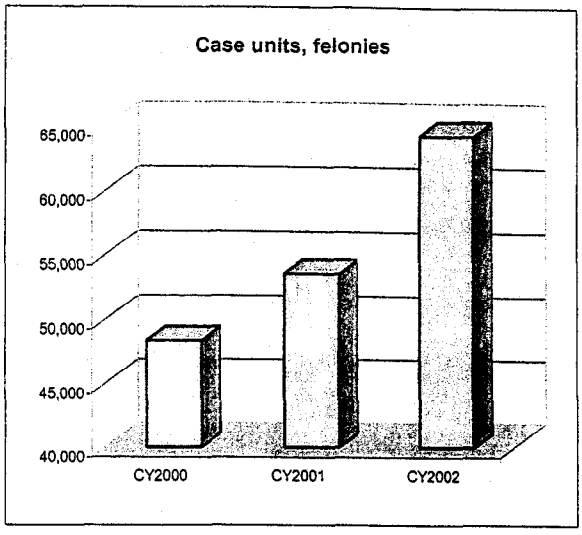
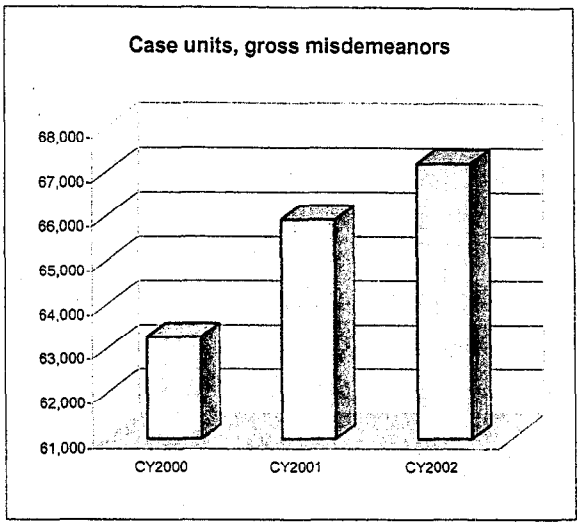
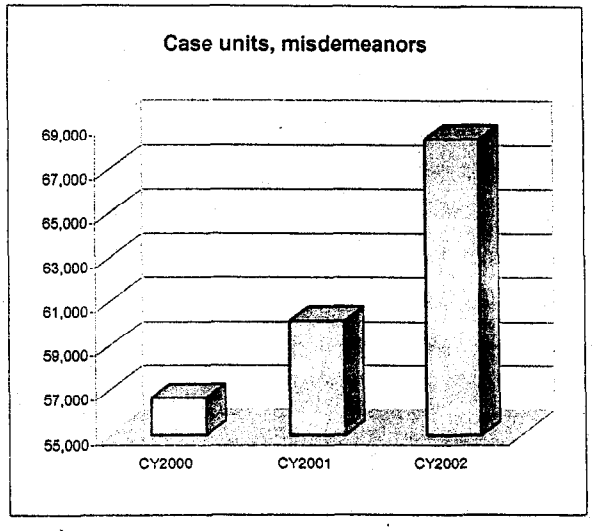
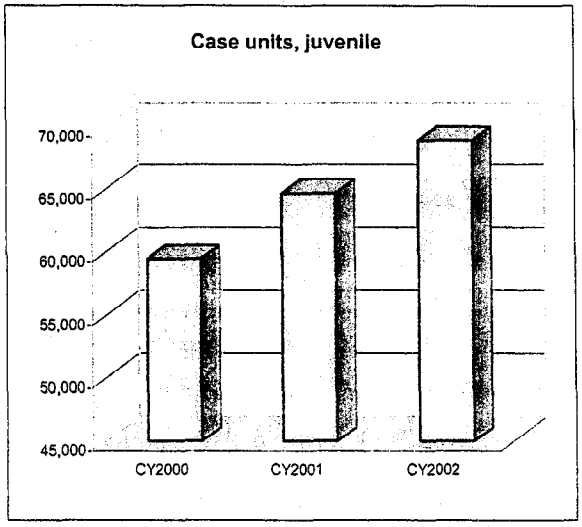
CY2001	294569
CY2002	320222

