

Bay County could combine Criminal Defense, Public Defender offices

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BAY CITY — Faced with an upcoming vacancy in the Office of Criminal Defense, Bay County leaders are considering the consolidation of two departments that were bisected as part of a cost-saving plan five years ago.

Consolidating the Office of Criminal Defense and the Department of Public Defender would eliminate one secretarial position but the overall cost difference remains unclear, said Bay County Executive Thomas L. Hickner.

“There are statistics that have been generated suggesting that it saves us money (to privatize),” said Hickner. “And there have been different statistics suggesting it saves money to keep it in-house.

“We are in the process of evaluating how we are going to meet the legal and Constitutional requirement of providing representation for

people who are eligible for court-appointed attorneys. We haven't decided how we will do that."

The vacancy will occur Jan. 3 when the current director of the Office of Criminal Defense, Mark E. Janer, becomes the newest District Court judge.

Janer's departure reduces the county's in-house defenders to two: Kenneth M. Malkin, who works out of the Office of Criminal Defense, and Bruce K. Mannikko, who runs the Department of Public Defender.

The trio represented 99 percent of defendants, charged with felonies or probation violations, who were assigned court-appointed attorneys last year, according to Bay County records.

If the two departments are combined, a greater portion of felony criminal cases will have to be farmed out to private attorneys or handled by a law firm working on a contract basis, said Hickner.

"The issue is conflicts," said Hickner.

By law, codefendants in the same criminal case must be represented by attorneys from separate offices to avoid the conflicts of interest inherent in joint representation.

"One attorney (or law office) cannot act in the best interest of both defendants if, for example, a plea offer is made to one defendant in exchange for his testimony against the other," said Hickner.

By creating two separate offices in 2005, the county was able to recapture a large portion of the work that had been contracted to private attorneys. At that time, private attorneys handled about one-third of the county's criminal defense caseload, Bay City Times records show.

Also at that time, work done in-house cost the county about \$295 per case, as compared to \$524 per case for work that was contracted to private lawyers, Bay City Times records show.

In 2009, Bay County had about 1,807 new felony, misdemeanor, traffic and probation violation cases, county records show.

Of those, Janer and Malkin shared 508, or 28 percent. Mannikko took on 267, or 15 percent. All of the defendants who were served by in-house attorneys were charged with felonies or probation violations.

The misdemeanor and traffic cases, plus the remaining 25 felony cases, or 1 percent of the felony workload, was handled by Schisler Law Firm in Bay City, according to county records. Last year, Schisler lawyers defended 1,007 people.

Through a 2007 contract, the county pays Schisler a flat rate of \$13,000 per month, or \$156,000 annually.

The budget for the Office of Criminal Defense is \$261,497. For the Public Defender, the budget is \$204,961.

For now, Janer is accepting no new cases and is working toward closing the 100-plus files he still has pending. He said he hopes to close most of them and get others to the point where he can hand them off to Malkin or Mannikko for sentencing.

“They have caseload caps, though,” said Janer. “If it gets to be too much, the work will be sent out to private attorneys. This could be an opportunity to try to privatize that work.”

In order for the felony work to be privatized, a qualified law firm would have to come up with a flat rate that is less than the cost the county would pay to maintain the status quo, said Hickner.

“The problem with the felony cases (is that) they’ve never been attractive because of the length of some trials,” said Janer.

“No one has ever put together any meaningful bid for the felonies, or they’ve only wanted to do certain types of felonies, the ones they can turn over rather quickly.”

Hickner said he could work out a contract that will be more attractive to private attorneys.

“There will be more discussion before it ultimately goes to the (Board of Commissioners),” said Hickner.