

## JUDICIAL PROCESS INTERIM COMMITTEE

### Wed., February 10th

The Commission on Legal Counsel for Indigents currently has 30 full time employees; three of them are in administration. We administer and oversee 16 attorneys (FTE'S) and approximately 42 private attorney "contractors", and through those attorneys we provide services in about 9,500 cases a year in North Dakota. None of our FTE'S handle any mental commitment or civil commitment of sex offender cases. They handle all criminal and juvenile matters.

In 2007 and 2008, there were between **1200-1300** civil mental health commitments filed yearly in clerks' offices around the State. According to information provided by the Supreme Court Administration, in 2007 **\$262,2434.00** was spent on legal fees for attorneys representing indigent mental health clients (and almost all of them are indigent), and in 2008, **\$333,663.00** was spent for legal services. As pointed out by Mr. Birst, the system of counsel appointment in these cases is all over the board. There is no oversight, no uniform contract, no training. The attorneys aren't even paid the same. Some counties pay \$65.00 an hour. Some pay \$75.00 an hour or more.

The Association of Counties is advocating a position that our agency should take over the administrative duties associated with, and the costs for, the defense of indigent persons who are civilly committed in mental health court. This committee will note that I had previously filed a "fiscal note" estimating that this proposal would have a dramatic effect on our agency. Jean Delaney and I sat down and put together the fiscal note using the expense information provided by the Supreme Court for 2008 (defense costs of \$333,000.00). The fiscal note indicated the additional cost to our agency of approximately **\$2,000,000 a biennium**. I explained a bit last time that it is not as simple as just paying the attorneys. The attorneys should be trained. . Being forced into treatment is a severe loss of liberty, and the attorneys need to understand the law and be able to competently advocate for their client. Developing a system takes administration and organization, which equates to extra staffing, office space and equipment.

From a budget angle, our agency would have a problem with taking on this new venture. Currently we have one budget and part of our budget is derived from the payment of two fees by criminal defendants in the system. One is an Administration fee, and one is an application fee. We cannot co-mingle this budget with costs associated with civil commitment cases. Or rather

put in another way, I would strongly advocate not doing that. We are a fairly new agency. This year mark's our 5<sup>th</sup> year of operation. It wasn't until December of 2009 that we became fully staffed and are just starting to see trends and stability in our budget. If we were forced to take on civil mental commitment defense, I would recommend a separate budget.

Our attorneys would not be doing civil commitment cases. First, they are not trained to do so. Secondly, they already have a full case load with their criminal matters; we are looking at ways of **reducing** case load, not **increasing** case load. There are some of the contract attorneys we deal with that do civil commitment defense but I am unaware of how many. Some of our contract attorneys might take a few cases from our agency, handle some municipal appointments and also do mental health defense.

In our fiscal note, I budgeted for another administrator to handle a separate, civil division of our agency. One of the concerns I expressed before is that these matters have very tight time lines. When a petition is filed in a county clerk's office, virtually everything is dropped and the clerk works on finding an attorney. The attorney only has hours before his or her client is evaluated and may have a court hearing. If you can imagine this happening each and every day in one, two, 20 or thirty counties, and further then imagine that now one agency is going to be doing it for the state, you can understand why there would have to be a competent administrator on top of this to avoid constitutional mis-steps. A well defined system would have to be put into place with all the county clerks, and there has to be someone monitoring this at all times. It could be done, but it will cost money and a great deal of organization. Our agency would prefer not to grow in this civil direction, but of course we serve at the pleasure of the legislature and Governor and will adapt accordingly.

Respectfully submitted this 8<sup>th</sup> day of February, 2010

Robin Huseby, Commission on Legal Counsel for Indigents