

Still no resolution in public defender suit

Challenge of state's indigent defense system scheduled for trial; talks stall

By Alysia Santo

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Settlement negotiations have stalled in a class-action lawsuit challenging New York's system of public defense.

Discussions about a settlement, which began last year, "ended without success," said Corey Stoughton, lead attorney for the plaintiffs and a lawyer with the New York Civil Liberties Union.

The case seeks to remedy a "persistent failure" to provide meaningful counsel to the poor by forcing a state takeover since New York's public defender system places the burden of operations on counties. It lists problems including excessive caseloads, disparity in pay and resources compared with district attorneys, and delays in appointing counsel.

Stoughton declined to elaborate on why negotiations ended. A trial date is set for Dec. 4.

The state attorney general's office declined to comment on the case, but the office recently motioned for summary judgment, arguing that no trial is necessary because the "plaintiffs do not have a case," according to court records, and that "New York has undertaken legislative action" to deal with the problem, including new state grants that counties can apply for to improve legal services for the poor.

In August, the state approved \$12 million to fund programs that provide lawyers to criminal defendants at their first court appearance, to be disbursed over the next three years among the 25 counties that applied.

Local governments were among the recipients, including both Albany and Rensselaer's public defender offices, which will receive \$656,000 and \$554,000 respectively. Schenectady and Saratoga County's public defender offices did not apply.

The U.S. Supreme Court established the right to counsel under the Sixth Amendment 50 years ago, but no direction was given as to how states were to meet this obligation.

According to the American Bar Association, 80 percent of people who face criminal charges cannot pay for a lawyer and require appointed counsel.

Albany public defender James Milstein said it's important for criminal defendants to have a lawyer with them at their initial arraignment because that's when decisions such as bail amounts are set, which can determine if someone is held in jail. "People are very emotional at arraignment, and they're unfamiliar with the process and things that may be beneficial to them," he said. "They need a lawyer to advise them of their rights."

The arraignment of defendants without an attorney is one of the deficiencies alleged in the class-action lawsuit that's set to go to trial. The case was filed six years ago in the name of Kimberly Hurrell-Herring and 19 others charged with crimes in Onondaga, Ontario, Schuyler, Suffolk and Washington counties, yet the suit claims the "failings" are "by no means limited or unique" to those counties.

In 2010, the Court of Appeals, the state's highest court, overturned a dismissal of the case.

One of the plaintiffs, Jacqueline Winbrone, spent 52 days in the Onondaga County jail before prosecutors dismissed the case against her after information surfaced that she had been framed. She claims she repeatedly called her assigned counsel to explain her innocence but that his voicemail was always full, and when she saw him in court he barely spoke to her. During her detention, her husband died and she was evicted from her apartment.

While the suit doesn't contain examples from the Capital Region, a review of the caseloads of local public defender offices from 2011 shows that every county in the region exceeded the guidelines set by the American Bar Association, which recommends that no assigned counsel take more than 150 felonies or 400 misdemeanors in a year. Only New York City caps the number of cases that public defenders are assigned.

Excessive workloads are another deficiency the state is attempting to address with grant money; applications are due in October from counties for another \$12 million in state funding to help reduce attorney caseloads.

Albany is applying for the funds, and Saratoga's office is in discussions about whether to apply. Schenectady and Rensselaer county public defender offices could not be reached for comment.

In addition to the new grant money, the state provides other funds to counties for public defense, including about \$70 million this fiscal year. Yet indigent defense in New York costs at least \$380 million a year, if county and state expenditures from 2011 are used as a baseline.

The Office of Indigent Legal Services is administering these new grants, and director William Leahy said while the additional money is a step in the right direction, it won't be enough to bring the state into compliance with its constitutional obligations to ensure counsel for those who can't afford it.

"We've made a little bit of progress, but it's a very long road ahead," said Leahy. "That road could be made a lot shorter if the state steps in and starts to more generously support this extensive need."

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