



TEXAS TASK FORCE ON INDIGENT DEFENSE
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CHAIR:
THE HONORABLE SHARON KELLER
Presiding Judge, Court of Criminal Appeals

DIRECTOR:
MR. JAMES D. BETHKE

VICE CHAIR:
THE HONORABLE OLEN UNDERWOOD

February 11, 2011

The Honorable Ramon Garcia
Hidalgo County Judge
1615 S. Closner, Suite J
Edinburg, TX 78539

Mr. Isidro Sepulveda, Jr,
Program Director
100 N. Closner
Edinburg, TX 78539

Re: CORRECTED LETTER- Policy Monitoring Visit Follow-up

Dear Judge Garcia and Mr. Sepulveda:

In 2009, the Task Force on Indigent Defense conducted a policy monitoring visit concerning Hidalgo County's indigent defense practices. One of the recommendations in the monitoring report dealt with the distribution of attorney appointments in felony, misdemeanor, and juvenile cases. The Task Force followed up with this item and requested FY2010 attorney appointment data from the County Auditor's Office. The Auditor's Office promptly supplied the requested data, and the Task Force has analyzed the distribution of attorney appointments for FY2010.

Our board's rules require that we measure the distribution of attorney appointments in counties that we monitor. If the top 10% of recipients of attorney appointments at each level (felony, misdemeanor, and juvenile) receive less than 30% of appointments at the respective level, the county's methods are presumed to be fair, neutral, and non-discriminatory. When the Task Force analyzed the distributions in its 2009 visit, Hidalgo County exceeded this threshold in felony, misdemeanor, and juvenile cases. When we revisited this issue for FY2010 data, the County again exceeded the threshold in felony, misdemeanor, and juvenile cases. Please see the enclosed summary of our findings with regard to attorney appointments in Hidalgo County. Per our policy monitoring rules, these findings require a response from the County by March 18, 2011.

At their next meeting on April 6, 2011, the Task Force Board will review the distribution of attorney appointments in Hidalgo County. We invite your comments regarding this item. Task Force staff is available as a resource and our staff will attend the Hidalgo Board of Judges meeting on February 17th to provide technical assistance with this matter. We look forward to working with you.

Sincerely,

Joel Lieurance

cc: The Honorable Rudy Delgado, Local Administrative District Judge
The Honorable Fred Garza, Local Administrative Statutory County Judge
The Honorable Mario E. Ramirez, Jr, Chairman of Juvenile Board
Mr. James D. Bethke, Director, Task Force on Indigent Defense

Corrected Summary of Appointment Distributions

(On the felony pie chart, the labels of two pie pieces were swapped. The actual data reported was correct, but the labels corresponding to two pie pieces were swapped.)

Relevant Policy Monitoring Rules of the Task Force on Indigent Defense

1 TAC §174.28(c)(5) Attorney Selection Process.

- (A) The policy monitor shall review the local indigent defense plans and determine if they:
 - (i) Include an attorney selection method; and
 - (ii) Specify who is authorized to make appointments, what appointment lists are used, and a description of when an attorney on the list may be skipped, if applicable.
- (B) The policy monitor shall check for documentation indicating:
 - (i) In the case of a contract defender program, that all requirements of 174.10 - 174.25 of this title are met;
 - (ii) That attorney selection process actually used matches what is stated in the indigent defense plans; and
 - (iii) The number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review, the percentage share of appointments represented by the top 10% of attorneys accepting appointments.
- (C) A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. If the county can track attorney list changes, the monitor will only examine the distribution of cases for attorneys that were on the appointment list for the entire year. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list.

1 TAC §174.28(d) Report.

- (3) Follow-up Visits. The policy monitor shall conduct an additional on-site visit to counties where the report included significant noncompliance findings. The follow-up visit shall occur within 12 months following receipt of a county's response to the report. The policy monitor shall review a county's implementation of corrective actions and shall report to the county and Task Force any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the policy monitor, the program director shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 30 days.
- (4) Failure to Respond to Report. If a county fails to respond to a monitoring report or follow-up report within the required time, then a certified letter will be sent to the program director, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that all further payments will be withheld if no response to the report is received by the Task Force within 10 days of receipt of the letter. If funds are withheld under this section, then the funds will not be reinstated until the Task Force or the Policies and Standards Committee approves the release of the funds.
- (5) Noncompliance. If a county fails to correct any noncompliance findings, the Task Force may impose a remedy under 173.307 of this title.

