

Local News

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Assigned counsel changes sought

New department would oversee cases when public defender has conflict

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The Cortland County Bar Association is hammering out a plan for the county to create a department that would handle cases when the Public Defender's Office has a conflict of interest.

Creating an assigned counsel administrator department would be in the best interests of the county, says Bar Association president and county Public Defender Keith Dayton.

It would eliminate the conflict that the bar association says exists with the County Attorney's Office acting as the assigned counsel administrator, a situation that has existed since last year when then-county attorney Ed Purser took on the dual role.

Purser did so at the behest of County Administrator Martin Murphy, who said it was the most cost-effective solution and one that the county had the authority to do.

The County Attorney's Office was budgeted for about an extra \$45,000 to cover the cost of the program last year. The duties were split between Purser and a secretary in his office.

An assigned counsel administrator takes cases of indigent defendants that the Public Defender's Office is conflicted from representing, and assigns an attorney to handle them.

Currently these cases are assigned to

local attorneys on a rotating basis and judges also help in making the assignments, Dayton said.

Dayton, the newly appointed county Public Defender, said Monday the bar association would be meeting today to discuss the details of creating an Assigned Counsel Administrator Department.

The cost of such a department is not yet known and Dayton said that is one detail the association will be working on, as well as other things like whether the assigned counsel administrator would be a county employee or contracted out and what his or her hours would be.

"We are trying to put together a proposal that would pass the Office of Court Administration standards, the bar association standards and the state Office of Indigent Legal Services standards," Dayton said.

The move comes amid the changing face of the county, with the 17 newly seated legislators having appointed Dayton as public defender to replace Ed Goebler and also past Assistant District Attorney Karen Howe to replace Purser as county attorney.

Newly appointed Legislature Chair Susan Briggs (R-Cortlandville) has said one of her priorities will be settling the long-disputed issue of a conflict attorney.

Dayton said the conflict attorney is really a separate issue from the assigned counsel administrator.

The assigned counsel administrator

would be the one tasked with handing out the cases. Whether these cases would go to local attorneys or a newly created position of a conflict defender, would be decided by the Legislature in the future, he said.

The county created a conflict attorney in 2006 to handle cases in which the public defender had a conflict of interest but the office was disbanded in 2010 because the state Supreme Court Appellate Division ruled that the position was not established in conformance with state law.

For now the bar association is just pushing for an assigned counsel administrator department, Dayton said.

Murphy said Monday he is happy with the way the county is handling its assigned counsel and does not see the need for change. He said he had not been included in the bar association's discussions about creating an assigned counsel administrator department but he thinks the county is fulfilling its obligation to provide indigent defense.

"And we haven't had any complaints," Murphy said about the current system.

Dayton expects the bar association to vote on accepting the plan in two weeks and then it would be introduced to the county Legislature for consideration, perhaps next month.

Dayton says the department is necessary because it would ensure clients get represented fairly.

"One is supposed to have a plan to en-

sure the representation of qualified applicants (for indigent defense) so there has to be an assigned counsel administrator," Dayton said.

And, he said, the assigned counsel administrator should be an attorney other than the county attorney or public defender.

The bar association last year objected to the dual role of county attorney serving as assigned counsel administrator on the basis that it could cause a conflict since the county attorney prosecutes juvenile delinquent and Persons In Need of Supervision petitions. But Purser had said local judges make those assignments, avoiding the conflict.

But the bar association cited many rulings opposing the dual role. Among them, the state Office of Court Administration in 2011 opposed the county attorney acting as assigned counsel administrator as did a 1965 New York State Judicial Conference opinion and the state Attorney General's 1978 opinion.

Briggs said within a month the county attorney will be presenting options for the Legislature to consider about how the county could handle assigned counsel.

"We will get a presentation on her thoughts and possibly some proposals so at that point the Legislature will have the information they need to make a decision," said Briggs. Howe was not available for comment by press time.