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HEADLINE: Lawyers sue court for raise;
Low pay from Wayne Circuit Court risks justice for poor, defense attorneys claim

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BODY:

DETROIT -- Saying that justice for the poor is at risk, attorneys are suing for higher pay to represent them.

The lawsuit, to be filed today against the leadership of Wayne Circuit Court, is needed because defense attorneys assigned by the court to represent poor clients are being paid less to handle each case than they were 20 years ago, said Matthew Evans, president of the Wayne County Criminal Defense Bar Association. That group and the Criminal Defense Attorneys of Michigan are filing the suit, which asks the Michigan Supreme Court order Wayne Circuit Court to pay the attorneys \$90 an hour.

"In 1982, defense attorneys representing the poor were earning \$250 per case," Evans said. "Now, we're getting \$225 a case. That includes all the hours put into researching, preparation and other duties."

This low pay has led to a drop in the number of attorneys in the county who are willing to be assigned such cases from 465 in 1999 to 317 today and an increase in the case loads of the attorneys willing to do such work, Evans said. At the same time, the amount of money the court budgets for the Wayne County Prosecutor's Office has steadily increased, he said.

"The system is stacked against the defendant," said Frank Eaman, a Detroit attorney who is handling the groups' lawsuit. Defense attorneys "must compromise the amount of time on a case and consequently, sometimes, compromise the client."

Wayne Circuit Co-Chief Judge Timothy M. Kenny said the defense attorneys should get better pay, but the court doesn't have the money to do so. The defense attorneys' groups want the court to spend about \$11 million more on representation of the poor than the \$16 million it is spending this year, Evans said.

"We certainly recognize that the attorneys deserve to be paid more," Kenny said. "(Co-Chief) Judge Mary Beth Kelly and I met with representatives of the defense bar to try to resolve the matter, but there is a problem right now with money being available to pay them."

Wayne County Prosecutor Michael Duggan said he agrees that court-appointed lawyers deserve a more equitable pay system.

But while he supports increasing their pay, Duggan also wants to change the way cases are assigned to ensure judges do not assign cases to favored lawyers. "There's just too much potential for problems," he said.

Court administrators in Macomb and Oakland counties agree that the pay for attorneys who handle court-assigned cases for the poor in their jurisdictions should be increased.

Low pay discouraging

The low pay to handle cases for the poor discourages many lawyers from doing so, said Keith Clark, 35, of Livonia.

Clark said he accepts such assignments "because I believe everyone has a right to fair representation. But it is becoming more difficult for me to take assigned cases because it takes time away from working on cases" in which he has been hired by an individual. Those cases generally pay \$150 an hour.

Clark said there are only two ways for an attorney to handle the problem of low pay for cases assigned by the court: "Perform less work for the client, which I refuse to do, or stop taking cases."

Steven Fishman, a prominent Detroit defense attorney, said he decided long ago not to take such cases.

"I haven't taken an assignment since the late '70s," Fishman said. "From what I hear, the pay scale hasn't changed since then. That circumstance speaks for itself."

Eaman, the attorney who is handling the lawsuit calling for higher pay, cited the case of Eddie Joe Lloyd -- who was released in August after spending 17 years in prison for a murder DNA evidence showed he did not commit -- as a prime example of how low pay for court-assigned lawyers hurts their impoverished clients.

"Chances are, you will receive less than adequate legal defense," Eaman said.

Lloyd's first attorney, Charles Lusby, stepped down from the case just before it went to trial. A second lawyer, Stanford Rubach, took the case to a jury just eight days later.

Rubach, who died this month, never challenged -- and perhaps didn't know -- that the original genetic analysis was done incorrectly. Duggan said Lloyd's own legal appeals were sharper than those of a lawyer who never met with him.

Macomb feels pinch

Macomb County also is experiencing a money pinch for defense lawyers.

While specific rates for court-appointed attorneys weren't available late Monday, Peter Peacock, head of the Macomb County Bar Association, said fees are inadequate.

"Lawyers should have reasonable compensation," Peacock said. "At the same time, the county has limited funds available, so we have to work with those parameters. We're fortunate in this county to have a great group of lawyers, but there has not been a (fee increase) in a number of years and we do certainly feel one is warranted."

Any change in the fees for court-appointed attorneys would have to be approved by the Macomb County Board of Commissioners. Peacock said he and other bar association officials are working on a proposal to increase the rates to present to the board.

In Oakland Circuit Court, court-appointed attorneys are paid on an event-driven fee schedule rather than on an hourly basis, Court Administrator Kevin Oeffner said. That means attorneys are paid one rate for handling a sentencing and another rate for handling a trial.

Court officials tried to raise those rates for the 2003 fiscal year budget, which started Oct. 1, but the request was turned down by county commissioners, Oeffner said. The last time rates were increased was roughly two years ago, Oeffner said.

Oeffner said paying court-appointed attorneys reasonable fees doesn't just benefit lawyers but clients.

"You want to attract the best qualified attorneys," he said. "And if the fees are not what they should be then I think many attorneys -- perhaps -- more qualified attorneys would tend to do work more on a retained basis. So you want a fee that attracts a qualified attorneys and a defendant is entitled to the best representation possible."

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