

HB 1022  
House Appropriations  
Government Operations Division  
January 13, 2023  
Testimony of Kevin McCabe,  
Supervising Attorney, Dickinson Public Defender's Office

Good morning, Chairman Monson, members of the Committee, my name is Kevin McCabe, and I am the Supervising Attorney of the Dickinson Public Defender's Office. I have been in my current position since the office opened in March of 2006, which puts it at just short of 17 years.

CHALLENGES

I'm here today to discuss my perspective on the two biggest challenges we face as an agency that Mr. Finck mentioned earlier, employee turnover due to compensation and contractor rate of pay.

To begin with, during the past seventeen years, we have had a total of six full time attorneys within our office besides myself. We have had two other persons who trained in our office prior to them becoming licensed to practice and one other person who was licensed but was hired as a temporary attorney because we did not have an agency opening at the time. Of the nine attorneys hired, one is still in the office, one was terminated, and the rest left because they told me that they could make a lot more money elsewhere or simply that the Commission cannot compete with what they are being offered elsewhere. Notably, of that group, three of them left to work as Assistant State's Attorneys, two of them in Stark County, where I am from. One of them is the current elected State's Attorney for the county. What I am seeing is not unique to my county or my district. For example, in McKenzie County, the current State's Attorney was a supervising attorney the Watford City office just prior to him being offered his current position and in Williams County, two of the current Assistant State's Attorneys used to be employed within our Williston Public Defender's Office, one of which was the supervising attorney. The State's Attorney in Mercer County was also a supervising attorney at one point in the past. I'm sure Mr. Finck could even list more examples. Any time I talk with any of these people and ask them why they left, I always get the same answer and they state it's because they can make more money working for the counties than they can with the Public

Defender's Offices.

This problem isn't going away, it's only getting worse. Recently, an attorney left our office in June of 2020. Per protocol, we advertised the open position along with the requirements and salary range. It took us over sixteen months before we hired another attorney in our office. This wasn't due to lack of trying. I called and begged anybody that I could think of to apply for the position. We received applications, but very few of the qualified applicants ever ended up interviewing. Most of them told us that they found better paying opportunities elsewhere, so they took their names out of consideration. Of those that did interview and were offered the position, each person declined the offer. When I spoke to them in a follow-up phone conversation, they claimed it was due to the low salary that was offered to them. So for that sixteen months, I was working alone covering as many cases as I could and we contracted the remainders out. Eventually, we did hire an attorney, but that person only lasted three months. So again, we were left with an open attorney position and this time it took ten months to fill. We ended up hiring a person that was underqualified for the position advertised, fresh out of law school, just having passed the bar. Which brings with it, its own set of challenges, as here I am training this person again not knowing how long the Commission can afford to keep her once she becomes well known within our district and is able to work on her own.

As I have said, I have been here for almost seventeen years. During those seventeen years I have been approached by numerous persons and agencies asking me to leave my position and go to work for them. About a year ago when I felt the agency was struggling and I was feeling overwhelmed with the workload, and not knowing when I would be getting another attorney in the office, I decided to cash in some chips. I talked to the Stark County State's Attorney and the Stark County Commission about going to work for them. On a Monday morning, a member of the commission and the State's Attorney called, and they asked me what it would take for me to work for them and I gave them an offer, which I thought was way above what they would agree to and about \$20,000 more than I was making here per year. To my amazement, that afternoon, I had a written offer from them on my desk for exactly what I asked for. I immediately accepted the offer and filed my resignation letter with Mr. Finck.

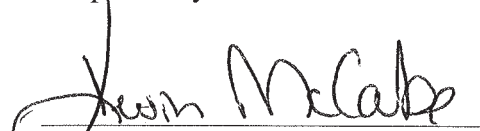
As you know, I'm still working for Public Defender's Office. Mr. Finck is a smooth talker. I received a counteroffer from the Commission, and Mr. Finck and I were able to

negotiate a deal which kept me employed with the Commission. I decided to come back for one reason and one reason only, and that is because I didn't want the Commission to have to close the Dickinson office and lay off the two assistants that were working with me. I stayed hoping that things would get better agency-wide, as this isn't only an attorney issue, I have lost staff to the court system after we've trained them, and my current administrative assistant and legal assistant are constantly being asked by different clerks of court to come work for them for higher pay. Plus, I know that there will be another opening at the Stark State's Attorney's office as a longtime assistant is retiring this year.

As for contractor rate of pay, I just want to say that our system will not work without attorneys willing to work as indigent defense contractors. But over the last five years, this is becoming a big struggle within our district. That position that I ultimately turned down with Stark County was eventually filled by a person that did a lot of contract work within our district. And as I previously mentioned, our position was open for ten months before we underfilled it. During that time, I called and begged this attorney to apply for it always getting the same answer, I like the work, but I would need more money than they are offering. Other contractors have quit taking indigent defense cases because they say that they cannot afford to take these cases anymore. Too much time spent on cases with too little pay. In two cases that I know of, contractors refuse to take our cases, but they take municipal cases simply because they get paid more per hour and those cases only reach the "B" misdemeanor level. In short, they get paid more, and work less on each case. Currently, in our district, most of the contractor attorneys are coming from out of town. They are traveling from Minot, Bismarck and in some cases, even South Dakota.

I want to thank the Committee for your time.

Respectfully submitted:

  
Kevin McCabe, Supervising Attorney  
Dickinson Public Defender's Office