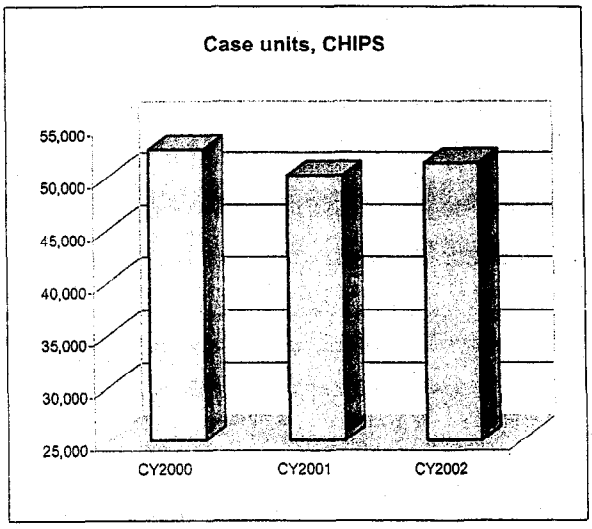












BRUCE BIGGINS & CHRISTINE CHOI
Attorneys At Law, PLLP
309 Third Street, International Falls, MN 56649
Tel:(218) 285-7160
Fax:(218) 283-8155

November 8, 2002

Ms. Kristine A. Kolar
Chief Public Defender
NINTH JUDICIAL DISTRICT
4 West Office Bldg.
403 4th Street NW, Suite 160
Bemidji, MN 56619-0945

Mr. John Undem
Assistant Public Defender
P.O. Box 428
Grand Rapids, MN 55744

Dear Ms. Kolar and Mr. Undem:

Thank you for sending me to the "What It Takes to Win Your Case" presentation in Chicago. It was wonderful. I learned a number of things that will help me be more effective.

My closed Public Defender (PD) files are creating quite a storage problem. As you recall, I also have Ms. St. Clair's old files. The volume of my closed files after only two years is greater than the volume of closed files left by Ms. St. Clair. My partner has been kind enough to allow me to store PD files in her basement for over two years. She is involved in an extensive remodeling project and wants me to store the files elsewhere.

Our office's landlord has lockable, dry and secure storage spaces available in the basement of our office building. He has offered a storage unit to us at $20.00 a month. This is a lower rate than he is charging others. Can I rent this space and charge it to the PD expense report? I would also like permission to buy 24 inexpensive Quill file storage boxes at $1.69 each to organize and store the closed

files in. It is fairly important for me to have easy access to the closed files. Steve is quite close and could also use the storage area, although he owns his own building and has more room than we do here. Let me know your thoughts on this.

I have previously given both of you my thoughts on making my position 3/4 time. The position was 3/4 time until Susan St. Clair had it. The only way that I have managed the last two years was to have a full time secretary devoted to supporting my APD position. She quit several months ago. I can't afford to continue to use all my take home PD pay to pay for full time PD support staff. Even if I could, my partner won't let me do it anymore. I have been putting in more than 130 hours a month since my secretary left. I don't believe anyone else could handle my work load with less time than I do. The truth of the matter is that International Falls should have two full time APDs with at least one full time support staff person and a part time investigator to properly service our clients. I know that is not going to happen. I would be quite satisfied to be 3/4 time.

Here are some reasons my position should be 3/4 time. There were over two thousand misdemeanor cases that went through our court last year. I am getting almost all of the Public Defender misdemeanor cases assigned to me. A large percentage involve people that had no criminal history and the cases are very important to them. They may be misdemeanor cases but they still require discovery, evaluation of the police reports and evidence, pre-trial motions where they are warranted. The City Attorney is charging a lot of misdemeanor cases that have trialable and Constitutional issues. His offers are often worse than what I would get if I tried the case and lost. I just can't encourage people to roll over on many of these cases. I expect to try at least 5 or 6 misdemeanor cases to a jury in the next couple of months. I expect this trend to continue.

