

IN THE GENERAL SESSIONS COURT OF KNOX COUNTY, TENNESSEE

MISDEMEANOR DIVISION

In re:)
) Docket No. _____
Petition of Knox County)
Public Defender)

AFFIDAVIT OF JERRY P. BLACK

STATE OF TENNESSEE)
)SS:
COUNTY OF KNOX)

The undersigned, being duly sworn, states as follows:

1. My name is Jerry P. Black and I am an attorney licensed to practice in the state of Tennessee. I have been a licensed attorney since August of 1968. I have devoted my practice to the representation of persons unable to afford counsel in both civil and criminal cases. I have been a professor of law since 1972. My primary teaching responsibilities have involved the supervision of law students in clinical legal education settings.

2. Since September of 1975 I have practiced law in Knoxville, Tennessee and am familiar with the criminal justice system in the Knox County General Sessions Courts and Criminal Courts.

3. In my capacity as a law professor supervising law students, who are allowed to represent those unable to afford counsel pursuant to the Rules of the Tennessee Supreme Court, I have counseled them as to their ethical obligation to provide effective representation to the citizen accused. We discuss counsel's obligation to provide ethical representation under the Tennessee Rules of Professional Conduct, the American Bar Association's Standards for the Defense Function in Criminal Justice, and the Performance Guidelines for Criminal Defense Representation by the National Legal Aid and Defender Association.

4. I have carefully reviewed the Sworn Petition to Suspend Appointment of the District Public Defender to Defendants in the Knox County General Sessions Court, Misdemeanor Division. I set out below my opinions with regard to the factual averments in this petition as they related to an attorney's professional responsibility to his or her client.

5. The data generated by the Knox County Public Defender show that the office was appointed in a staggering number of cases. It is difficult to see how the office's lawyers provide the quality of representation that they do given the number of cases and the caseloads of the respective attorneys.

6. Rule 1.1 of the Tennessee Rules of Professional Conduct require a lawyer to provide competent representation to a client. Rule 1.2 requires the lawyer to act with reasonable diligence and promptness in the representation of a client. And Rule 1.4 mandates that the lawyer keep the client informed about the status of his or her case.

7. Guideline 1.3 of the *Performance Guidelines for Criminal Defense Representation* state the counsel “before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge, and experience to offer quality representation to a defendant in a particular matter. If it later appears that counsel is unable to offer quality representation in the case, counsel should move to withdraw.”

8. ABA Guideline 4-1.3 (e) commands defense counsel “not to carry a caseload that, by reason of its excessive size, interferes with the rendering of quality representation”

9. The obligation to provide quality representation is the same whether the charge is a felony or a misdemeanor. Quality representation requires a thorough interview of the client prior to the client’s court appearance, a factual and legal investigation of the charges against the client, consultation with the client about the possible case outcomes, discussion with the prosecution concerning an agreed disposition, and quality preparation for a possible hearing or trial.

10. In my experience, a defendant’s confidence in and respect for our criminal justice system is dependent upon his or her experience in our courts. If the person believes that he or she got a fair shake they are more likely to comply with the court’s orders and less likely to reoffend. A defendant’s confidence in the system begins with the defendant’s confidence in defense counsel. I think the defendant asks, “did my lawyer do right by me?”

11. The sheer number of cases assigned to the Knox County Public Defender makes it virtually impossible to comply with the mandates of the ethical rules set out above. Because of excessive caseloads, even the best intentioned defender is unable to properly represent his or her clients. And when that happens, the defendant understandably mistrusts the criminal justice system – a system that does not follow the constitution but one that demands the defendant follow the law.

12. The only realistic solution to the excessive caseload of the Knox County Public Defender is to allow that office to refuse additional appointments until such time as the caseload is manageable. The Petition appears to set out a most reasonable plan to reduce the caseload and to provide the greatest assistance to those defendants needing appointment of counsel.

13. It is my observation that the public defender and his assistants in Knox County are lawyers who seek to provide quality representation to all of those to whom they are appointed. This has been true since the office’s inception.

14. It is my observation that what hampers the public defender and his assistant in their effort to provide full quality representation is a crushing caseload – a caseload that would prevent anyone from providing the defendant his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution and under Article I, Section 9 of the Tennessee Constitution.

15. Further, affiant says not.

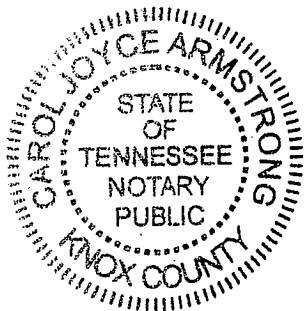
Jerry P. Black
Jerry P. Black BPR 002069

STATE OF TENNESSEE

COUNTY OF KNOX

Before me, the undersigned notary of the state and county aforesaid, personally appeared Jerry P. Black, with whom I am personally acquainted and he executed the foregoing instrument.

Witness my hand and seal, this 28th day of February, 2008



Carol Joyce Armstrong
Notary Public

My commission expires: My Commission Expires July 26, 2011