



Law Office of the  
**PUBLIC DEFENDER**  
Seventeenth Judicial Circuit

Howard Finkelstein • Public Defender

Broward County Courthouse • 201 S.E. 6th Street • Suite 3872 • Fort Lauderdale, Florida 33301  
Telephone: (954) 831-8650 • Fax: (954) 831-8853 • Internet Address: <http://www.browarddefender.org>

HAND DELIVERED

January 6, 2011

The Honorable Victor Tobin  
Chief Judge  
17<sup>th</sup> Judicial Circuit  
Broward County Courthouse  
201 SE 6<sup>th</sup> Street  
Fort Lauderdale, Fl 33301

Dear Judge Tobin:

The judicial system is failing to provide counsel for indigent persons arrested for violating municipal ordinances. This failure begins with municipalities ignoring their responsibility to provide for indigent defense in these cases and culminates with the judiciary turning a blind eye. As you know, my office has not handled municipal ordinance (MO) cases for the last six years due to legislative changes. Instead, each municipality is responsible for the appointment of defense counsel to indigent defendants. The municipalities are systemically ignoring this obligation and the courts have failed to act. Both entities are responsible for the denial of due process and the prolonged incarceration of persons accused of municipal ordinance violations.

Mr. Benigno Fernandez was arrested on November 30, 2009 charged with a municipal ordinance violation, case number 10-47MO40A. Mr. Fernandez missed his arraignment and a *capias* was issued in the amount of \$150. He was arrested on the *capias* on December 29, 2010 and has remained in jail, unable to post bond. Chief Assistant Public Defender Lynn DeSanti informed Hollywood City Attorney Julie Salarvand of Mr. Fernandez's incarceration. Attorney Salarvand did not know who the city's public defender was and seemed unconcerned about Mr. Fernandez's incarceration. She advised Ms. DeSanti that, if she was so concerned, she should arrange to have him placed on the docket herself.

The City of Hollywood's response to this matter is both outrageous and illegal. The city's failure to act and the judiciary's complacency violate the basic tenets of our constitution. Notably, this is not the first time that Mr. Fernandez has been incarcerated on a City of Hollywood case without the benefit of counsel. In 2009, Mr. Fernandez languished 39 days in custody on the charge of Open Container (See *City of Hollywood vs. Ben Hernandez*,

Public Defender  
Howard Finkelstein  
954.831.8644

Executive  
Chief Assistants:

Diane M. Cuddihy  
954.831.8814

Catherine A. Keuthan  
954.831.8665

Chief Assistants:

Douglas N. Brawley  
954.831.8497

Renee T. Dadowski  
954.831.8817

Lynn M. DeSanti  
954.831.8810

Frank de la Torre  
954.831.6779

Steven Michaelson  
954.831.8664

Susan L. Porter  
954.831.6752

Gordon H. Weekes, Jr.  
954.831.8636

Robert R. Wills  
954.831.8677

Chief Investigator:  
Allen E. Smith  
954.831.6714

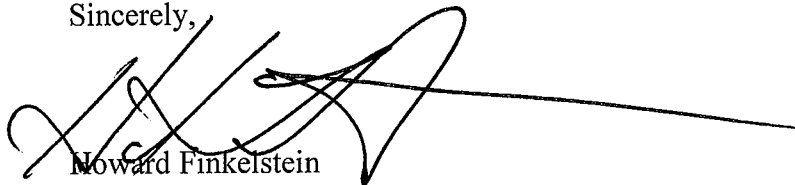
Broward County case number 09-14443MO10A, originally case number 08-5366MO40A,). Mr. Fernandez was sentenced by Judge Stacy Ross to an adjudication of guilt and credit for 39 days time served. Counsel was not provided. The court did nothing to protect Mr. Fernandez or sanction the City of Hollywood. It simply looked the other way.

My staff estimates that between 25 and 50 municipal ordinance cases come through First Appearance Court each week. Yet, there has never been an appearance by any City Public Defender on behalf of these defendants at Magistrate Court. These defendants are accepting pleas without consulting an attorney even though the nature of the charges suggest many of them may suffer from mental illness. By overlooking the municipalities' absence, the judicial system is complicit in this denial of due process.

From a fiscal standpoint, the municipalities are costing the taxpayers of Broward County \$105/day to house someone arrested for a nonviolent municipal ordinance violation. In just one case, the City of Hollywood cost the taxpayers \$4105 in 2009, to house Mr. Fernandez for 39 days. Not only did the city not provide counsel, but it did not reimburse the jail as required by law. The judiciary, county commission and sheriff have allowed this illegal process at the expense of taxpayers.

In the furtherance of justice, I am requesting that you immediately set an Emergency Motion to Determine Counsel in the case of *City of Hollywood vs. Benigno Fernandez*. I also ask that you instruct the judiciary on its duty to insure that indigents arrested for violating municipal ordinances are provided counsel. The courts cannot excuse municipalities from this obligation. The courts are uniquely positioned to prevent the unlawful incarceration of indigents and protect taxpayer dollars - not only the dollars spent to house these individuals, but the thousands of dollars a class action lawsuit would cost this county for the total disregard of basic due process rights. If the cities do not fulfill their legal and moral obligation, the courts should dismiss every case presented. If our cities wish to use the system, they need to pay. Otherwise, they need to stop arresting poor homeless people.

Sincerely,

A handwritten signature in black ink, appearing to read 'Howard Finkelstein', with a long horizontal line extending to the right.

Howard Finkelstein  
Public Defender

cc:

Jeffrey Sheffel, City Attorney for Hollywood  
Sheriff Al Lamberti  
Michael Satz