The number of juvenile cases has dropped off the last couple of months. Most of these settle because of my good working relationship with the juvenile probation

officer and the County Attorney. I have discussed the drop with both the County Attorney and Juvenile Probation. None of us expect this trend to continue. The juvenile cases that take time are the crim sex cases. I have a juvenile rape case that is going to trial. I anticipate having at least a hundred hours into it before it is over.

As you know we have a newly elected County Attorney, I suspect that I will need to put in more time until she settles in. She has already said that there will be no deals on meth cases. If there are no reasons for not trying the case, I try the case. Not being willing to do this is what gives Public Defenders a bad name. If I am not willing to do this, I can't get good deals.

CHIPs cases go on and on. I have a number that have been open for years. I try these cases when they need to be tried. Social Workers may be well intentioned but they don't know about the Constitution. I have been aggressively trying to get some of these cases dismissed. I have had some successes. I read large numbers of long reports before each review. I try to call the kids in out of area foster care from time to time. I put a lot of time into these cases that is not reflected in the case openings and closings.

The felony cases (Steve's conflicts) that I get are mostly drug cases that all have suppression issues. My last meth lab case took at least 100 hours. The deal I got was for less than half the time the prosecutor was originally demanding.

I have at least two pending drug cases that are going to trial in the next couple of months. A couple of hundred hours would be a very conservative estimate of how much additional time they will take.

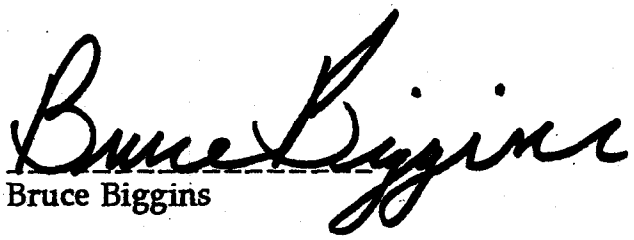
I am just winding up a felony child abuse case that I worked for a year and a half. It involved all kinds of medical evidence. I wore the prosecutor out and got it reduced to a gross misdemeanor with 15 days jail. I have hundreds of hours into this case and the related CHIPs case. The client would have gone to prison if I hadn't

put the time in. I can't get the deals, if I don't put in the time to demonstrate that I am really willing to try the cases.

The court demands that I be available the same amount of time that a full time APD would be. I have been ordered to court in the middle of civil depositions. I constantly have to re-schedule private cases and appointments because of the ever changing court calendar. Trials have been scheduled with only a couple of days notice. The court's demands require lots of administration time devoted to scheduling and notification.

The bottom line is that I am doing the work load of a lot of full time APDs and getting 1/2 time. I don't think anyone else could do what I do faster, without rolling over on cases that need to be tried. I have developed forms, client questionnaires, boiler plate motions and notices that save a lot of time. In spite of this many cases require specific discovery requests, memorandums of law and other things that can't be handled with boiler plate stuff. I love this job and look forward to coming to work every day. I am asking for your support on my request to make my position 3/4 time. Thank you for your consideration and time.

Very truly yours,



Bruce Biggins

STATE OF MINNESOTA
Office of the Ninth Judicial District
Public Defender

Brainerd Regional Office
219 South 4th Street
Brainerd, MN 56401

(218) 828-6134
Toll Free 1-800-366-2704

January 2, 2003

COPY

David F. Hermerding
Managing Attorney
Public Defender's Office
219 South 4th Street
Brainerd, MN 56401

Dear Dave:

It is with deep regret and great sorrow that I hereby tender my resignation as an Assistant District Public Defender. I have accepted a position with the Crow Wing County Attorney's Office and have established a start date of February 3, 2003. I anticipate continuing my duties as a public defender through the trial calendar on January 28, 2003. My last day with the public defender's office will be February 2, 2003.

