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Law Practice, Criminal

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## Next LA public defender raises concerns for some

LOS ANGELES — The Los Angeles County Board of Supervisors is expected to appoint an interim public defender Tuesday who is not a specialist in criminal law but has spent much of her career defending law enforcement agencies against civil rights accusations.

The impending move has rankled rank-and-file deputy public defenders who say they fear Nicole Davis Tinkham is not the appropriate person to lead the agency.

“In my personal opinion, for the board to appoint her is incredibly disrespectful to our clients,” said Elizabeth Lashley-Haynes, one of the few deputy public defenders who agreed to speak on the record about Tinkham. “Our clients are the marginalized, the downtrodden, the forgotten.”

Six deputy public defenders spoke for this story on the condition they not be identified for fear of professional reprisals. They said Tinkham’s lack of criminal law experience was of particular concern.

“Though interim, this sets a dangerous precedent across the country to appoint someone with this limited background to head one of the largest public defender’s offices,” said David Marsh, a deputy public defender for 28 years. “It is sad that the Board of Supervisors made no real effort to get feedback from frontline PDs before making this selection, or the previous selection. Our office morale has suffered in the last few years. This only worsens things.”

An assistant at Tinkham’s office said she would not comment but provided a statement. “Although she does not have a criminal law background, we believe that her extraordinary skills are ideally suited to achieve success in this new assignment,” the statement read. “The challenges that await Ms. Tinkham are not so different from those that face attorneys and judges on a daily basis as they are transferred and expected to excel in new and different assignments.”

The Board of Supervisors is scheduled to vote on Tinkham’s nomination on Tuesday. If selected, she would replace Kenneth Claymon, a longtime public defender in Los Angeles and Ventura counties who led the office for a term limited to 120 days because he is a retired public employee.

The department has been in turmoil for some time. Longtime Public Defender Ron Brown retired abruptly last year. County Supervisor Sheila Kuehl said the board was drawn to Tinkham because of her management experience.

“As the head of a very large department, the person is not just a public defender but a manager of one of the biggest law firms in California,” Kuehl said. The supervisor said she was concerned by reports of mismanagement in the public defender’s office.

“I had heard a good deal of concern about personnel practices in the office, about who was getting promoted and wasn’t, about arbitrary transfers. People were not pleased with that,” Kuehl said. “I think what they’re wondering is, can this person appropriately understand the work of a public defender to deal with the personnel issues? Our opinion was that a person with deep HR experience as an attorney is more likely to be able to sort through the factionalism, the favoritism, all of the other things we heard from this office over the last two years.”

Claymon had experience parachuting in to other troubled public defender offices. But Kuehl indicated the board believed he was unsuccessful at straightening out the problems in Los Angeles County. There “was a deep and serious management issue, and one that was not resolved by Ken’s tenure,” Kuehl said.

Kuehl attempted to reassure Tinkham’s detractors.

“She’s not going to make big changes,” she supervisor said. “She’s going to help the five of us understand how the office can be run with less chaos and more stability.”

Tinkham began her career at Collins Collins Muir & Stewart LLP in South Pasadena in 2003 as an associate and rose to partner. She had a mix of private and public entity clients, including Los Angeles County and the sheriff's department.

Some deputy public defenders groused about her defense in 2013 of a deputy public defender who caused an auto accident that seriously injured a pedestrian. Tinkham's unsuccessful defense of the public defender's office led to a \$14 million judgement against the county. *Newland v. County of Los Angeles, et al.*, BC514945 (L.A. Super. Ct., filed Jul. 12, 2013).

Also troubling to one deputy public defender was Tinkham's role as co-counsel defending the sheriff's department against a racial discrimination and hostile work environment suit filed by an African-American deputy sheriff who said his supervisor called him a "knuckle-dragger." *Perry v. L.A. County Sheriff's Department*, BC483047 (L.A. Super. Ct., filed Apr. 18, 2012).

Tinkham represented a Los Angeles County deputy sheriff accused of using deadly force against an individual the public defender's office represented as a criminal defendant. *Fetters v. County of Los Angeles, et al.* B252287 (Cal. App. 2nd Dist. Decided: January 08, 2016)

Tinkham's prior defense of the sheriff's department could cause more problems than leaving a bad taste in the mouths of deputy public defenders, one legal ethics expert said. Heather L. Rosing, of Klinedinst PC in San Diego, said it could present a conflict that violates professional conduct rules. Rule 3-310(E) of the Rules of Professional Conduct states that an attorney must not accept employment "adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment."

Former colleague Brian K. Stewart estimated that during her time at the Collins firm, Tinkham defended law enforcement clients in 4 to 6 cases. Stewart expressed confidence in Tinkham's abilities, calling her smart, a good leader, and a consensus-builder. "She will do an excellent job in her new position," Stewart said.

#345775

### L.J. Williamson

Daily Journal Staff Writer

lj\_williamson@dailyjournal.com (mailto:lj\_williamson@dailyjournal.com)

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