

Many Missouri Public Defenders Decline New Cases After State Supreme Court Disciplines Lawyer

By *DAN MARGOLIES* OCT 6, 2017 *KCUR.com (Kansas City public radio station)*

The chronically underfunded Missouri public defender system is now dealing with another vexing issue: the prospect that its overworked attorneys could be punished for not keeping up with their workloads. And that's leading to a growing standoff between judges and public defender attorneys. The issue surfaced after the Missouri Supreme Court last month suspended a 21-year veteran of the public defender's office in Columbia who was laboring under a huge caseload and was hospitalized due to chronic health problems.

The lawyer, Karl William Hinkebein, was placed on probation for a year after the Office of Chief Disciplinary Counsel — the state agency that oversees attorney conduct — found that he failed to provide adequate representation to six of his clients between 2011 and 2013. In the wake of that decision, many public defenders throughout the state are refusing to take on additional clients. Last week, Boone County Presiding Judge Kevin Crane said he would start appointing private attorneys to represent indigent clients. He has since appointed more than three dozen, who will be working pro bono.

Michael Barrett, director of the Missouri public defender system, says the Supreme Court's decision has left public defenders in an untenable position. "The Supreme Court just demonstrated that they're going to punish us." He says one public defender is handling 298 cases, another 295 and yet another 198. "These are not cases for the year," he says, "these are cases right now."

The state's 370 public defenders handle more than 80,000 criminal cases a year for indigent clients — an average of 216 cases per attorney. Numerous studies that have looked at the Missouri public defender system say it should have nearly twice as many lawyers to meet standards set by the ABA for the minimal time needed to adequately represent clients. Some Missouri public defenders were especially rankled by the suggestion of one of the Supreme Court's judges during oral argument that Hinkebein should have just quit rather than take on new cases. "If you're a new lawyer just coming out of law school and you've got your law school debt, is that the first solution you're going to think of — quitting your job?" says Anthony Cardarella, who heads the public defender office in Clinton county. "Not to even mention the type of person that's typically a public defender who doesn't want to abandon his co-worker, much less their client, much less their employment."

Some judges are ordering public defenders to take on cases even after they've refused to do so. Attorneys that refuse to abide by the orders risk being held in contempt. "If I was a cartoonist for a newspaper, I'd draw a picture of a public defender whose got two guns pointed at him from either side of their head: On one side, the (Office of Chief Disciplinary Counsel) and the Supreme Court saying, 'I dare you to take that case and I'm going to take your law license.' On the other side is the local court who says, 'I dare you to not take that case. And I'll hold you in contempt.' That's our world right now," Barrett says. Barrett says it's up to attorneys in each of the public defender's 33 trial division offices to decide for themselves whether to stop taking on additional clients. And right now, it appears that a lot of them are doing so. Cardarella says that while some judges are sympathetic to the office's plight, "it's inevitable" that others will order his office to continue to accept cases.

The Missouri public defender system has been underfunded for decades. Only Mississippi spends less than the \$355 per case Missouri currently allocates to its indigent defense budget.

In March, the ACLU's Missouri chapter filed a class-action lawsuit seeking to force legislators to adequately fund the system. Barrett gave a deposition in the case just this week.

Last year, seeking to draw attention to the system's plight, Barrett invoked an obscure Missouri law to appoint then-Gov. Jay Nixon, a lawyer and former state attorney general, to represent an indigent defendant. A judge ruled that Barrett didn't have the authority to do that, but the point he was trying to make — that the state's public defender system was on the verge of collapse — captured national headlines.