I planned to make a career and to retire as a public defender. My salary and benefits package were more than adequate to meet my needs and those of my family. During my five and a half years as a public defender, I had 17 jury trials and I don't know how many court trials. I represented hundreds of clients in everything from truancy to first-degree murder in two different court systems. I like to think I achieved a fair amount of success. I represented public defenders as a panelist at a number of conferences and was recently appointed by Chief Justice Blatz to represent outstate public defenders on the Juvenile Rules Committee. Most rewarding, however, was working with attorneys and support staff who are truly dedicated to protecting the rights and interests of the poor and indigent.

In my opinion, the caseload in the Brainerd office is overwhelming and unworkable. When I returned to Brainerd in December of 2001 after my assignment in Aitkin, I started keeping track of my own caseload. Between December of 2001 and November of 2002, I closed 727 matters – 135 felonies, 53 gross misdemeanors, 343 misdemeanors, 136 adult probation violations, 27 juvenile matters, and 33 "other" matters (advice only, outside counsel, etc.). According to the 1991caseload standards for district public defenders in Minnesota, I did the work of more than two full-time public defenders. I suspect the caseloads for the other attorneys in the Brainerd office are similar if not worse. I further suspect that the caseload in the Brainerd office has doubled over the last five years. During that time, we added one full-time attorney and no additional support staff. The practical effects of our caseload are long hours in court

several days a week, little time to consult with clients, and few opportunities to use vacation time or comp time.

The anxiety, stress and depression brought on by my caseload eventually convinced me that my job was killing me. As a husband, father and sole provider, my first duty is to my family. Although I appreciated the kind words of support from John Stuart, Kevin Kajer and Kris Kolar, the conditions in Brainerd will not improve in the reasonably foreseeable future. I finally decided that I could no longer work as a public defender at the expense of my family. I realize that my departure, coupled with the departure of another full-time attorney and the pending budget deficit, may trigger a collapse of the Brainerd office. I also hope that the Brainerd office will get a lot of attention these next few months and that good may still result from this crisis.

Thank you for the wonderful opportunities these past five years. You most likely will never know how much I wished I could have continued as a public defender.

Sincerely,

Rockwell J. Wells
Assistant District Public Defender

STATE OF MINNESOTA

IN SUPREME COURT

In the Matter of the Petition of the Board of Public Defense and the State Public Defender for an Emergency Order Addressing the Crisis in Public Defense

AFFIDAVIT

Fred T. Friedman, being first duly sworn upon oath, deposes and says:

I am the Chief Public Defender for the Sixth Judicial District and am duly licensed to practice law in the State of Minnesota.

I have been a Public Defender since 1972; that I have been the Chief Public Defender of the Sixth District since 1986, and that I have the most seniority of the 10 Chief Public Defenders of Minnesota.

I make this affidavit in response to State Public Defender's Petition for relief from our current caseloads and for increased funding.

That in my 31 years as a public defender, this is the first time we have dealt with appropriation cuts, unallotments, and layoffs.

That despite having less funds and less lawyers and support staff, the caseload does not enjoy a corresponding decrease. That the expression "try to do more with less" may earn votes, but does not move cases or, more importantly, achieve justice.

That high caseloads and a reduced workforce has led to a nightmare of scheduling conflicts for public defenders throughout Minnesota.

That, routinely, court administrators and judges schedule defenders in two or more courtrooms at once and two or more courthouses at once.

That the current majority of the public defenders of Minnesota are part time employees who pay for their own overhead, including their secretaries, rent, computers, and library. That they signed contracts to work either half-time or three-quarter-time, and despite these cuts, actually work far more hours than they contracted for.

