

**IN THE GENERAL SESSIONS COURT
FOR KNOX COUNTY TENNESSEE
MISDEMEANOR DIVISION**

In re: Petition of
Knox County Public Defender

Docket No. _____

AFFIDAVIT OF DAVID M. ELDRIDGE

STATE OF TENNESSEE)
)ss:
COUNTY OF KNOX)

The undersigned, being duly sworn, states as follows:

1. My name is David M. Eldridge and I am an attorney licensed to practice in the state of Tennessee. I have been a licensed attorney since April of 1987. Since July of 1988 I have devoted my practice principally to the representation of individuals and organizations in connection with criminal investigations and prosecutions in the state and federal courts. Of potential relevance to the subject matter of this Affidavit, I am certified as a Criminal Trial Specialist by the Tennessee Commission on Continuing Legal Education and Specialization. I currently practice in the capacity of the managing partner at the law firm of Eldridge & Blakney, P.C. located in Knoxville, Tennessee.
2. I have practiced law in Knoxville, Tennessee for twenty years and am therefore familiar with the criminal justice system in the Knox County General Sessions and Criminal Courts.
3. I have reviewed the Sworn Petition to Suspend Appointment of the District Public Defender to Defendants in the Knox County General Sessions Court, Misdemeanor Division. I offer the following observations and opinions with regard to the factual averments in this Petition as they relate to an attorney's professional responsibilities to their clients in criminal cases.
4. Under any objective analysis, the number of cases to which the Knox County Public Defender's Office was appointed in fiscal year 2006 and 2007 is staggering. Given the number of Assistant Public Defenders within the office, the resulting case loads for any individual Assistant Public Defender are such that it is difficult to envision how the office is able to deliver the quality of representation it does now. As will be

discussed, in my view, it is an easily supported opinion that the case loads currently imposed upon the Knox County Public Defenders Office are sufficiently excessive so as to prevent their lawyers from rendering constitutionally effective assistance of counsel on a regular basis.

5. This court is well aware of the obligations that are imposed upon a lawyer representing a citizen accused of crime by the Tennessee Rules of Professional Conduct (TRPC). This court is further aware of the citizen's constitutional rights to the effective assistance of counsel and the obligations that right also impose upon their counsel. However, for the purposes of the record in this matter, those obligations bear articulation and comment in this Affidavit.
6. The TRPC require a lawyer to provide competent representation to a client which requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Rule 1.1, T.R.P.C.
7. The TRPC require a lawyer to act with reasonable diligence and promptness in representing a client. Rule 1.2, T.R.P.C.
8. The TRPC requires a lawyer to communicate effectively with the client. This obligation includes the affirmative obligations to keep the client reasonably informed about the status of a matter and explain it to the extent necessary to permit the client to make informed decisions regarding the case as well as the reactive obligation to respond to client requests for information within a reasonable time. Rule 1.4 T.R.P.C.
9. These three ethical obligations imposed by our Supreme Court upon all lawyers --- competence, diligence, and communication --- have constitutional dimensions for the lawyer representing a client in the defense of a criminal charge.
10. The criteria by which our Tennessee Supreme Courts measures the minimum standards necessary to provide constitutionally effective assistance of counsel embody these same obligations of competence, diligence, and communication which are set forth in the American Bar Association's Standards for the Defense Function. See *Vaughn v. State*, 202 S.W.3d 106 (Tenn. 2006)(citing *Baxter v. Rose*, 523 S.W.2d 930 Tenn. 1975).
11. More specifically, these standards have been articulated in the ABA Standards to include the following minimum requirements:
 - (1) Counsel should confer with his client without delay and as often as necessary to elicit matters of defense, or to ascertain that potential

defenses are unavailable. Counsel should discuss fully potential strategies and tactical choices with his client.

(2) Counsel should promptly advise his client of his rights and take all actions necessary to preserve them. . . .

(3) Counsel must conduct appropriate investigations, both factual and legal, to determine what matters of defense can be developed. . . . This means that in most cases a defense attorney, or his agent, should interview not only his own witnesses but also those that the Government intends to call, when they are accessible. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. And, of course, the duty to investigate also requires adequate legal research.

