



NLADA | American Council of Chief Defenders

The American Council of Chief Defenders is a national community of criminal defense leaders

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April 23, 2013

Dow Constantine
King County Executive
Chinook Building
401 5th Avenue Suite 800
Seattle, WA 98104

Dear County Executive Constantine:

The American Council of Chief Defenders (ACCD) is a national community of public defense leaders dedicated to securing a fair justice system and ensuring high quality legal representation for people facing loss of life, freedom, or family. The mission of the ACCD is to speak as a national voice for public defense clients; to promote best practices in the leadership, management, and administration of justice; and to support development and reform of public defense systems.

We are familiar with King County's highly respected defender system, and we write to urge that King County retain the autonomy of the four existing defender offices in the exercise of their professional and ethical obligations and their advocacy role, as you move to include the defenders in the County retirement program pursuant to the *Dolan* case settlement.

The current, decades-old system provides independence to the four non-profit offices, which has allowed them to develop and maintain national reputations for effective, client-centered representation. It is this successful model that we strongly recommend that you keep in place.

We understand that King County's interest in risk management has led the County to consider other operational structures, including the public corporation model. According to the legal memorandum provided to the County Council by the Pacifica law firm ("Pacifica Memorandum"), the public corporation model would transfer "the public defender services currently provided by the existing 501(c)(3) corporations to County chartered public corporations with boards of directors chosen by the County and subject to statutorily required public process and oversight." If King County chooses not to maintain the current non-profit structure for providing public defense services, the ACCD suggests that the County adopt some form of the public corporation model that will protect the independence that is essential to the functioning of a good public defender system.

The public corporation model has other advantages over the two division proposal. It would minimize the enormous and costly disruption that often accompanies significant systemic change – change that can affect not only the public defender offices themselves, but also the courts and other criminal justice agencies. The public corporation model would also: (1) avoid the costly new conflicts of interest issues that would result from the plan to combine the four offices into two, (2) avoid the risk of damage to the current defender system's outstanding reputation for superior performance, (3) avoid the risk of reducing the level of respect the offices have developed for their role in improving the criminal justice system, and (4) retain the independence of the existing and effective programs.

The County can accomplish all this while still addressing its risk management concerns. As noted in the Pacifica memorandum provided to the Council:

The public corporation model furthers two important goals: (1) preserving the current system of independent public defense offices which is well established and well regarded and has known and reasonable costs; and (2) housing those independent programs in a governmental structure. Public corporations provide a unique way to protect independence and preserve the County's current public defense assets and the identity of the existing offices, while allowing the County more control over the work of its employees. By carefully drafting the implementing documents, both goals can be achieved and the competing goals appropriately addressed.

Pacifica Memorandum at 3.

Our support for the public corporation model comes with a proposal for one modification: to ensure the independence of the public defense function, King County should have less control over the composition of the corporation's board. The Pacifica Memorandum states that (1) the County Executive would have authority to appoint board members, (2) the County Council would have the authority to confirm the appointments, and (3) the Council would have authority to remove a board member for cause and to remove and replace the entire board for a specific cause. Pacifica Memorandum at 2. Instead, the members of the board should be appointed by representatives selected from academia, bar associations, community groups, and nominees from the county executive and the county council, with no one group appointing a majority of members. Furthermore, to ensure the independence of the public defense function, the County should be given no authority to confirm board member appointments or to remove appointed members. Rather, no confirmation of the appointments should be required, and removal of Board members should be a matter for the Board itself to decide.

The American Bar Association's *Ten Principles of a Public Defense Delivery System* present the most widely accepted and applied version of national standards for public defense. In the words of the ABA, the *Ten Principles* "constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation."¹

The first of the ABA *Ten Principles* calls for the establishment of an independent right to counsel oversight board, whose members are appointed by diverse authorities, so that no single official or political party has unchecked power over the indigent defense function. As the commentary to the ABA *Ten Principles* notes, a nonpartisan board is needed to safeguard independence as well as to promote efficiency and quality of services; selection of board members should not be left solely to the County.²

We recognize the extraordinary value of King County's existing offices and leadership. Preserving the strengths of the existing system, including the

¹ American Bar Association, Standing Committee on Legal Aid & Indigent Defense. *Ten Principles of a Public Defense Delivery System*. February 2002. Available at: www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf

² To help jurisdictions in the establishment of independent public defender boards or commissions, the National Legal Aid and Defender Association has promulgated guidelines. NLADA's *Guideline for Legal Defense Services* (Guideline 2.10) states: "A special Defender Commission should be established for every defender system, whether public or private. The Commission should consist of from nine to thirteen members."

tradition, reputation, independence, record of achievement and existing leadership of the current offices is critical as you adapt your system to provide employee retirement benefits and resolve liability issues.

As the nation's leading voice on public defense, we urge the County to consider the public corporation alternative as a way to retain the strong defender system that you have and that serves the County well. Any change the County adopts, however, should protect the independence of the public defense function.

We would be pleased to answer questions. Thank you for your consideration.

Sincerely,



Tim Young
Chair, ACCD

cc: Members, King County Council