

Judge Rejects Allegation of Inadequate Counsel

A Hunter attorney's motion to have his client's criminal contempt conviction overturned on grounds she received inadequate representation from the Greene County Public Defender's Office has been rejected.

In a ruling dated Monday, Greene County Judge George Pulver Jr. said most of the arguments made by attorney Mathew Tully were irrelevant to his client's case. Pulver also said prison visitation logs - which Tully said proved his client, Kathryn Ebert of Prattsville, received only 17 minutes of counsel during eight months in jail - probably underrepresented visits made by public defenders.

"Much of defense counsel's papers read as if they are an audit or investigative study by a watchdog agency, rather than a criminal motion submitted on behalf of Kathryn Ebert," the judge wrote in a six-page ruling.

Tully had argued that ineffective counsel received by Ebert was indicative of an understaffed county Public Defender's Office that has been forced to "triage" the amount of time it devotes to clients. In his motion, Tully said the office's workload - 1,400 cases in 2002 - exceeded standards defined by the American Bar Association.

Pulver took a different view.

"This court views defense counsel's broad-based argument ... as a red herring far afield from the narrow interest at hand," the judge wrote.

Tully maintained that the 17 minutes recorded in jail logs are the only definitive proof of counsel that Ebert received. But Public Defender Greg Lubow said in an affidavit he had "specific recollections of meeting Ms. Ebert on at least two occasions." He did not cite specific dates or times.

Pulver noted in his ruling that public defenders routinely visit more than one client while at the county jail. Therefore, each client's name may not appear in the jail's log every time he or she is visited by an attorney, the judge wrote.

"The court is not at all persuaded that only 17 minutes were spent with (the) defendant during her incarceration," Pulver wrote.

Tully saw a silver lining in Pulver's ruling and said he plans to appeal.

"This is a case where we might have lost the battle but won the war," he said.

"The Legislature realized that changes needed to be made," he said, referring to county lawmakers' decision last month to change the public defender's job from part-time to full-time.

Lubow heads an office of five part-time defenders and has said he is not interested in making the jump to full-time work, according to county Legislator Wayne Speenburgh, a member of the committee searching for Lubow's successor.

Speenburgh, R-Coxsackie, said his committee plans to recommend a candidate for the job at the Legislature's February meeting.

Legislator Keith Valentine said the decision to make public defender a full-time job was not the result of Tully's filing. It was discussed months earlier, he said.

"This is part of the growth of the county," said Valentine, R-Catskill, noting that full-time positions also have been created recently in the Greene district attorney's and economic development offices.