I. A history of policy monitoring in Hidalgo County with respect to appointment methods

1. In our policy monitoring review of Hidalgo County, the Task Force made the following recommendation that was issued on May 5, 2009:

Hidalgo County needs to review its attorney selection processes to ensure that a fair, neutral, and non-discriminatory appointment system is present. The distribution of appointments could be made more even if: (1) the rotational wheel were to apply to in-court appointments and (2) the appointing judges appoint counsel based on the order of the attorneys of the list and not from any of the top five attorneys on the list (unless good cause is found for deviating from this order).

2. On October 8, 2009 Hidalgo County responded by saying:

The board of judges will annually review the distribution of attorney appointments to ensure that they are made in a fair, neutral, and non-discriminatory manner.

3. On October 13, 2009 I sent a letter to Hidalgo confirming that I received their response but also stating:

One of the report recommendations dealt with the distribution of attorney appointments. As a follow-up to this report, in November 2010, I will ask for an itemized list of attorney appointment totals from the auditor for FY 2010.

4. On December 17, 2010 I sent Hidalgo County a request for attorney appointment totals from FY2010.

5. On January 18, 2011, I received attorney appointment totals from FY2010.

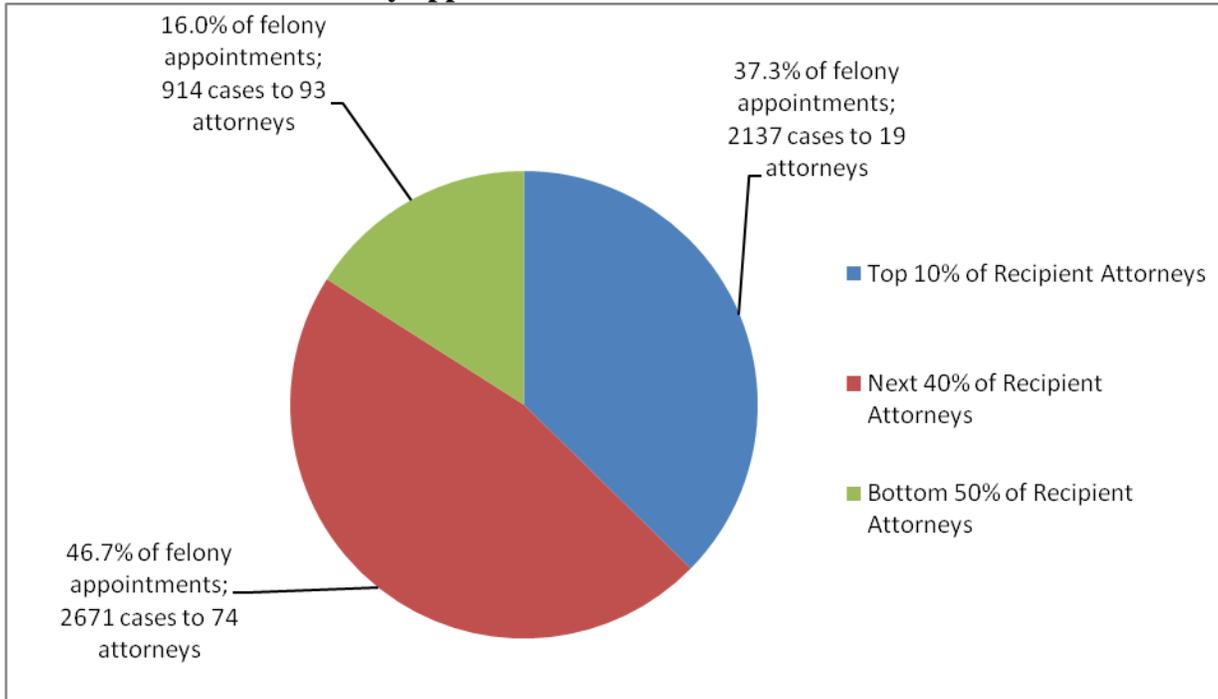
II. Data concerning appointment distributions. (CORRECTED PAGE)

Corrected Summary of Appointment Distributions

(On the felony pie chart, the labels of two pie pieces were swapped. The actual data reported was correct, but the labels corresponding to two pie pieces were swapped.)

