

search



Local

Sports

Business

Entertainment

Life

Travel

Multimedia

Blogs

Opinion

Subscribe

Share



Print

Email



Font Resize



## Minnesota's overworked, understaffed public defenders ask: Is justice being served?

By Frederick Melo  
fmelo@pioneerpress.com

Posted: 08/17/2010 12:01:00 AM CDT

When it comes to keeping the wheels of justice rolling, all is not well in Minnesota's 3rd Judicial District, and public defenders across the state are standing up to take shuddering notice.

The Rochester-based district spans 11 southeastern counties, and in each of them, crushing workloads are hamstringing attorneys constitutionally required to represent people facing incarceration.

Today, Chief Public Defender Karen Duncan will ask a Steele County judge to remove public defenders from 45 open cases, which would be a bold first for Minnesota.

"It's simply that we don't have anybody we can assign," said Duncan, who is based in Owatonna. "I find people sleeping on the couch of our Owatonna office because they've worked all



Karen Duncan, chief public defender in Minnesota's 3rd Judicial District, has been able to balance the public defender's budget in her Rochester-based district without layoffs, thanks to leaves and departures. The result, however, is that some defenders juggle 250 open cases, several times the recommended national standard, and attorneys often meet with clients for no more than a few minutes at a time. On Tuesday, August 17, 2010, she'll ask a Steele County judge to remove public defenders from 45 open cases. (Courtesy to Pioneer Press: Karen Duncan)

night, and they're catching a nap before court. ... Everyone recognizes we've got a bad situation here."

The situation is the pinnacle of a statewide problem long in the making. Stiffer legal penalties, an annual battery of new laws and increasingly complex cases have thrust indigent defendants before the courts for longer periods, heaping work on the state public defense system just as it is experiencing back-to-back budget cuts.

Karin Sonneman, Winona County's only fulltime public defender, made headlines last year for simultaneously juggling 250 open cases, most of them felonies. National standards recommend that defenders handle no more than 150 felony cases, and that's per year.

"We're down to about 50 percent of the public

Advertisement

defenders  
for what we  
need right  
now," said

the district's chief judge, Robert Benson, who is chambered in Fillmore County. "That's not absorbable. We can't absorb it. It's bad all over the state, but the 3rd District is especially bad."

The shortage isn't just hurting defendants. It's grossly delaying cases, which has the potential to rob victims of justice. With time, witnesses' memories fade and suspects can disappear, all of which could hurt the prosecution as much as the defense.

And by law, accused criminals who exert their constitutional right to a speedy trial could walk free if an attorney isn't available to represent them. Legal appeals increase when cases are mismanaged, costing taxpayers money and prosecutors valuable time. No one benefits from breakdowns in the justice system.

#### CONSTITUTIONAL QUESTION

Chuck Samuelson, executive director of the American Civil Liberties Union in Minnesota, has been monitoring the 3rd District situation closely. He points to the 1963 U.S. Supreme Court decision, *Gideon vs. Wainwright*, which determined that states must provide legal representation to defendants who cannot afford an attorney.

"If the state is constitutionally obliged to make sure that everyone is represented,



if that's true, then the question is, are these caseloads enough to violate the U.S. Supreme Court's *Gideon* decision?" Samuelson asked. "In my opinion, that situation is close everywhere in the state."

Eric Magnuson, the former chief

justice of the Minnesota Supreme Court, said judges and court staff have pointed to the shortage of public defenders as one of the court system's most pressing problems.

"The system doesn't work if all parts of the system aren't functioning up to speed," he said. "You can have a prosecutor and a judge ready to go, but you can't (move a case forward) if you don't have the defendant's lawyer there. ... And they've got to be there prepared."

The attorneys in the 3rd Judicial District say they sometimes aren't. In March, 14 defenders filed a work grievance through the Teamsters union, calling their workloads illegal. Eleven of the 14 surveyed themselves and found they shared common concerns about their inability to provide their clients with adequate representation.

In the survey:

- All said they had put a client on the witness stand with no or little preparation, and most said their cases suffered as a result.
- With little time to prepare, most of the public defenders said they had discouraged clients from demanding their right to a speedy trial.
- Several attorneys said they typically returned less than half their clients' calls and letters.

Those challenges are extreme but not unique. The attorneys contend the district's pitfalls are a harbinger for what the rest of Minnesota will soon face if something isn't done to improve the state public defender system.

#### FROM BAD TO WORSE

In February, state legislative auditor James Nobles detailed a statewide problem in an 89-page report.

"Workloads are too high, affecting both the ability of public defenders to represent clients and the operation of state courts," he wrote. "We offer several recommendations to improve the system, but options for significant change will require additional resources."

But instead of more resources, the 3rd District's attorneys say things get worse each year.

Having already suffered deep cuts in 2003, they've seen their budget cut again for three years running, and their numbers dwindle from the equivalent of 35 full-time attorneys in 2007 to 24 attorneys as of Aug. 1, after budget-balancing leaves of absence.

