

February 22, 2017

RE: League Fights New Municipal Public Defender Mandate

Dear Mayor:

We have learned that New Jersey municipalities are being asked, for the first time and in contravention of long established practice, to provide representation for certain defendants in Superior Court. This appears to be a collateral, unintended issue related to bail reform.

Last week, we reached out to Judge Glenn Grant, Acting Director of the State's Administrative Office of the Courts, asking for his help in addressing this issue. The problem directly affects municipal public defenders, but unless remedied, it could indirectly affect your budget and your property taxpayers.

According to the new bail reform procedures, the County Offices of the Public Defenders will represent all unrepresented defendants at initial release hearings. However, that Office would not represent any defendants at the subsequent detention hearing, where the sole charge is a disorderly persons offense.

If, at the initial release hearing, the County Prosecutor files a motion for pretrial detention, the hearing on that motion (the detention hearing) must be held within three days. We have been told that County Prosecutors would only make such a motion on a disorderly persons offense, if it involved domestic violence.

We understand that Judge Grant has advised County Assignment Judges to decide how such domestic violence defendants would be represented at detention hearings. It seems that the vast majority of County Assignment Judges, in turn, have ordered the Municipal Public Defenders to provide representation for indigent defendants.

This requires a part-time Municipal Public Defender to prepare a defense and to travel, on short notice, to the County Seat, for these matters. Financial issues aside, the assignment of these matters to Municipal Public Defenders is both improper and impractical. The Municipal Public Defender is contracted to represent an indigent defendant in Municipal Court, not the Superior Court. If a defendant is convicted in the Municipal Court and appeals, the job of the Municipal Public Defender is over. The local Public Defender does not appear in Superior Court on the matter. We believe it is then handled by the Office of the Public Defender, and that is how these matters should be handled as well.

We advised Judge Grant that it is impractical to require a sole practitioner, who goes to municipal court at most once per week, and sometimes once per month, to be available, on short notice, to attend these hearings. The State Public Defender has an office in each courthouse and can attend these hearings on a moment's notice. That is what the prosecutors are doing. The County Prosecutor handles the matter and the Municipal Prosecutor is not required to be in court on short notice.

For these reasons, we have asked Judge Grant to direct the County Assignment Judges to relieve local Public Defenders, and local property taxpayers, of this unprecedented new responsibility.

Unless help is provided by the Judiciary, we will be forced to turn to the Legislature for funding or cap relief. We will keep you advised of any future developments and we will request your active assistance, if further steps prove necessary.

Sincerely,

Michael J. Darcy, CAE
Executive Director