

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

MCBAPRESIDENT'S MESSAGE

County public defender a necessary position

This week the Monroe County Legislature decided to reappoint Monroe County Public Defender Tim Donaher. This was a very important decision for our community. The work of the office is critical to us all.

Those accused of crimes who do not have enough money to retain a defense attorney of their own choosing must depend upon the competence and zeal of attorneys in the Public Defender's Office to protect them from wrongful conviction and imprisonment, as well as the stigma and negative employment consequences caused by a conviction.

And, as we have recently seen in our community, when a wrongful conviction occurs, the real perpetrator remains at large, able to continue to commit additional horrible crimes. The office also represents parents who are at risk of losing their children because of allegations of abuse or neglect.

The Public Defender's Office is recognized throughout the state and country for the excellent quality of their work. The Office's 2010 Annual Report notes that its 60 attorneys represented over 30,000 new clients in 2010, carrying caseloads much higher than national standards. In felony trials in 2010, its attorneys won acquittals or orders of dismissal in 30 percent of cases tried, and won on the top charge in an additional 9 percent of cases, although their client was convicted of a lesser charge.

Despite this record of success, under our current system, the public defender can be replaced by the legislature for any reason or no reason every two years. There are no articulated standards for judging his performance and no non-partisan review to inform the legislature in making its judgment about retention.

A public defender could be denied reappointment because he or she fought too vigorously or publicly for adequate funding for the office, the office won too many high profile cases, or the legislative majority simply changed.

In May the Board of Trustees of the Monroe County Bar Association unanimously approved the report of a task force headed by the Hon. Jonathan Feldman, which examined the process for the selection and retention of the public defender. The report "Con-

tinuing to Lead: The Merit Selection and Reappointment of the Monroe County Public Defender," was based on a year-and-a-half-long study of national standards and best practices and extensive local input.

The report proposed the following as standards for the reappointment of the public defender:

1. Quality of representation provided to clients of the Public Defender's Office;
2. Level of commitment and service to clients; and
3. Administrative efficiency of the Public Defender Office.

These are sensible standards for judging the work of any law office, public or private. It also proposed that the term of the public defender be four, rather than two, years.

The report proposed that the review of the work of the public defender against those standards should be conducted by a four member panel: an attorney, a judge and a community member appointed by the MCBA president, and a county legislator, appointed by the president of the legislature.

The committee would be mandated to seek input from those in the best position to evaluate the service of the public defender, the bench, the bar, and the community and would allow the public defender the opportunity to respond to any adverse comments.

It would make a recommendation based on its findings to the president of the legislature at least 90 days prior to the expiration of the public defender's term to allow time for the legislature to consider the reappointment in a deliberative merit based process. The final decision would remain, as required by current statute, with the legislature but the quality and breadth of information before it would be greatly increased.

And the chances of an effective public defender losing office for political or non-merit based reasons would be far lower with a public record of the office's quality, commitment to clients and effi-

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Daily Record
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ciency.

Unfortunately, the county legislature did not take up discussion of the task force report last year after it was issued. We certainly hope they will do so this year and have re-extended our offer to meet with its leaders to discuss the benefits of merit selection and retention of the public defender.

Our Criminal Justice Section has reported to the trustees on their assessment that the current public defender is delivering the highest quality legal services to the clients of the office; has in place excellent training programs for staff attorneys and criminal defense attorneys outside the office; has instituted community out-

reach and education efforts; and has good human and technology systems to promote efficiency.

On that basis, the trustees commended Donaher for his efforts as public defender and communicated our commendation to the legislature's leaders. But we could only provide this input from the lawyers. It would have been far better to have a process that also gathered the views of the bench and the community so that the legislature had a complete picture when making this important decision.

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