

Standard Spotlight: Standard K

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By Andrew Falk, Staff Attorney

The late Norman Lefstein, of IU McKinney School of Law, began his 2011 book, *Securing Reasonable Caseloads*, with a story about an overworked public defender who was considering filing motions to withdraw from certain cases in order to provide better defense to his other clients. When the defender raised the idea with his supervisor, the supervisor threatened to fire him. Eventually the defender left the agency, “disheartened by his caseload, his inability to represent his clients the way he knew they should be represented, and wholly unsupported by his supervisors, including the head of the defender agency.”¹

Lefstein was not only concerned with public defenders. He also argued that “[w]e should be equally concerned with the options available to the heads of defender programs who are confronted with too many cases and too few staff.”² He further asked, “What should the heads of defense programs do when this occurs? How aggressively should they seek to control the caseloads of their lawyers? . . . If judges continue to pile on cases despite motions to withdraw, should public defenders force judges to pursue contempt proceedings?”³

The Indiana Public Defender Commission has sought to address these concerns by adopting Standard K, which requires counties to include in their comprehensive plan a minimum of the two following provisions, which address both individual public defenders as well as chiefs:

1. Individual Public Defenders. Whenever a salaried or contractual public defender determines, in the exercise of his or her best professional judgment, that the acceptance of additional cases or

¹ Lefstein, Norman, *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, at 5 (ABA 2011).

² *Id.*

³ *Id.*

continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the attorney is required to inform the county public defender, if any, or other authorities designated by the plan to secure professional independence for indigent defense services in the county.

2. Chief Public Defenders. Whenever the chief public defender determines, in the exercise of his or her best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the chief public defender is required to inform the appropriate judges and refuse to accept the appointment of additional cases.

The Commission is aware of multiple situations in which Indiana counties are dealing with Standard K-triggering circumstances. The Marion County Public Defender Agency, for example, has advised the Commission that attorney caseloads related to the actual number of pending, open cases have increased dramatically since the COVID-19 pandemic began. In comparing the pre-pandemic period (10/31/18 – 12/31/19) to the pandemic period (1/1/20 – 3/31/20), the office has an increase in open cases of 203%.

The Marion County attorneys listed in the report are compliant with Commission standards regarding new case assignments. Their ability to resolve new case assignments and provide effective representation, however, may be significantly impaired due to the backlog of cases. Restrictions on in-person hearings, jail visits, and trials during the pandemic, along with increased pressure from the courts to resolve the backlog of open cases, contribute to the Marion County Public Defender Agency's concerns regarding its attorneys' ability to provide their clients with effective assistance of counsel.

Similarly, other counties are dealing with related issues. Although Vermillion County vastly differs from Marion County, it also faces pandemic-related caseload challenges. In one instance, Vermillion County has years' worth of trials scheduled during a three-month period due to pandemic restrictions and backlogs, with too few public defense attorneys to adequately handle the load. To add insult to injury, Vermillion County has experienced tremendous difficulty finding additional attorneys to help cover the caseload and jury trials scheduled.

The Commission suspects there are other Indiana counties facing caseload challenges similar to Marion and Vermillion Counties. In some situations, additional attorneys may need to be hired (see Cullen article regarding funding for pandemic-related hiring). In every county, public defender boards, chief public defenders, and public defense attorneys should communicate with each other about caseloads and the attorneys' ability to adequately manage their open cases. And in some instances, chief public defenders should invoke Standard K to prevent additional cases from being assigned to overloaded public defenders.

If you have any questions or concerns about this topic, please contact the Commission.