

IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE

IN RE:)
PETITION OF KNOX COUNTY) DOCKET NO.: _____
PUBLIC DEFENDER)
)

AFFIDAVIT OF W. THOMAS DILLARD

STATE OF TENNESSEE)
:
COUNTY OF KNOX)

The undersigned first being duly sworn would state as follows:

1. My name is W. Thomas Dillard. I have been an attorney licensed to practice in the State of Tennessee since 1965. After serving as an Assistant United States Attorney, United States Magistrate and United States Attorney, I re-entered private practice in January of 1987 with the firm of Ritchie, Fels & Dillard, P.C. I am currently senior partner in the successor firm of Ritchie, Dillard & Davies, P.C., and I devote my practice principally in the area of criminal defense in both state and federal courts. I am certified as a Criminal Trial Specialist by the Tennessee Commission on Continuing Legal Education and Specialization. I also am a member of the Tennessee Bar Association's Standing Committee on Ethics and Professional Responsibility and also the Advisory Commission to the Supreme Court on Rules of Practice and Procedure.

2. A significant portion of my practice over the past 21 years has been in the General Sessions and Criminal Courts in Knox County and other counties in the state of Tennessee. I believe I am familiar with the obligations of a criminal defense attorney under the Constitution of the United States, the State of Tennessee, and the Tennessee Rules of Professional Conduct.

3. The defense of an accused charged with a criminal offense is unquestionably a serious matter and the obligation of that individual's attorney is set forth in Article 1, Section 9 of the Tennessee Constitution, the Sixth Amendment to the United States Constitution, and the Tennessee Rules of Professional Conduct. The obligations and responsibilities of the attorney will of course vary from case to case, but in each instance, it is necessary that the facts of the case be thoroughly investigated and that the law applicable to each case be appropriately researched.

4. 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.

5. I have reviewed the attachments to the aforementioned sworn petition which set forth a number of cases handled by the Knox County Public Defender's office in fiscal years 2006 and 2007. Contained in the Petition and the attachments is an analysis of the case management system used by the Knox County Public Defenders Office. This analysis reflects the weighted caseload of this office in Felony, Misdemeanor, and DUI General

Sessions Courts, as well as the three divisions of Criminal Court. I have reviewed the number of cases to which the Public Defender's office was appointed in the fiscal years 2006 and 2007. When one considers the number of cases assigned in each of these courts, and further considers the number of attorneys assigned to each court, the resulting caseloads for the existing Assistant Public Defenders have obviously reached critical mass. In my opinion these attorneys have been and are doing a commendable job in attempting to render the effective assistance of counsel required under the state and federal constitutions. However, unless this caseload is reduced significantly, or the number of attorneys is increased significantly, it is my opinion that this will result in caseloads sufficiently excessive so as to prevent those attorneys from rendering constitutionally effective assistance of counsel to all of their clients.

6. I am familiar with the Tennessee Rules of Professional Conduct, having been a member of the Committee that undertook the revision of the ethical rules for attorneys in this state. Several of these rules apply to the factual situation set forth in the sworn petition:

Rule 1.1 of Tennessee Rules of Professional Conduct (T.R.P.C.) provides that "[a] lawyers shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Comment [4] to this rule states:

"A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This principle applies as well as to a lawyer who is appointed as counsel for an unrepresented person."

Rule 1.1 also applies to a thorough investigation of the facts. Although adequate investigation and preparation will be determined in part by the complexity of the case, the obligation of counsel to investigate the facts is still a vital and necessary component of effective representation.

Rule 1.4 also applies to this situation. The Rule states as follows:

“(a) A lawyer shall keep a client reasonably informed about the status of a matter and comply with reasonable request for information within a reasonable time.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

With the caseload now being carried by these Public Defenders, this ability of the attorneys to comply with this rule is also impacted.

7. Although it is difficult to compare my current caseload by weighted standards with a caseload currently being handled by a Public Defender in one of the General Sessions Courts or Criminal Courts, it is my opinion that it would be impossible for me to represent a similar number of clients in the required effective manner.

8. My effective representation would be further exacerbated by the fact that the Public Defender is not able to employ a “vertical representation” of clients but rather must rely upon a “horizontal representation.” In my firm, the same attorney or attorneys are assigned from beginning to end. If we were to establish a “horizontal method” of

representation, the resulting inefficiency would make effective representation of the client even more problematic.

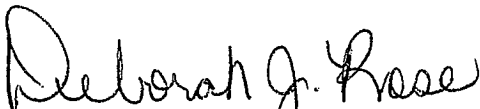
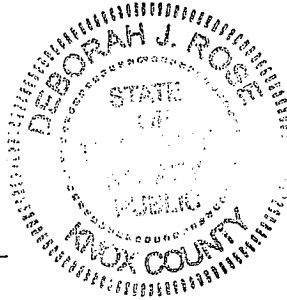
Further the affiant saith not.



W. THOMAS DILLARD

Sworn to and subscribed before me

this 28th day of February, 2008.


NOTARY PUBLIC

My Commission Expires: June 7, 2008