



June 11, 2010

Honorable Anthony Cobos
County Judge
El Paso county Courthouse
500 E. San Antonio, Suite 301
El Paso, TX 79901
countyjudge@epcounty.com

Dear Honorable Anthony Cobos:

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I am writing to urge that El Paso develop a truly independent oversight commission to uphold national public defense standards and to ensure essential indigent defense procedures. The recent issue surrounding El Paso County Public Defender Clara Hernandez' potential dismissal from office is of grave concern to us.

In the American Bar Association's *Ten Principles of a Public Defense Delivery System*, one of the most widely used models to ensure national public defense standards, the first principle calls for independent features in all of the important components of a public defense system. Independence of the defense function is the only way to ensure insulation of the defense function from the executive and judicial branches in their administrative capacities, insulation from the judiciary in the courtroom, and insulation from the vicissitudes and improper influence of politics, supervisory overreaching, and untenable economic demands.

Essential to defense function independence, as explicitly recognized in the ABA's first principle, are independent oversight commissions. Without such a commission, government officials can pressure public defenders into conforming to certain procedures that compromise the quality of indigent defense and, at worst, undermine or violate the Sixth Amendment right to the effective assistance of counsel and the attorney client privilege between public defenders and their clients. Moreover, the independence standard helps to ensure diversity and enhance public confidence in the public defense system.

The National Legal Aid and Defender Association's *Guidelines for Legal Defense Services* standards specifically address the composition of an oversight commission that is independent from potential political manipulation. The NLADA standard advises that an independent oversight commissions should consist of 9-13 members. These members should be appointed by a variety of authorities to ensure a non-biased, bipartisan public defense system. Several states have created commissions consistent with these standards. North Carolina's commission, in particular, has been repeatedly held up as a model of good government and responsible indigent defense oversight. El Paso's taxpayers deserve no less.

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The Constitution Project's National Right to Counsel Committee, in its recently issued report *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, affirms that one of the most important mechanisms for ensuring independence of the indigent defense system is to have appointments to the oversight board originate from a variety of sources. At a minimum, the authority to appoint members to the commission should be allocated to all three branches of government and relevant bar associations. North Carolina allocates appointing authority to the chief justice, governor, house, senate, and six different bar groups, with the commission appointing three additional members. In other states, the responsibility is shared among the governor, the chief justice, the chairman of the legislature, and the state bar association. As explained in the Constitution Project report, these models ensure a diverse commission that is neither beholden to nor apt to do the bidding of any single branch of government, bar group, or individual who selects the commission's members. It also eliminates from the commission the influence of political pressures and favors through the commission on the public defender office.

The Constitution Project's National Right to Counsel echoes the ABA's and NLADA's position on commission composition by stating that, although commissions need not be a particular size, they should consist of at least seven to nine members so that they can perform the necessary work, wield sufficient authority, and feel a sense of responsibility for the commission's performance. Conversely, the larger the commission, the less likely members may have a sense of personal responsibility for the commission's success. On the other hand, since members of oversight bodies are usually uncompensated except for expenses, a commission comprised of at least nine to thirteen members will more likely assure the presence of a quorum at meetings and sufficient persons to devote time to essential tasks. Moreover, large and diverse commissions may be more effective since there are more members to express public support on behalf of indigent defense.

Without addressing the issue surrounding Ms. Hernandez, NACDL submits that a dismissal decision inherently invites concerns because the employment process is inconsistent with the national standards and recommendations supported by the ABA, NLADA and the Constitution Project. Other states that have failed to insulate the administration of public defense from political interference have experienced similar turmoil. El Paso taxpayers are not well-served by such a model.

NACDL urges El Paso to install a commission consistent with the American Bar Association's *Ten Principles of a Public Defense Delivery System*, the National Legal Aid and Defender Association's *Guidelines for Legal Defense Services* standards, and the report of the Constitution Project's National Right to Counsel Committee. As a result of the events surrounding the chief public defender's potential dismissal, the independence of the defense function, and perhaps the quality of indigent defense, in El Paso has been called into question. Now is the time for El Paso to confront the problem head-on by creating an independent oversight commission to ensure an effective, efficient and just public defense system.

Sincerely,



Cynthia Hujar Orr
President

Cc: Honorable Anna Perez
Honorable Veronica Escobar

Honorable Willie Gandara, Jr.
Honorable Dan Haggerty