

Defense Fees Surge in Otsego

The Otsego County Board of Representatives is grasping with the high, rising cost of providing lawyers for poor people whose cases are in the county's courts.

For 2006 the board budgeted \$723,829 to hire lawyers to represent clients who cannot afford to hire their own. But when the bills came in, the county had spent nearly a quarter of a million dollars more, a total of \$963,056.

For 2007, the board has budgeted \$795,430, but no one is sure this will be the bottom line, according to county board Chairman Donald Lindbert.

"This is something we seem to have very little control over, because it's up to the judges to decide who gets a lawyer," he said Wednesday.

Still, the county, which has a Public Defender's office, is researching its options, Lindberg said.

The biggest piece of the public defender's budget is cost of assigned council - lawyers who represent poor people when the Public Defender's Office has a conflict of interest.

Five years ago, in 2002, Otsego County allotted \$181,000 for assigned counsel, about 42 percent of the Public Defender's \$430,855 budget.

Then two years ago, New York state raised the fees these attorneys must be paid. Before the law took effect, assigned lawyers were paid \$25 an hour for work out of court and \$40 an hour for in-court representation. The current rates at \$75 an hour for work on felony and family-court cases and \$0 an hour for work on misdemeanor cases.

At these new rates, Otsego County's assigned attorneys were paid about \$580,000 last year, nearly 60 percent of the public defender's budget. By comparison, the county's part-time public defender, Richard Rothermel, and his five part time assistants were paid less than half as much, \$262,080.

Assigned attorneys bill the county for representing people in county court, family court, and town and village courts.

Some big cases add to the bill. Delhi Attorney James Hartmann was paid \$20,7000 to defend Francis J. Ricca last year on a murder charge, according to county records. But it is the large number of claims that make the bill so steep.

"We have a stack of vendor claims that must be 18 inches high," Laura Child, Otsego County clerk-auditor, said Thursday.

Why all the conflicts of interest?

"There can be a number of reasons for a conflict of interest," Rothermel said. "If we represent the husband in family court, we can't represent the wife."

The same group of lawyers cannot represent the mother and father in a child-custody case in

family court.

In criminal court, when two or more people are charged with committing a crime together, the office often cannot represent more than one client, as it might be the advantage of one defendant to implicate another.

Then, too, if the public defender has previously represented people associated with the case, a judge may find that the office may have a conflict and assign another lawyer to represent the accused.

How do other counties get it done?

In Delaware County, there is no public defender's office and indigent clients receive assigned counsel. According to John Meredith, the county's budget officer, Delaware County spent \$461,000 last year on representing poor people in court and has budgeted less for 2007, \$425,000 because the pending court calendar looks less expensive. "

Last year, we had a big murder trial, and that was expensive," Meredith said. "We hope this year will be better."

A more apt comparison for Otsego county might be neighboring Chenango County. The two counties have part-time public defenders and assistant public defenders, and they resort to assigned counsel when there is a conflict of interest.

In 2006, Chenango County's Public Defender's Office handled 1,055 cases, according to Karri Beckwith, the Office's administrator. These cases include 188 felonies and 867 other criminal and family-court cases. The cost to the county was \$431,579, which includes \$216,462 for assigned counsel, she said.

Comparable numbers in Otsego County are 1,114 cases, including 199 felonies and 915 other criminal and family court cases, for a total cost of \$963,056, according to Roethermel.

So, with about 6 percent more cases, Otsego County spent more than twice as much as Chenango County last year representing indigent people.

Otsego County Judge Bridan Burns said he could not comment on the difference between counties, as he is unfamiliar with how cases are handled in Chenango County. In Otsego County, lawyers are assigned to cases when they need to be assigned, and generally they do a good job, he said.

How can Otsego County lower its costs?

Roethermel said Otsego's tab for assigned counsel is too high, and he favors establishing a "conflicts office" to contain costs. Essentially, this would be a second public defender's office, set up to represent clients cases when the first one cannot.

"I think it would save the county money, and if it was done right, provide better representation in court," he said.

Attorneys in this conflicts office would concentrate on and be experts on criminal and family court matters, where some assigned counsel attorneys have widely varied practices, he said.

"Right now, we have about 15 attorneys who do most of the assigned counsel work in Otsego County, and I'd say about eight or nine do it very well," Roethermel said.

Oneonta attorney William Schebaum, who was paid \$8,745 last year after being assigned to represent Corbin Douglas on a murder charge, shares Roethermel's opinion about the quality of representation in court. But Schebaum said he doesn't think a conflicts office would be a panacea.

"You're still going to run into situations with three or four defendants, and you'll need assigned

counsel then," he noted.

Otsego County District Attorney John Nuehl, whose \$419,007 budget for this year is about half of the Public Defender's Office, also has doubts about establishing a conflicts office.

"I think it would help for a couple years, but it would be less effective as time goes by," Muehl said.

After a few years in operation, he said, the conflicts office would have represented many clients and acquired its own conflicts, he said.

Albany attorney Mathew Tully has proposed that his firm, Tully, Rinckley & Associates, handle conflicted cases in Otsego County.

If his proposal were accepted, he said, the county would pay his firm \$280,000 per year, but by handling many cases now going to assigned lawyers, Tully, Rinckley and Associates would save about \$150,000 a year.

Lindbert said he believes the county should "look seriously at Tully's proposal." However, Rep. Stephen Fournier, R-Milford, chairman of county's Public Safety and Legal Affairs Committee, noted that the New York State Defenders Association, a nonprofit organization that provides advice to public defenders, criticized the proposal, indicating it would not fulfill the county's legal duty to represent indigent clients.

"We have Mr. Tully's proposal, but we want to consider our options," Fournier said.

Rothermel said he, too, is "skeptical" that Tully's proposal would work well in the county.

The public defender said there has been talk in Albany about the state taking over the defense of the indigent. The state might take over public defender's offices and set up a statewide conflicts office, he said.

"That would have the economy of scale," Rothermel said, "and I think this governor (Eliot Spitzer) has enough clout and momentum that he might make it happen."