

Judge takes public defense to task

*Six lawyers quit,
causing case delays*

By Laura Maggi
Staff writer

Tensions over how to repair New Orleans' crippled system of providing legal representation to criminal defendants who can't afford lawyers reached a boiling point last week, with judges complaining that recent changes will actually slow down the already sluggish process.

In a bitter clash with lawyers hired to reshape the Orleans Indigent Defender Program, Criminal District Judge Frank Marullo



Judge Frank Marullo
Wants attorneys appointed immediately

indicated he is poised to find Steve Singer, the program's new trial chief, in contempt of court for not implementing Marullo's order to immediately

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Public defenders to work full time

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appoint attorneys for defendants possibly facing the death penalty.

Other judges also have taken Singer to task, saying he needs to quickly find attorneys to represent indigent defendants.

At issue is Singer's decision to require public defenders to work full time. Letting such lawyers have a private practice on the side was harmful to their public clients, critics of the system have argued.

The move prompted six public defenders to quit, leaving some judges with trials and motions scheduled on their dockets, but no attorneys for the accused.

The fight comes a year after Hurricane Katrina exposed the precarious state of the criminal justice system in New Orleans, particularly for poor defendants. For months after the storm — and in some cases, even now — thousands of the accused have languished in prisons across the state without access to courts or lawyers.

Long-term problems

But Louisiana Supreme Court decisions, lawsuits and myriad independent studies reaching back more than a decade make the case that the problems highlighted by Katrina are not isolated to New Orleans. Instead, they are the result of systemic flaws in how indigent defense is set up across the state, critics say.

These critics point to the financing mechanisms for indigent defense: traffic ticket fees that bring in wildly disparate sums from parish to parish and that after Katrina dried up altogether in some jurisdictions.

The lack of adequate financial support leaves local indigent-defense offices unable to provide the vigorous legal representation required by the U.S. Constitution, a 2004 report by the National Legal Aid and Defender Association found.

Advocates have stressed that a simple injection of cash is not enough to fix the problems that have plagued indigent defense in the state's 41 judicial districts. They argue that all too often the judge-appointed boards that run the local public defender programs create ineffective offices.

"If you had more resources, it would alleviate some of the strain, but still there is not a whole lot of accountability in the system," said Heather Hall, di-

rector of the Louisiana Justice Coalition, a group of organizations advocating changes to the indigent-defense system across the state.

The Orleans Indigent Defender Program has been the subject of several critical reports over the years. They found that salaried lawyers, who worked part time and had high caseloads, too often did not investigate their cases. Often, they failed to meet with clients. A Southern Center for Human Rights report in March found that most of the locked-up defendants interviewed had not spoken with an attorney outside a courtroom, either before or after Katrina.

Before the storm, the defender office was ill-equipped, with no central case files or tracking system — one of the key factors in the difficulty of finding the defendants awaiting trial who were scattered to prisons across Louisiana after Orleans Parish Prison was evacuated.

New team on board

The crippled office was left with fewer than 10 lawyers to represent defendants across the state. Most of the work of getting people released from prisons before their trials was done by private attorneys or by the Tulane University Law Clinic.

The board that oversees the office also collapsed after the storm. Most members became inactive or resigned. The Criminal District Court judges appointed a new board for a one-year term in April, from a list provided by two local bar associations, as required by state law.

The new board took a restructuring approach, recently bringing on Ronald Sullivan, a Yale University law professor, as a paid consultant to reshape the day-to-day operations. Singer, who is law clinic professor at Loyola University and is paid only by the school, was brought on as the chief of the trial division.

One of the first changes was a decision last month to require all attorneys to work full time. A salary increase was to offset the loss — or some of the loss — of their private practice.

Sullivan said the switch was essential. "The quality of representation in the criminal court was abysmal. It would be imprudent at best to replicate a system that was constitutionally inadequate," he said.

Dwight Doskey, a veteran of the Orleans public defender office, disputed that characterization, saying most of his colleagues truly cared about their clients and did the best job they could with insufficient resources.

