

The Macomb Daily

News

Proposed charter carries public defenders option

If voters approve new charter, new executive could create staff to represent indigent criminal defendants

Sunday, October 4, 2009

By Jameson Cook, Macomb Daily Staff Writer

A staff of attorneys representing indigent criminal defendants could be in the county's future if Macomb County voters approve a new charter next month.

The proposed charter drafted by the Charter Commission includes a clause that authorizes creation of a public defenders office, which would replace the existing system of appointing lawyers for financially poor criminal defendants off of a list.

"A public defenders office is one of the things that could be created," said Jake Femminineo, charter commission chairman.

Femminineo said he favors such an office but acknowledged there are arguments against it.

"Some studies say it's the best thing in the world, some say it's the worst thing in the world," he said. "Hopefully, once the charter passes, the new executive can go in and put together a study group on it."

Voters will decide on the charter Nov. 3. If it passes, a new executive will be elected in November 2010 for a term beginning Jan. 1, 2011.

James Maceroni, one of 26 charter commissioners, as chairman of the Departmental Committee pushed for the language to allow a public defenders office. A criminal defense attorney, Maceroni supports hiring a staff of public defenders to improve the quality of representation and prepare the county for a possible state revamp of the system.

"There's a statewide push for more uniformity" in the public defense system, he said.

There currently are multiple lawsuits in Michigan accusing the state of underfunding public defense and providing inadequate representation to indigent defendants. The state nonprofit group, Campaign for Justice, is lobbying the state to develop a uniform system. Currently, each county funds and sets up its own system for representing poor defendants.

Maceroni said if the state requires a public defenders office, "if we have something in place we'll be ahead of the game."

The county also could save money, he said, although state or county reforms could mean increasing the pay of public defenders in Macomb since their pay has remained the same for many years.

"This size of a county needs a public defenders office to pool resources," Maceroni said.

Last year, the county doled out about \$4.9 million to 378 adult and criminal defense attorneys to represent indigent defendants. Of that, the county was repaid \$1.15 million from criminal defendants, the vast majority for cases in prior years.

Judicial Aide, which oversees the current system, has a staff of three employees.

Chief Judge Richard Caretti of Macomb County Circuit Court said that since there are so many ways a public defenders office could be created, he cannot say whether he would favor or oppose it.

"If someone designed an efficient, cost-effective scheme beneficial to the county in how it spends and provides effective legal representation for indigent defendants, I could (favor it)," he said.

The county could create a hybrid system with a limited public defender staff and still farm out some of the cases, such as when there are multiple defendants in a case.

A key question would be funding, but there would be a "myriad of issues to address," Caretti said.

"There would be many logistical problems," he said. "How would you initiate a brand new system?"

He agreed with Maceroni and Femminineo that court-appointed lawyers in Macomb are "woefully underpaid," as their fee schedule has increased nominally since the 1970s. For instance, attorneys are paid \$25 per hour in "extraordinary fees" for extra work beyond the standard fee for particle actions or hearings.

"It (compensation) is almost insulting," Caretti said. "We really do owe a debt of gratitude to attorneys who are willing to take these cases."

Maceroni, the son of circuit Judge Peter J. Maceroni, said establishing a public defenders office would improve public criminal defense by equalizing its resources to those of the county Prosecutor's Office, which spent \$9.5 million last year.

It could facilitate consistent training of lawyers and provide a standard level of experts available to public defenders. For instance, the public defenders office could have a per-case contract with various experts, such as investigators, forensic pathologists, psychiatrists and psychologists, among others.

Currently, court-appointed attorneys request a circuit court judge to approve the hiring of an expert in each case under a cost limit. That lawyer is responsible for locating and hiring the expert.

Femminineo said the public defenders office could hire an expert in state sentencing guidelines to combat assistant prosecutors' interpretation of them. Currently, each court-appointed attorney provides input on guidelines in each case.