

Appeals court revives lawsuit over public defender system

by John S. Hausman | Muskegon Chronicle

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MUSKEGON COUNTY -- A Michigan appeals court panel has sided with indigent criminal defendants suing to force the state to provide more money and oversight to public defender systems in Muskegon and other counties, ordering that their lawsuit must proceed to trial.

In a 2-1 decision released Friday, the appeals panel upheld a Lansing judge's May 2007 ruling that kept the case alive, rejecting the state's bid to throw the case out of court. The state appealed that ruling, and the lawsuit has been in limbo for more than two years awaiting the outcome.

The lawsuit is on behalf of poor felony defendants in Muskegon, Berrien and Genesee counties. A coalition of advocacy groups including the American Civil Liberties Union sued the state and Gov. Jennifer Granholm in February 2007.

The lawsuit alleges Michigan's county-run, county-funded system of court-appointed attorneys is so bad it fails to ensure the constitutionally mandated right to "effective assistance of counsel" for poor people charged with felonies. The ACLU argues Michigan's and the governor's failure to provide money, oversight or training violates the U.S. and Michigan constitutions.

The state argues -- among other points -- that the plaintiffs have sued the wrong parties because the counties, not the state, have the responsibility to provide counsel for indigent defendants; that the Legislature, not the governor, has the power of the purse; that the proper remedy for ineffective lawyering is to appeal after a criminal conviction; and that the lawsuit fails to show any damages suffered by the plaintiffs.

The appeals ruling did not address the merits of the case. But the majority rejected the state's legal arguments against the lawsuit, ruling that the issues are worthy of a jury hearing them.

"We cannot accept the proposition that the constitutional rights of our citizens, even those accused of crimes and too poor to afford counsel, are not deserving and worthy of any protection by the judiciary in a situation where the executive and legislative branches fail to comply with constitutional mandates and abdicate their constitutional responsibilities," said the majority opinion signed by appeals judges William B. Murphy and David H. Sawyer.

Dissenting Judge William C. Whitbeck agreed with the state that the proper remedy for bad lawyering is to appeal a conviction. Whitbeck said the executive and legislative branches, not the courts, should address the issues raised in the lawsuit. He wrote that the case raises "public policy and fiscal matters of the highest ... importance" -- meaning it could fundamentally change how Michigan defends indigents and could be extremely costly to taxpayers.

"We always believed that the action we filed was appropriate, and the court was the proper forum for addressing the issue," said Frank Eaman, a Detroit attorney representing the plaintiffs, in reaction to the appeals court ruling.

"We hope we can proceed to discovery and trial and create the record to show that Michigan's indigent defense is a broken system and in desperate need of repair."

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