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Statement of County Bar Associations in Response to Mayor's Repeal of Executive Order 132

New York, NY – On behalf of each of the five New York County bar associations (the “County Bars”), we are gratified that the Mayor has repealed Executive Order 132, and issued Executive Order 136, which reaffirms the role of the bar associations in the provision of defense counsel for indigent defendants.

In an Article 78 court petition filed in June 2010 (the “Petition”), the County Bars challenged Executive Order 132 as a violation of state law. Contrary to the City’s recent allegation in the press that the County Bars’ Petition was “an assault on indigent defense,” the Petition was filed in response to the City’s unilateral and unlawful attempts to rescind an indigent defense system that had been in place for 45 years. We are gratified that the City has now rescinded Executive Order 132, which the lawsuit pointed out was not in compliance with applicable statutes, has reinstated the original plan of indigent defense, and has pledged not to reduce funding for indigent defense – all remedies that were sought in the Petition.

The Petition sought court action in particular in relation to Executive Order 132 of March 2, 2010, and its related Request For Proposal (RFP) of February 2, 2010, which attempted to institute a new system for furnishing criminal representation for the indigent, in violation of state law. Among the concerns expressed in the Petition were that those actions (1) would open the bidding process for providing such legal services to private legal institutions other than “private legal aid bureaus organized and operating to give legal assistance and representation” to indigent criminal defendants; (2) that the City’s new plan proposed a substantial reduction in funding for indigent defense, which the system cannot withstand and (3) that it sought to eliminate or undermine the County Bars’ and the courts’ roles in administering panels of private attorneys who provide legal services to the indigent.

In the wake of the County Bars’ Petition, the City repealed Executive Order 132 last week and issued Executive Order 136, which appears to address concerns specifically raised by the County Bars’ Petition. Indeed, the City has now publicly and clearly stated in Executive Order 136 and in papers filed in response to the Petition that: (1) it has no intention of reducing the budget for indigent defense; (2) the role of the County Bars and the courts in administering the bar panel system established under the provisions of a 1965 plan approved by the County Bars and the New York City Bar Association and implemented by the City will remain unchanged; and (3) only “private legal aid bureaus organized and operating to give legal assistance and representation” to indigent criminal defendants are eligible to bid for work as indigent defense service providers in response to the City’s February 3, 2010 Request for Proposal. All of these measures and statements are consistent with the relief requested in the County Bars’ Petition, and the County Bars’ goal of ensuring that the best possible indigent defense plan is available to indigent defendants, and that any plan adopted for the provision of counsel to indigent defendants conforms to state statutory requirements.

The Haynes and Boone team includes David Siegal, Kendyl Hanks, Jon Pressment, Nora Van Horssen and Lauren Perotti. Haynes and Boone, LLP is an international corporate law firm with offices in New York, Texas, California, Washington, D.C., and Mexico City, providing a full spectrum of legal services.

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