December 16, 2014

Kevin S. Brackett
Chairman
South Carolina Commission on Prosecution Coordination
Post Office Box 11561
Columbia, South Carolina 29211-1561

Dear Chairman Brackett and Members of the Commission on Prosecution Coordination:

I write on behalf of the American Bar Association ("ABA") to inform you of an erroneous reference to a standard attributed to the ABA in a recent Commission publication and to respectfully request that the error be corrected. On October 14, 2015, your Commission released its Caseload Equalization Budget Proposal ("Proposal"), which states in pertinent part that "[t]he American Bar Association has set a criminal caseload standard of no more than 150 felony cases or 400 misdemeanor cases per attorney.” Proposal, at 7. It further states that “[i]n South Carolina, we are operating at 2.5 times the ABA standard . . . .” Id. However, the Proposal does not cite any specific ABA policy or standards for this reference.

Our relevant standards were adopted by the ABA House of Delegates -- our policy-setting body -- as the ABA Standards for Criminal Justice: Prosecution and Defense Function (3d ed.) ("Criminal Justice Standards") in 1992 and published in 1993. Standard 3-2.9(e) addresses prosecutorial workloads:

> A prosecutor, without attempting to get more funding for additional staff, should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the interests of justice in the speedy disposition of charges, or may lead to the breach of professional obligations. Criminal Justice Standards, Standard 3-2.9(e).

While the ABA therefore encourages reasonable prosecutorial workloads, the ABA House of Delegates has not adopted numerical caseload limits for prosecutors.

Your Proposal’s reference to “150 felony” and “400 misdemeanor” cases appears to stem from the National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, The Defense (1973) ("NAC Standards"). The NAC Standards -- now more than 40 years old -- pertain only to defense caseloads, not prosecutorial caseloads. Further, the NAC
Standards’ validity may be questionable given the Standards’ lack of empirical basis and failure to account for modern developments in criminal law, such as forensics and collateral consequences. Norman Lefstein, Securing Reasonable Caseloads 43-49 (American Bar Association 2011).

Because the ABA has not adopted numerical caseload limits for prosecutors, we ask that you correct the erroneous reference to the ABA in citing authority for numerical caseload limits for prosecutors.

As Standard 3-2.9(e) above illustrates, the ABA supports prosecutors’ efforts to maintain reasonable workloads. We take no position on whether prosecutorial workloads in South Carolina are excessive. We caution, however, that, in seeking additional funding for the prosecution function, the State of South Carolina should ensure resource parity between the defense counsel and the prosecution.

Justice cannot be delivered without properly funded judicial, prosecutorial, and defender offices. An expansion of prosecutorial resources absent a commensurate expansion of defender resources would violate ABA standards. (See ABA Ten Principles of a Public Defense Delivery System, Principle 8, with Commentary (2002).) We understand that the Commission does not advise the legislature on the defender budget, but we wish to share our view that these issues are closely related and to urge that the State of South Carolina legislature consider each criminal justice stakeholder in determining future budget allocations; that is why we are sending copies of this letter to responsible legislative committee chairs.

Thank you for accommodating our request.

Sincerely,

Thomas M. Susman

cc: Hugh K. Leatherman, Sr., Chairman, Senate Finance Committee
W. Brian White, Chairman, House Ways and Means Committee