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Macomb officials debate creation of public defender's office

Proposed new charter would allow separate unit

Maureen Feighan / The Detroit News

Mount Clemens -- Lawyers, judges and prosecutors in Macomb County are at odds over a small section of the county's proposed charter that could potentially overhaul how attorneys are appointed to criminal cases for defendants who can't afford to hire their own.

One sentence in the charter, which goes to Gov. Jennifer Granholm for approval June 19 and before voters in November, would authorize the creation of a public defender's office. That means if the county's future county executive or board of commissioners wanted to pursue such an office down the road, they could.

Supporters say court-appointed lawyers are "terribly" underpaid in Macomb County, making it hard to mount an adequate defense and possibly resulting in longer jail sentences for poorer clients.

"I believe that the current system of court-appointed attorneys is in complete disarray, and it needs to be dealt with on the state level," said Commissioner Jake Femminineo Jr., a lawyer and chair of the Macomb County Charter Commission.

But critics say rather than overhaul the entire system, which they say works, just boost pay rates for appointed lawyers.

"I agree that they're not paid enough," said Macomb County Prosecutor Eric Smith.

"But the way to rectify that is not to make it more expensive by hiring in attorneys or staff. Financially, it makes no sense."

Court appointments for felony criminal cases are handled differently from county to county in Michigan.

In Macomb, roughly 320 lawyers are listed with the circuit court's judicial aide office to take adult criminal felony cases. Appointments are done randomly, but lawyers are divided into three different categories based on experience. They're paid per court action.

The county's fee schedule was last updated six years ago. Fees range from \$50 for filing a motion to \$500 a day for each day of a trial for a capital case. Attorneys who want to hire an expert must ask a judge to approve separate funding.

"Lawyers have to choose between zealous representation or going bankrupt, and that shouldn't be the case," said Arthur Garton, president of the Macomb County Bar Association.

But Smith said the county already spends \$3 million on court-appointed attorneys and starting a public defender's office could cost millions more. Wayne and Washtenaw counties, which have public defender's offices, only have resources to handle about one-fifth of the cases that need attorneys.

Given Macomb's woes -- the county board raised taxes for the first time in more than 30 years earlier this spring to help plug a \$33 million budget hole -- some say starting a whole new office is unlikely. But Macomb Circuit Judge Mark Switalski thinks now is the right time for a new approach. Shaving even one year off a defendant's sentence could save the county or state thousands, he said.

"We can't do business the way we've been doing it," he said.

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