
From: Rodney Ellis <rodney.ellis@rodneyellis.com>
Sent: Friday, September 19, 2014 12:42 PM
Subject: Improving the quality and independence of indigent defense



September 19, 2014

Dear Friend,

Imagine a baseball game in which the umpire also happened to be the manager of one of the teams. Absurd, right? Yet something very much like that scenario plays out in many Texas courtrooms every day.

When a person charged with a crime cannot afford to hire a lawyer, the Sixth Amendment of the United States Constitution requires that an attorney be appointed to protect the rights of the accused. In most Texas counties, including Harris County, judges control the appointment of these attorneys. They decide who is eligible, select an attorney, and control how much the lawyers will be paid.



This type of system, known as an assigned counsel system, can present several challenges for judges to effectively provide the required oversight and quality control given their primary duties and that their exposure to attorney performance is limited to courtroom interaction.

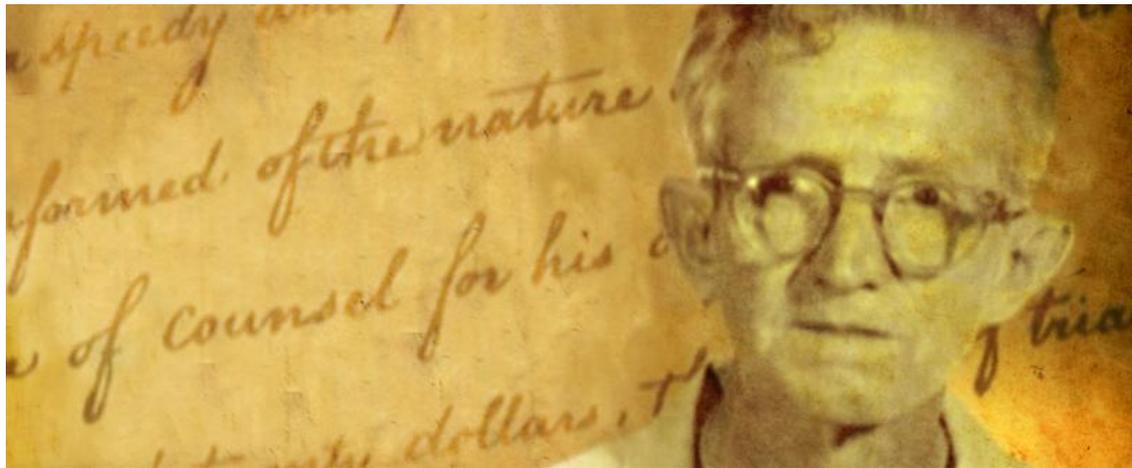
- **The Assigned Counsel System's Lack of Independence Creates a Conflict of Interest.** The current appointment system violates the American Bar Association's first principle for public defense, which states that "the public defense function, including the selection, funding and payment of defense counsel, is independent." When a judge can hire and fire attorneys appearing before them, there is a real risk that the judge's authority will interfere with attorneys' freedom to advocate effectively on behalf of their clients. This results in a fundamentally unfair system of legal representation that places innocent people at risk of wrongful conviction simply because they are poor.
- **The Current System Allows for Extremely High Caseloads.** Records show that the assigned counsel systems for felonies, misdemeanors, and juvenile cases allow some attorneys to be assigned an excessive number of cases. For example, according to a report on Harris County published in September 2013, "the felony assigned counsel system resulted in 45 percent of the cases (9,302 cases) being assigned in excess of the National Advisory Commission 'standard' of 150 felonies per year." Excessive caseloads inhibit an attorney's ability to provide competent and diligent representation, leading poor defendants to be victims of the "meet 'em and plead 'em" variety of defense. After all, an effective defense

requires client communication, investigation of the facts, and zealous advocacy for the best outcome possible for the client.

- **The Current Assigned Counsel System Lacks Oversight and Quality Control.** Judges can only evaluate attorneys based on how the attorneys perform in court and therefore have an incomplete picture of attorney performance. Judges cannot assess how well, or even if, assigned counsel perform their out-of-court responsibilities. This includes interviewing their clients and other potential witness, reviewing discovery, conducting independent investigations, researching relevant legal precedents, and counseling their clients about the consequences of potential case outcomes.

As the largest county in Texas, Harris County should be at the forefront of implementing and perhaps creating programs that ensure an effective and efficient criminal justice system. One program that would go a long way to improve the independence and quality of indigent defense is the Managed Assigned Counsel (MAC) system.

MACs, patterned on a successful private defender program in San Mateo, California, are a relatively new option for Texas counties. Approved by the Legislature in 2011, this system promises to enhance the independence and quality of indigent defense. The MAC program assigns counsel for indigent defendants by an entity other than the judiciary. A government entity, nonprofit corporation, or local bar association can act as this independent agency and would be responsible for court appointments, funding, and payment of counsel.



Clarence Gideon petitioned the U.S. Supreme Court, which ruled unanimously in a landmark decision that state courts are required to provide counsel in criminal cases to represent defendants who are unable to afford to pay their own attorneys. [Read more here.](#)

In addition, the MAC system would add a level of management, quality monitoring, and professional development that has not been part of the system before. The MAC program ensures the quality of representation by supervising the performance of attorneys on the appointment list, as well as providing leadership and training through Continuing Legal Education (CLE) and mentoring programs.

While the benefits are many, if implemented, this new program will have to remain true to the ideals of improved justice from which it came. The new structure alone will not

elevate the quality of services provided. That will take effective management, sufficient resources, and a willingness to hold lawyers to a high standard of professionalism.

I will continue to advocate for an independent appointment system and do my part to make sure we advance policies that create a reliable and effective system instilled with the fairness and integrity that justice demands.

Sincerely,

A handwritten signature in black ink that reads "Rodney Ellis". The signature is written in a cursive style with a large initial 'R'.

Rodney Ellis

The last day to register to vote is **Monday, October 6**. To receive an application, visit VoteTexas.gov. Have your voice heard at the ballot box this fall - register and vote!

and you must comply in order to vote. Voter ID requires all voters to present one of the following forms of photo identification in order to be eligible to vote:

- Driver's license, election identification certificate, personal identification card, or concealed handgun license issued by the Texas Department of Public Safety;
- U.S. military identification card containing the person's photograph;
- U.S. citizenship certificate containing the person's photograph; or
- U.S. passport.

With the exception of the U.S. citizenship certificate, all of the forms of identification must **be current** or have **expired no more than 60 days before** being presented at the polling place.

If you or a family member do not have one of the forms of photo identification listed above, there is a free option available. The change in law creates a new form of photo identification called an election identification certificate, which the Texas Department of Public Safety will issue for free at any driver's license office.

More information may be obtained by [clicking here](#) or calling the Texas Secretary of State's office at 1-800-252-VOTE.

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