That because of reduced work force and scheduling conflicts, complaints against public defenders by clients and judges to the Board of Professional Responsibility have increased, and frustrated judges have engaged in fining public defenders and threatening fines of public defenders who have not mastered Houdini's skills of escape so as to appear to be in two places at one time (see attached).

That in the last week of July alone, two experienced public defenders resigned in Itasca County, a managing attorney resigned in Anoka County, and a managing attorney resigned in Martin County.

While some of us work toward more cooperation and finding solutions to these difficult funding problems, the actions of some other people only create acrimony. In my judgment, it is clear that more funding or caseload relief is required. Something has to change.

Further affiant sayeth not.

FRED T. FRIEDMAN
Chief Public Defender
Sixth Judicial District
1400 Alworth Building
306 West Superior Street
Duluth, MN 55802
(218) 733-1027
Attorney Reg. No. 3213X

Subscribed and sworn to before me
this 4th day of Aug, 2003.

Notary Public

LINDA S..PRIHODA
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

Rules and statutes related to the request for an order granting a presumption that continuances will be granted upon request in out of custody cases:

Minn. R. Crim. P. 1.02. The Rules of Criminal Procedure shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Minn. R. Crim. P. 5.03. In felony and gross misdemeanor cases, and if a separate Rule 8 hearing is not waived, the Rule 8 hearing shall be held within 14 days of the Rule 5 hearing, absent good cause.

Minn. R. Crim. P. 6.06. This rule addresses speedy trial in misdemeanor cases. It states that, upon demand by the defendant or the prosecuting attorney, trial must commence within 60 days of the demand if the defendant is out of custody, absent good cause.

Minn. R. Crim. P. 8.04. This rule says that the Omnibus Hearing shall be scheduled for a date no later than 28 days after the Rule 8 hearing, absent good cause.

Minn. R. Crim. P. 10.04. Sets time limits for motions. In misdemeanor cases, motions must be served no more than 30 days after arraignment, absent good cause.

Minn. R. Crim. P. 11.10. This rule addresses speedy trial in felony and gross misdemeanor cases. It states that, upon demand by the defendant or the prosecuting attorney, trial must commence within 60 days of the demand, absent

good cause. The rule provides that this time period does not commence until the defendant enters a plea other than guilty.

Minn. R. Crim. P. 12.07. This rule permits the court to continue pretrial conferences in misdemeanor cases for good cause.

Minn. R. Crim. P. 19.04. The rule concerns procedures following an indictment and states that arraignment must occur within seven days of the initial appearance, and that the Omnibus Hearing must be held within seven days of arraignment. Both time limits may be extended for good cause.

Minn. R. Crim. P. 26.04. This rule addresses post verdict motions and provides for a hearing on a motion for a new trial within 30 days after a verdict or finding of guilty unless the time for hearing is extended by the court for good cause.

Minn. R. Crim. P. 27.04. The rule concerns probation revocation hearings and states that in out of custody cases the hearing shall be held "within a reasonable time."

Minn. R. Juv. P. 13.02 (2003). The rule states that trial shall commence within 60 days of a speedy trial demand for a child who is not detained and within 30 days of demand if the child is detained. The rule requires that if a detained child has not been tried or released within 30 days, the child must be released unless a continuance has been granted. If the detained child is released after 30 days, trial must occur within 60 days of the original demand for speedy trial. In either case, if trial doesn't occur within 60 days, the delinquency petition must be dismissed without prejudice, absent a continuance and/or absent good cause.

The rule also provides that in the event of a mistrial, or in the event of an order for a new trial, the new trial shall be commenced within 15 days, absent good cause.

Minn. R. Juv. P. 15.07, subds 3(a)(2) and4(B) (2003). This rule governs the timing of probation revocation hearings. For out of custody juveniles, the admit/deny hearing must be held within a "reasonable time" of the revocation motion being filed; the revocation hearing must be held within a "reasonable time" of the child denying the violation.

Minn. R. Juv. P. 15.08 (2003). The rule governs disposition modification. It states that a hearing an a motion to modify disposition shall be held within 20 days of the motion absent "extraordinary circumstances."

