

P.A.C.E.
Professional Association of Fresno County Employees
P.O. Box 661
Fresno, California 93709-0661

President – Scott Baly
Secretary – Daniel Brickey
Shop Steward – Eric Christensen

Vice President – Kristin Maxwell
Treasurer – Kathy Marousek
Member at Large – Doug Feinberg

September 20, 2013

Ken Taniguchi, Public Defender
2220 Tulare Street, Ste. 300
Fresno, CA 93721

Mr. Taniguchi,

Pursuant to the American Bar Association Standards for Criminal Justice, the ABA Model Rules, California Rules of Professional Responsibility section 3-110, and ABA formal opinion 06-441 we the undersigned are informing management of the Fresno County Public Defender's Office of our concern regarding our Constitutional duty to effectively perform competent legal services for our clients due to excessive caseloads, and working out of class.

Attorneys in this office are over-burdened with a staggering number of cases. All are concerned about being singled out for punishment should an individual complaint be voiced due to the recent termination of an attorney colleague. In light of our concern we are bringing this request for a solution to you through our Association.

In 2009, prior to declining cases assigned to the Public Defender's Office, you informed the Board of Supervisors the following:

"The Board was informed in the August 26, 2008, budget reduction Item that any further cuts in personnel would result in the inability Of the Public Defender to staff all courts and fulfill 100% of its Mandated functions." "Currently the caseload level for each Full-time staff attorney in the Department far exceeds the American Bar Association standards and only grows each time an attorney Position is deleted." (***Public Defender Budget Status and Mandated Service levels for FY 2008-09; January 23, 2009.***)

You explained to the BOS that our constitutionally mandated duty of providing effective legal representation to the indigent of Fresno County was dangerously close to overload due to budget cuts. You informed them that further cuts to our staff would force you to decline cases and that your failure to act would subject you to personal liability. (***Please see attachment "A".***)

When you wrote the above-referenced budget status report to the BOS the Public Defender was staffed with 78 attorneys, 6 legal assistants, 18 investigators and 22 office assistants. Since 2009, according to budget reports by the District Attorney's Office and this office,

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criminal filings have increased by at least 16%. At this time the Public Defender's Office has a total of 56 attorneys, 4 legal assistants, 9 investigators, and 11 office assistants: 38 attorneys are handling a criminal caseload of more than 23,000 cases per year. (**Please see inner-office telephone list; 2013-14 budget reports for DA and PD; PD Budget Report FY 2012-13.**)

For a brief time in 2009 you complied with your Constitutional mandate of insuring the caseloads did not exceed a designated number and once we reached a cap you declined new cases. While criminal filings have continued to greatly increase, our office has been reduced by at least 1/3 of its staff yet you have not declined any cases since 2009.

As of July 1st, 2013, the misdemeanor attorneys are carrying an average of 356 open cases (**Please see attachment "B"; Public Defender Annual Report FY 2012-13.**) with up to, if not more than, 2,000 cases assigned per year to each attorney. (**Please see attachment "D".**) The ABA recommends only 400 total cases per attorney per year in reference to misdemeanors.

The felony attorneys are carrying an average of 230 cases as of July 1st, 2013 with up to, if not more than, 1,000 cases assigned per year to each felony attorney. (**Please see Public Defender Annual Report FY 2012-13 and attachment "C."**) The ABA rules recommend a total of 150 felony cases per year per attorney.

The major crimes attorneys each have approximately 16-22 cases currently assigned including specials cases, homicides, complex gang crimes, etc. An attorney handling a specials case, at the maximum, may carry one or two other non-specials cases. It is taking an average of three to four years to get a homicide case to trial, and an average of one to two years to get a non-homicide major crimes case to trial.

In light of the above, all of the undersigned attorneys are hereby giving notice that we are at risk of being ineffective in representing our clients due to excessive caseloads, shortage of investigators, legal assistants and office assistants.

"Defense counsel should not carry a workload that, by reason of its Excessive size, interferes with the rendering of quality representation, Endangers the client's interest in the speedy disposition of charges, or May lead to the breach of professional obligations." (**ABA standards 4-1.3.**)

We are asking that management address the issue of excessive caseloads immediately due to the severity of the situation and the imminent harm that could befall our clients coupled with the stress and emotional toll it is taking on the attorneys and support staff. This office is in a crisis and management has not addressed these concerns when brought up by individual attorneys. We have lost over 40 attorneys in the last four years and 11 attorneys have taken extended leaves, yet during the last budget hearings you have not asked for any additional funding for desperately needed staff in order to adequately and competently represent our clients.

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The second issue is attorneys working out of class. According to Fresno County personnel job specifications every Level I and Level II attorney in this office is working outside of their job specifications.

