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NACDL NewsRelease

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FOR IMMEDIATE RELEASE

NACDL President Cynthia Hujar Orr Testifies Before U.S. Sentencing Commission On Proposed Amendments to the Sentencing Guidelines

Washington, DC (March 17, 2010) – NACDL President Cynthia Hujar Orr testified Wednesday, March 17, before the U.S. Sentencing Commission on various proposed amendments to the sentencing guidelines. Orr’s statement and testimony on behalf of NACDL featured common sense observations and suggestions based on NACDL’s unique and extensive expertise and experience. Topics covered include the nature and implementation of amendments concerning offender characteristics relevant to downward departure determinations, alternatives to incarceration, factors considered in the calculation of a person’s criminal history score, as well as organizational guidelines regarding compliance and ethics programs, various conditions of organizational probation, and mitigation credit.

“NACDL’s positions on the proposed amendments currently before the U.S. Sentencing Commission reflect NACDL’s commitment to more individualized sentencing in federal court,” Orr explained after the hearing, adding that “federal law directs that the sentencing court ‘shall consider the nature and circumstances of the offense and the history and characteristics of the defendant.’”

“NACDL’s positions here reflect its strong support for common sense approaches to sentencing in the U.S. that neither unnecessarily expend society’s limited resources nor unduly tie the hands of federal judges to craft an appropriate sentence.”

Selected NACDL positions:

- NACDL strongly encourages the Commission to delete the phrase “not ordinarily” for the wording of policy statements describing specific offender characteristics relevant to downward departure determination, thereby making all the factors set forth in 28 U.S.C. § 994(d) relevant when considering whether to depart from the guidelines.
- NACDL urges the Commission to remove all language suggesting that the following defendant characteristics either are not ordinarily relevant or simply not relevant at all when considering a departure: age; mental and emotional condition; physical condition including drug dependence; military, civic, charitable or public service or record of prior

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good works; and lack of guidance as a youth. NACDL recommends consideration of these factors when considering the merits of a sentencing departure.

- NACDL proposes that language be inserted into the guidelines to the effect that alternatives to imprisonment should be strongly considered any and all cases where they may be more cost effective, but also more effective in meeting the goals of rehabilitation, not just cases involving drug offenses. In addition to those with drug dependency issues, NACDL supports application of the Commission's proposed amendments concerning alternatives to incarceration more broadly to include those with other mental and emotional conditions, including gambling addiction.
- NACDL does not support the proposed carve-out from offenses eligible for non-incarceration sentences for public corruption, tax and other white collar offenses. It is NACDL's position that there is no particular category of offense that should be *per se* excluded from consideration for non-incarceration sentences.
- NACDL believes that the current guideline regarding mitigation for effective compliance and ethics programs is sufficient and allows an organization the flexibility to respond appropriately to the many varieties of possible criminal conduct that may occur. Immediate restitution, self-reporting, and other external actions based on possible criminal violations deprive organizations of legally viable defenses and expose organizations to a great likelihood of crushing civil liability. Such requirements are fundamentally unfair and may be financially harmful to an organization and its shareholders.
- NACDL objects to the premise that the use of "independent monitors" is presumptively necessary in most or all cases of organizational probation.
- NACDL questions the need to impose a requirement that high-level employees must be able to recite chapter and verse of every document retention policy in the organization, as this would be a waste of compliance resources. It should be enough that employees are aware that the organization has a document retention program and know how to access and apply its requirements as appropriate for the employee's position.
- NACDL supports the principle that mitigation credit in the context of the organizational guidelines should be an option even when high-level personnel are involved in criminal conduct, but believe the proposed requirements for qualifying for the exception are far too onerous.
- NACDL recommends the insertion of language that would direct courts to consider a variety of factors concerning the collateral consequences of a defendant's non-citizen status where the non-citizen faces deportation after serving his time.

NACDL's [written testimony](#) explains in detail the basis of NACDL's positions in support of or in opposition to the various proposed amendments under consideration before the U.S. Sentencing Commission.

NACDL's statement was written in conjunction with Mark Allenbaugh, Mark Rankin and Blair Brown.

The National Association of Criminal Defense Lawyers is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's 11,000-plus direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling more than 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system.

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