

## Lawyer Alleges Impropriety in Public Defender's Office

Though relatively new to the area, Hunter attorney Mathew Tully is making his name known.

Last month, Tully offered free representation to people challenging traffic tickets written by New York City Department of Environmental Protection police officers in Ulster and Delaware counties. And lately, he's set his sights on the Greene County Public Defender's Office.

In a Jan. 20 letter to Public Defender Greg Lubow, Tully questioned the office's "contractual oversight" regarding payment for services of assigned counsel representing clients with whom a conflict of interest has been found.

"The Public Defender's Office, by statute, is supposed to be adversarial to the government," Tully wrote. "In Greene County, it has become a part of the government and is working in concert with the government. If you are overseeing contracts and approving contracts, that's a government function."

Tully said he is not alleging misconduct, but added the appearance of impropriety is great.

Lubow said his office has no control over the purse strings for assigned counsel. Nor, he said, does his office make decisions on conflicts of interest or assigning counsel. He said his office performs "ministerial" duties only - checking vouchers for mathematical accuracy and compliance with the law.

"We don't control the money," he said.

Lubow said determining conflicts of interest and assigning counsel are responsibilities of judges. All vouchers are approved or disapproved by judges, he said, and all final payments rest with the Greene County Legislature following an audit. Lubow said he makes no judgment regarding the substance of a voucher, including the hours of service submitted.

Greene County Administrator Doug Brewer confirmed Lubow's assessment. He said the county includes assigned counsel services as part of the public defender's budget, albeit a part Lubow does not control.

Tully, to support his argument, cited a 1978 decision in which the state Attorney General's Office found it inappropriate for a county attorney, as the head of a county law department, to have oversight of contracts and to appoint outside counsel representing clients in family and criminal court because the county attorney occasionally would represent the county in those courts.

Lubow said that opinion does not apply to this situation. In the case cited by Tully, he said, a county attorney would have control over appointing his or her adversary, which is not the case with the Public Defender's Office.

But Tully said other counties exclude the public defender from the oversight process, either

assigning the duties to the county administrator or an "assigned counsel administrator" appointed by the county. He would like to see Greene County do the same.

Lubow said both methods are a common practice.

In Columbia and Ulster counties, contractual oversight is under the purview of the county's governing body or a department of the government other than the Public Defender's Office.

Lubow said he has asked County Attorney Carol Stevens to request a ruling about his office's involvement with the vouchers. He said he would be more than happy to abide by whatever decision is made.

"(Tully) might be correct," he said. "If that is in fact the case, then we will get out of it."