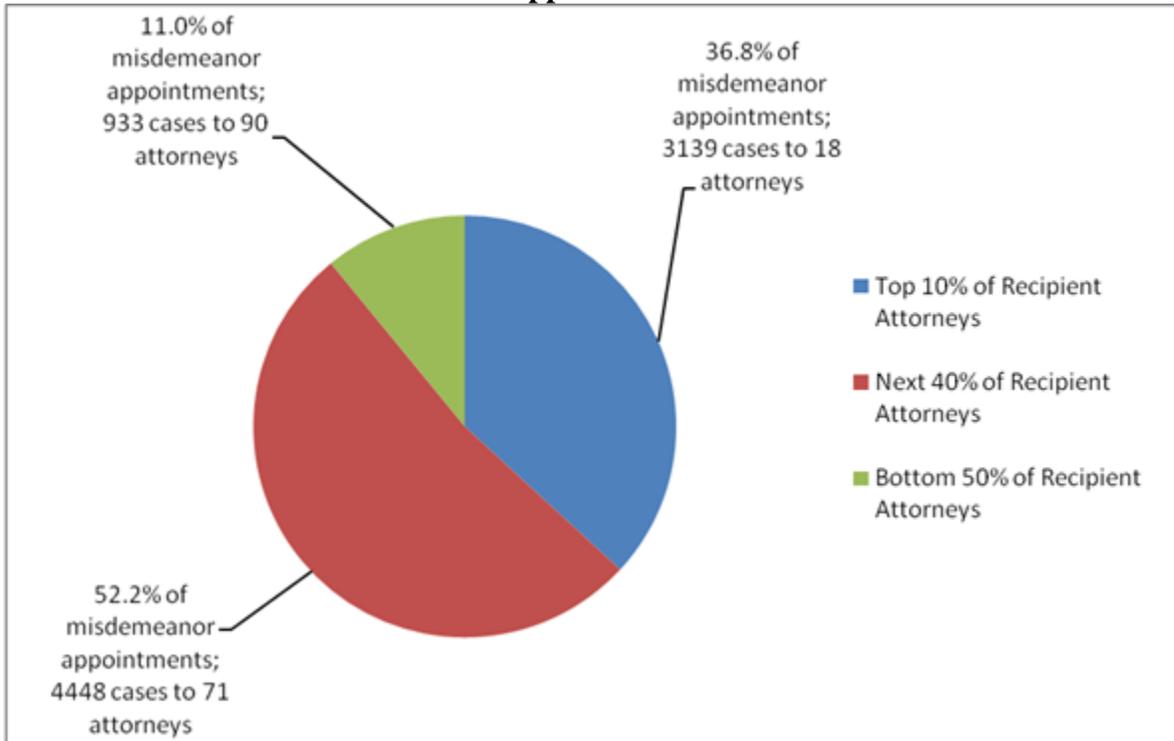
1. Our follow-up of felony appointments showed that in FY2010 that the top 10.2% of recipient attorneys received 37.3% of felony appointments (**or 3.7 times their representative share**). Our past review for FY2008 showed that the top 10.1% of recipient attorneys received 33.7% of felony appointments (**or 3.3 times their representative share**).

FY2010 distribution of felony appointments



2. Our follow-up of misdemeanor appointments showed that in FY2010 that the top 10.0% of recipient attorneys received 36.8% of misdemeanor appointments (**or 3.7 times their representative share**). Our past review for FY2008 showed that the top 9.7% of recipient attorneys received 40.9% of misdemeanor appointments (**or 4.2 times their representative share**).

FY2010 distribution of misdemeanor appointments



3. Our follow-up of juvenile appointments showed that in FY2010 that the top 10.1% of recipient attorneys received 53.5% of juvenile appointments (**or 5.3 times their representative share**). Our past review for FY2008 showed that the top 10.0% of recipient attorneys received 45.7% of juvenile appointments (**or 4.6 times their representative share**).

FY2010 distribution of juvenile appointments