Kevin Kajer, chief administrator for the state's Board of Public Defense, said the 10 judicial districts have lost the equivalent of 60 full-time lawyers since 2008, about 15 percent of their staff, through a combination of layoffs, leaves and attrition.

The state's public defense budget, which was \$69.5 million last year, dropped to \$67 million this year, despite a boost from a temporary new attorney registration fee. Things could get much worse next year when the registration fee expires.

"The part that's alarming for us, for next year, if nothing happens, we're going to be down to \$64 million," Kajer said. "That also assumes there's no further budget reduction. ... We would be about \$4 million short of where we need to be just to maintain existing staff."

#### MISSION IMPOSSIBLE

Fearing discipline for providing clients with ineffective counsel, some attorneys say their unmanageable workloads are putting their careers on the line. Others, like Adrienne McMahon, have sometimes volunteered to bite a proverbial bullet in order to see their clients' cases move forward.

McMahon, a public defender in Owatonna, recently encouraged one of her

clients to appeal his guilty verdict on the basis that she wasn't prepared for trial.

"I made a record on the court transcript that I wasn't ready," she said. "I kind of had to throw myself in front of the bus and say, 'I'm failing this client.' I had to tell that to the court in front of everybody that was there, and yeah, that's pretty embarrassing."

A public defender in Winona was nearly held in contempt of court for failing to make a court appearance. He said he was asked to represent clients in two different courthouses at once, even though the courtrooms are in separate counties. Duncan investigated, and the citation was ultimately dismissed.

Two others are defending themselves against complaints filed against them by clients or judges through the Minnesota Lawyers Professional Responsibility Board. On Aug. 3, a public defender noted on her anonymous blog (<http://notforthemonosyllabic.blogspot.com>) that she'd been booked to see a dozen clients at the same time. She buzzed through them all in an hour.

"I was motoring through clients. ... Then, I cried on the way back to the office from being ridiculously stressed out and overwhelmed," she wrote. The entry is entitled, "Today was like horrible times ridiculous plus craptacular."

#### DYSFUNCTIONAL SYSTEM

It's not just public defenders complaining. Judges and prosecutors, too, have expressed concern that the public defender situation is leading to exorbitant trial delays, which could in turn hurt prosecutions, and therefore, victims.

Olmsted County Attorney Mark Ostrem said his office filed charges in a domestic assault strangulation case in July 2008, but the trial has been delayed more than two years, in part because the first public defender on the case took a leave. On Monday, a defender asked for more time to get up to speed and collect evidence.

"We can't try a case with an unprepared public defender. You're just buying an appeal at that point, and we're going to lose," Ostrem said. "If you have cases where the victims are people, and many of them are, how do you explain that to the victim?"

Prosecutors are expected to examine the public defender crisis during a district meeting in September.

"As cases get old, witnesses forget," said Judge Jeffrey Thompson.

"Witnesses move out of state. Defendants aren't held accountable."

Thompson sits on a judicial bench in the hopes of delivering justice, but he fears that justice is not being served. During a recent visit to Olmsted County, he saw routine felony trials scheduled as far into the future as September 2011 because there is no public defender available.

"This is getting to the point of being dysfunctional at best. It's discouraging to me to see how little understanding the Legislature and the governor's office seem to have about the importance of the public defenders in our system of criminal justice," Thompson said. "And I mean that from a law and order perspective."

Duncan recently asked judges to consider putting low-level cases on hold indefinitely until the defenders are better staffed.

She said an alternative might be to convert some misdemeanor traffic offenses to petty misdemeanors, which are not eligible for public representation.

"It's clear to me, by the choices that our legislators made, they expected us to do less justice in the criminal court," Duncan said. "Unfortunately, the session ended before they could give us direction as to what it is we shouldn't be doing."

#### NO EASY SOLUTION

Martha Albertson, an assistant Steele County public defender, is one of several attorneys weighing career options while taking a yearlong leave from the district. A former prosecutor, she's questioned whether she's able to ethically tell clients she's given them adequate representation, which is a requirement to retain her law license.

"The biggest problem is the lack of funding for the number of cases we have," she said. "I don't know what the solution is. Is the solution to decriminalize some things, like minor drug possession? Is the solution to divert minor cases to diversionary programs, before they're even charged, like they do in Canada and Washington state? We either need more money or fewer cases."

She suspects, however, that volume isn't the only problem. Albertson and other attorneys say the prosecutorial culture in several of their counties makes settling open cases difficult, so they tend to stay open longer than the norm. The district has two drug courts but few other alternative programs.

According to the legislative auditor's report, felonies in 2008 remained open an average of 272 days in the district, well beyond the statewide average of 198 days. (In Hennepin County, the average is 135 days.)

Among their staffing concerns, the public defenders say they have only two paralegals to assist two dozen lawyers.

The district employs 2 1/2 investigators to go door knocking on behalf of their clients, a far cry from the hundreds of investigators available to prosecutors through municipal police, county and state public safety agencies.

#### CAUGHT IN THE MIDDLE

In a July 16 letter to Duncan, 13 attorneys said they feared airing their concerns individually because doing so "could result in workplace or professional discipline."

