January 26, 2017

The Honorable Cory Booker
United States Senate
Washington, DC 20510

Dear Senator Booker:

I am writing you on behalf of the American Bar Association (ABA) and our more than 400,000 members from all corners of the profession. The ABA applauds you as an ally in our long history of supporting America’s public defenders, the plight of the indigent accused, and the Constitution’s Sixth Amendment right “In all criminal prosecutions...to have the assistance of counsel for his defense.” We are pleased to express our support for your legislative efforts to attain these objectives and secure this right.

The ABA’s Standing Committee on Legal Aid and Indigent Defendants (SCLAID) conducted four public hearings in 2004 at which 32 experts from 22 large and small states across the country testified. In its report, SCLAID observed that when lack of funding for indigent defense led to overwhelming workloads, the result was “routine violations of the Sixth Amendment obligation to provide effective assistance of counsel.”

Principle 5 of the ABA’s 2002 Ten Principles of a Public Defense Delivery System provide that “Defense counsel’s workload . . . [must be] controlled to permit the rendering of quality representation.” Furthermore, in 2006, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 06-441 concluding that the ABA’s Model Rules of Professional Conduct for competent representation with knowledge, skill, thoroughness, and preparation reasonably necessary (Model Rule 1.1) and with reasonable diligence and promptness (Model Rule 1.3) apply to public defenders.

Finally, the Comment for Guideline 5 of the ABA’s 2009 Eight Guidelines of Public Defense Related to Excessive Workloads states: “When a Provider cannot reduce excessive lawyer workloads, a motion filed with the court, aimed at stopping case assignments and/or permitting lawyers to withdraw from cases . . . , or conceivably the filing of a separate civil action, will be necessary.”

In support of these policies and principles, the ABA has filed amicus curiae briefs in numerous court cases.

Thus, the American Bar Association strongly supports the goals of your legislation, the Equal Justice Under Law Act of 2017 and the Clarence Gideon Full Access to Justice Act.

If you have any questions, Aloysius Hogan in the ABA Governmental Affairs Office can be reached at (202) 662-1767 or Aloysius.Hogan@americanbar.org. We look forward to working with you on these important issues.

Sincerely,

Thomas M. Susman