12. In any criminal case, whether the charge is a felony or a misdemeanor, these ethical and constitutional obligations require counsel to insure that a number of responsibilities are undertaken to be adequately prepared to represent the client. Although far from exhaustive, these responsibilities include a review of the applicable charging statute and relevant case law to identify and understand the elements the state must prove, an investigation of the facts of the case, securing information concerning the client's criminal record, examination of the case to determine whether there are grounds for suppression of evidence, and of course insuring that counsel has an understanding of all the consequences to the client of a conviction for the crime charged. The amount of time necessary to fulfill each of these responsibilities of course varies with the gravity of the charge and the complexity of the case. However, in order to provide constitutionally adequate and ethically appropriate representation to the client, each of these responsibilities should be met in every case whatever the charge.

13. The obligation to appropriately investigate a case bears some additional comment as to what steps should be taken to fulfill this responsibility.

a. This responsibility includes attempting to interview the state's witnesses. Witnesses may be interviewed by an investigator but if a witness is critical, counsel should also participate in the interview together with an investigator who can testify as to the witness' statements if impeachment is needed.

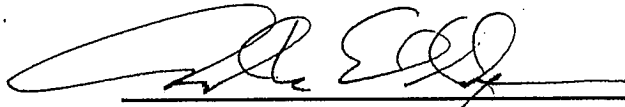
b. This responsibility also includes collecting information related to the case such as police reports, accident reports, videos from police cruisers, 911 tape recordings, and discovery materials provided by the state. This information should be reviewed in order to identify potential witnesses and attempting to interview those who may have relevant

information. In addition, the client should be thoroughly debriefed in order to identify potential witnesses as well.

c. I also believe this obligation includes visiting the scene of the alleged crime, taking photographs and if necessary, relevant measurements. I always make it a practice in any case to visit the scene personally before any hearing or trial on the case.

14. The client is entitled to be fully informed about the information that counsel has uncovered in their investigation of the case. The client is further entitled to counsel's assessment of the strengths and weaknesses of the state's case and the strengths and weaknesses of the available defenses to the charge. The client is entitled to be informed of any offer made by the state to resolve the case and to counsel's recommendation as to the whether the client should accept that offer or proceed to trial. To state the obvious, to fulfill these obligations, counsel must communicate with the client frequently and effectively during the course of their case. The obligation to effectively communicate also encompasses counsel's responsibility to do his or her best to answer a client's questions or concerns in a timely fashion. In other words, communication is of course a two way street and the lawyer must respond to a client's concerns promptly or risk significant damage to the attorney-client relationship. I have found the most effective communication occurs through face to face meetings which of course take significantly more time if the client is incarcerated.
15. At this point in my practice, I have a legal assistant and an associate attorney who work with me on most of my cases. In addition, in many of our cases, we employ a private investigator to assist in investigating the case. We are fortunate to have an active and busy practice, concentrated heavily in the representation of individuals and organizations in criminal investigations and prosecutions in the state and federal courts. However, our firm's caseload pales in comparison to the remarkable caseloads the lawyers in the Knox County Public Defenders' office are currently carrying. As is outlined in the Petition, many of the Assistant Public Defenders are relatively inexperienced, do not have access regularly to the level of staff support that I do in my practice, and are currently required to attempt to serve an extraordinarily large number of clients effectively.

16. Each of the responsibilities outlined above take considerable time. I know the amount of time and effort that is required to fulfill my ethical and constitutional obligations to my clients. If I was called upon to serve the number of clients that the members of the Knox County Public Defenders office currently are tasked with representing as set forth in the Petition, it would be impossible for me to represent those clients effectively as I am ethically and constitutionally required to do.
17. And further affiant saith not.



DAVID M. ELDRIDGE

Before me, the undersigned notary, of the state and county aforesaid, personally appeared David M. Eldridge, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), executed the foregoing instrument for the purpose therein contained.

WITNESS my hand and seal, this 26th day of February, 2008.


Notary Public

My Commission Expires 9-11-2010