Minn. R. Juv. P. 16.01, subd. 3 (2003). Absent good cause, the hearing on motion for a new trial must occur within 30 days of the adjudication, except in cases involving new evidence, which must be held within 15 days of the filing of notice of motion. Upon a showing of new evidence, the court shall order a new trial to be held within 30 days, absent good cause for extending this period.

Minn. R. Juv. P. 18.05 (2003). This rule addresses certification hearings. It states that the hearing shall be held within 30 days of filing the certification motion, but this period may be extended for up to 60 days for good cause. It also states that, absent "extraordinary circumstances," if the child is in custody, he or she must be released if the hearing is not commenced within 30 days.

Minn. R. Juv. P. 19.04 (2003). The rule establishes the timing of appearances in extended juvenile jurisdiction (EJJ) cases. The initial

appearance and court determination on the issue of probable cause must occur within 14 days of the filing of the petition, absent an extension for good cause. A contested hearing must be held within 30 days of the filing of the EJJ motion, but this period may be extended for up to an additional 60 days for good cause.

Minn. R. Juv. P. 19.11 (2003). This rule addresses EJJ revocation and provides for a revocation hearing within a "reasonable time" if the probationer is out of custody.

Minn. Stat. § 260B.130. Sets time limits for hearings in extended juvenile jurisdiction (EJJ) cases. Requires hearing be set within 30 days of state's request for EJJ designation, absent good cause, up to a maximum of 90 days from the filing of the request.

Minn. Stat. 631.02. Permits continuances in criminal cases for "sufficient cause."

Minn. Stat. § 631.021. Sets time limits within which criminal cases must be disposed of from date of the complaint being filed: 90 percent within 120 days, 97 percent within 180 days, 99 percent within 365 days.

Rules and statutes related to the request for an order limiting public defender involvement in CHIPS cases to one lawyer per case:

Minn. R. Juv. P. 61.01. All parties and participants in juvenile protection matter have right to be represented by counsel.

Minn. R. Juv. P. 61.02. Indigent juvenile has right to appointed counsel. Child's parent or legal custodian, if indigent, have right to appointed counsel in any juvenile protection matter in which the court determines that such appointment is appropriate.

Minn. Stat. § 260C.163. There is a right to counsel for the child, parent, guardian or custodian in connection with a proceeding in juvenile court. The court shall appoint counsel to represent the child who is ten years of age or older or the parents or guardian in any case in which it feels that such an appointment is appropriate.

Minn. Stat. § 260C.212, subd. 1(d). There is a right to appointed counsel for the parent or parents and the child in connection with preparation of an out of home placement plan.

Minn. Stat. § 260C. 212, subd. 4(c)(1). There is a right to separate appointed counsel "at public expense" for parents when CHIPS or parental rights termination petition is filed.

Minn. Stat. § 260C.331, subd. 3. Reasonable compensation for an attorney appointed to serve as counsel "are a charge upon the county in which proceedings are held upon certification of the judge of juvenile court or upon such other authorization provided by law."

Minn. Stat. § 611.14. Provides that the public defender shall represent children over the age of 10 in CHIPS cases.

Rules and statutes related to the request for an order requiring prepetition screening in CHIPS cases:

Minn. Stat. § 260C.141. This provision addresses filing CHIPS petitions. There are two aspects of this statute implicated by this request. First, the statute sets forth what the petition "must contain." The order requested complements this list by adding an additional criteria before filing would be permitted. The statute also permits filing by individuals or entities that are not a county attorney or agent of the commissioner of human services, subject to a probable cause review by the court. The order requested would not bar such filings, though petitioners would still need to comply with the filing requirements it imposes.

Minn. Stat. § 260C.148. This provision permits emergency petitions to be filed when domestic child abuse is alleged. The order requested would not affect such filings but, to assure clarity, this should be explicitly stated in that order.