"I don't think anybody would say that OI DP didn't do a good job when we went to trial," he said, although noting that, in too many cases, clients would take plea deals rather than wait for trial.

This is because defendants often could get out of jail on the amount of time they had already served while waiting for their day in court, he said. Most defendants, he noted, just want to get back home, not caring whether they end up with a criminal conviction on their records.

Hiring full-time defenders

The revamped office will hire a slew of lawyers at salaries based on their level of experience, Sullivan said, although the exact number is not clear. Training for new lawyers will be provided by a training director.

There are 26 lawyers on staff, and Sullivan said he needs a total of 60 to keep in line with the state's new caseload standards, although he added that the office doesn't have the money to support that level of staffing.

Hiring a contingent of full-time attorneys has been the suggestion of all the independent reviews of indigent-defense services across Louisiana, particularly in large urban areas with a glut of criminal cases. The reports found that attorneys often could not handle their caseloads as part-time jobs, but needed to focus on their private cases to make a decent living.

But several judges have been skeptical, agreeing with Doskey that what they see in their courtrooms is often vigorous trial representation of indigent clients that has led to a successful acquittal rate. They lament that many of the most experienced public defenders are those who have chosen to leave.

They have also questioned why Sullivan and Singer did not phase in their personnel changes. Implementing the new policy has required postponing some trials, including those of defendants who have been locked up since before the storm.

Dane Ciolino, a professor at Loyola University's law school and a member of the board overseeing the indigent office, said the group has agreed that they might need to roll out the changes more carefully.

At a retreat with other board members on Saturday, Ciolino said members agreed they wanted to push forward, but communicate better with the judges and proceed "in a measured way."

Last week, the lack of attorneys to handle capital cases angered Marullo, whose docket lists three such trials: two of accused child rapists and one of a defendant accused of first-degree murder, all indicted in 2005. When Singer, who had been in the job for two weeks and had just begun to hire new attorneys, told the judge he did not know when he could appoint lawyers to the cases, Marullo ordered a contempt hearing for not following his orders.

An attorney for Singer filed a motion seeking Marullo's re-

cusals from that hearing, which is scheduled for Wednesday before Judge Arthur Hunter.

Criminal District Judge Terry Alarcon, one of the judges who scolded Singer for not providing attorneys for trials this week, also questioned whether the switch to full-time attorneys — at higher salaries — was realistic without a commitment from the Legislature for more money.

"This has never been a high priority in this state. And I don't think it will be in the near future," he said.

Some of the defenders who resigned from the New Orleans program, including Doskey, also questioned whether the higher salaries could be maintained over the long run.

After almost 27 years working for the public defenders office, Doskey said he ended his tenure this month making \$47,000 annually. He said only in one year did his private practice bring in more money than his public salary.

While indigent defense has been discussed in the Legislature in recent years — a task force to study restructuring the state system was formed in 2003 — no major legislation has been introduced. At the request of Gov. Kathleen Blanco, the Legislature doubled the amount of state money allocated for indigent defense to \$20 million for this fiscal year, but most experts believe the allocation is still inadequate.

While finding money for accused criminals is never popular with lawmakers, state Rep. Danny Martiny, R-Kenner, who has taken over the indigent-defense task force, said there might be more appetite for the issue during the 2007 legislative session because of the problems caused by Katrina. Martiny said he hoped to work out a bill to restructure defense services before the session.

Bob Spangenberg, a consultant who studies indigent-defense services across the country, said fixing the Orleans program will depend on finding more money.

Other critics have said that a key change will be removing local judges from any role in indigent defense. Currently, they appoint the local boards.

"The independence of the office is a really profoundly fundamental point," said Jim Neuhard, the head of the Michigan Appellate Defenders Office. For example, public defenders need the same freedom as prosecutors to tell judges they need more time to prepare or to aggressively question important witnesses, he said.

Alarcon said he doesn't see a conflict with judicial appointment of the local board, as long as it is free to operate independently.

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