Duncan is officially their manager, but she shares many of their staffing concerns.

She said she's filed motions in Steele, Olmsted and Houston counties to basically overrule judges and rescind more than 50 public defender appointments, and she expects to file more.

In a recent letter, Duncan asked the courts not to prosecute lesser, non-violent offenses, such as parking complaints and low-level shoplifting, to

the full extent of the law, but to instead direct more cases to diversion programs.

She noted six attorneys were scheduled for leaves of absence as of last month.

"Before this most recent budget cut, each defender in our district was asked if he or she could take on more work," Duncan wrote. "Some said they could, and they did. ... We have no more elasticity. We cannot absorb the work of the attorneys who are leaving."

Frederick Melo can be reached at 651-228-2172.

Chuck Samuelson, executive director of the American Civil Liberties Union in Minnesota



Print

Email



Font Resize



Return to Top

## Related Topics

- [Politics - US Supreme Court, US News](#)
- [Places - Owatonna, MN, Steele County, MN, Minnesota](#)
- [Life - Criminal Defense Law, Law](#)

Like this story?

Buzz it up on

*The Pioneer Press is happy to host*

*community conversations about news and life in the Twin Cities. As hosts, we expect guests will show respect for each other. That means we don't threaten or defame each other, and we keep conversations free of personal attacks. Witty is great. Abusive is not. If you think a post violates these standards, don't escalate the situation. Instead, flag the comment to alert us. We'll take action if necessary.*

*It's not hard. This should be a place where people want to read and contribute -- a place for spirited exchanges of opinion. So those who persist with racist, defamatory or abusive postings risk losing the privilege to post at all.*

### POST YOUR COMMENTS:

[Read all 78 comments »](#)

Type in your comments below

**Name (appears on your post)**

You are currently logged in as **DDAweb**. [Not DDAweb?](#)

**Comments**

Characters left: 4000

Type the numbers you see in the image on the right:

**Post Comment**



topix

Please note by clicking on "Post Comment" you acknowledge that you have read the [Terms of Service](#) and the comment you are posting is in compliance with such terms. **Be polite.** Inappropriate posts may be removed by the moderator. [Send us your feedback](#).

## MORE OF TODAY'S HEADLINES

Minnesota voter registration status available online

4 men arrested in burglary at Obama Elementary School in St. Paul

Boy throws a fit, damages West St. Paul squad car after being denied new BB gun at Kmart

Lawsuit settled after California diner alleged he found condom in soup

Katie Miron of Hugo named 57th Princess Kay of the Milky Way

Stillwater man charged with killing grandfather, 82, in Roseville

Former Republican chairman, Bush campaign manager says he's gay

### Most Viewed Most E-Mailed

(From the last 12 hours)

1. Newest Minnesota Vikings receiver Greg Camarillo is a real grabber
2. Brett Favre: With Sidney Rice, Percy Harvin out, opportunity is now...



3. Boy throws a fit, damages West St. Paul squad car after being denied...
4. Ruben Rosario: A new State Fair freebie: education about Islam
5. Gang strike force suit settled for \$3 million
6. St. Paul father gets less than 5 years for crushing baby's skull
7. Charley Walters: A lot riding on Minnesota Twins' series against...
8. The Greg Camarillo file
9. Stillwater man charged with killing grandfather, 82, in Roseville
10. Vikings' Sidney Rice says his hip injury could have been...

## NATION & WORLD VIDEO

Man Arrested in NYC for Stabbing Muslim Cabbie  
Ohio Crash Survivor's Mom: a Miracle He's Alive  
Raw Video: SC Victim's Family Attack Suspect  
Police: Drunk Transient Set Destructive Wildfire  
Interview: Woods' Ex-wife Went 'through Hell'

## PIONEER Top Listings

Jobs

**Senior  
Implementation  
Consultant**

**Registered Nurse**

**Dental Technician**

**Construction -  
Disaster Restoration  
Project Manager**

**Experienced Servers  
- Lunch, Evening, and  
Weekend Shifts  
Available**

**Mechanics**

**Implementation  
Consultant**

**JOBS!! JOBS!! JOBS!!**

**All Listings**

### 900% Gain on Penny Stocks

Join today to receive our free  
newsletter, alerts,  
PennyStockAlley.com

### Spot FX Market Twists

Learn to Anticipate Market Twists and  
Turns with this FREE  
GFTforex.com

### Trade Like Jim Cramer

Get Jim's stock picks and trades every  
day.  
www.thestreet.com

Ads by Yahoo!

[News](#) | [Business](#) | [Sports](#) | [Entertainment](#) | [Life & Culture](#) | [Shopping](#) | [Jobs with the Pioneer Press](#) | [Jobs](#) | [Cars](#) | [Homes](#)  
[Newsroom](#) | [About Our Ads](#) | [Copyright](#) | [About MediaNews Group](#) | [Online Media Kit](#) | [Print Media Kit](#) | [Help](#)

[Privacy Policy](#) | [Terms of Use](#) | [MNG Corporate Site Map](#) | [Copyright](#)

A  **MediaNews Group** WEBSITE