“Upon assignment, the Defense Attorney I may make court appearance in Minor cases. MOST TRIAL WORK IS PERFORMED BY HIGHER LEVEL CLASSES IN THE DEFENSE ATTORNEY SERIES.” (*Defense Attorney I, Fresno County Job Specifications.*)

Every Defense Attorney I in this office is currently working outside of the above classification. Each attorney is handling an entire misdemeanor calendar including all the misdemeanor trials without any formal mentoring or training program in place.

Defense Attorney IIs are handling felony home courts and are assigned all felony cases excluding those designated a major crimes case or MDO, NGI or SVP. According to the job specification a Level II attorney should be handling cases of “average difficulty.” Instead they are handling all felonies including life-top cases, three strikes cases, complex cases such as home invasion robberies, first degree burglaries, gang allegations, sex crimes, large paper cases including welfare fraud, worker’s compensation fraud and check fraud involving thousands of pages of discovery. Not only are these cases time intensive, they also involve a high level of stress on both the attorneys and the clients due to high exposure and complexity. Placed in further perspective: A DA level II attorney is only allowed to work on misdemeanor cases and they do not face the same potential repercussions with the State Bar Association as a defense attorney. (*Please see Attachment “E.”*)

It appears that you are aware how the majority of felony cases currently fall outside the Level II Attorney job specifications, as you set forth in your report to the Board in November of 2012:

“Felony cases include a wide spectrum of violations, from low level Felonies to the most serious and violent cases such as homicides. Many cases in the ‘other’ and ‘felony’ categories require skills in Areas that include understanding of the bearing of client’s mental illness diagnoses and psychotropic medications, ability to interact And communicate with mentally ill clients and the ability to effectively Conduct cross examination of complex case expert witnesses. (*Public Defender FY 2011-12 Summary and FY 2012-13 First Quarter Report, November 7, 2012, Ken Taniguchi.*)

A Level II attorney who recently resigned from the Fresno County Public Defender’s Office was a certified legal specialist with the State Bar of California. This Level II attorney had over five years of experience in criminal law, had completed numerous complex felony jury trials, hearings and appeals, passed a State Bar certification exam and peer review

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committee, yet he was only considered a level II attorney in this office. In juxtaposition, there are several Level II attorneys with less than 2 years criminal law experience. It is apparent from the disparity of experience that the job specifications are not being adhered to, to the disregard of our clients and the attorneys.

From 2009 to 2013 we have lost the following chief, senior and level IV attorneys due to resignations:

1. Pete Jones
2. Ron Perring
3. Mike Aed
4. Julie Bowler
5. Mike Bowler
6. Garrick Byers
7. Franz Criego
8. Todd Eilers
9. Debra Girard
10. Paul Hinkly
11. Manny Nieto
12. Carl Reed
13. Ralph Torres
14. Tom Zynda

Not a single senior or Level IV position has been replaced despite the fact that the County promotion freeze was lifted on October 23, 2012. (*Please see attachment "F."*) In addition there have been several demotions:

1. Donna Miller Level V to IV
2. Angelica Rivera Level IV to III
3. Kristen Maxwell Level IV to III
4. Adrienne Harbottle Level IV to III
5. Cindy Cohn Level IV to III
6. Judith Sanders Level IV to III

The above attorneys have not been restored to their previous classification levels yet at least 18 new attorneys have been hired since the demotions were imposed.

We cannot continue in this manner. We are jeopardizing our client's constitutional rights on a daily basis. We are discouraged and demoralized due to the decimation of staff, greatly increased caseloads, lack of training, lack of mentoring, and refusal to promote anyone beyond a Level II within the previous five years. This office must hire and retain additional staff to attain manageable caseload numbers. Also, attorneys should no longer be assigned cases that are clearly outside their job specifications.

We ask that you respond to our concerns by September 30, 2013. Thank you.

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Sincerely,

Scott Baly

Kathy A. Marousek

Kristin Maxwell, Pace Vice President

Eric Christensen

Dan Brickey

Beth Ann Lee

Eric Christensen

Alan Lee

Alan de Ocampo

[Signature]

[Signature]

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Jens Mikkelsen

Avery Mikkelsen

Jan Lu

Scott Baly

Roberto Rodriguez

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Janet K Dana

Ed Miller

Alan M. Miller

Judith Landen

E.L. Duran

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Russell

Doreen

Angela Rinaudo

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Marena Pincus

Ed Miller

Johanna Edwards

Jean Sorenson

Mary Huff

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Heidi

Mrs Bader

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Jared Johnson

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CC: Liz Diaz, Assistant Public Defender
Gary Shinaver, Chief Attorney
Robert Delmare, Chief Attorney
Supervisor Henry Perea
Supervisor Debbie Poochigian
Supervisor Andreas Borgeas
Supervisor Judy Case
Supervisor Phil Larson
Gary Hoff, Fresno Superior Court Presiding Judge
John Navarette
National Legal Aid and Defense Association
California Attorneys for Criminal Justice
ACLU Fresno Division