



For media inquiries, please contact:
Liz Novak, Membership & Communications Manager
Monroe County Bar Association
585-402-7193
lnovak@mcba.org

FOR IMMEDIATE RELEASE: May 9, 2011

Task Force Recommends New Process for Selecting Public Defender

MCBA board unanimously approves a merit-based, non-partisan approach

ROCHESTER, NY—Citing more than a dozen studies and reports, national best practices and community input, the Monroe County Bar Association today recommended a new merit-based process for future selection and reappointment the Monroe County public defender.

In keeping with the constitutional right to an attorney, “the appointment process for the public defender must be independent and free from partisan political influence” according to the report of a Public Defender Task Force commissioned by MCBA and chaired by United States Magistrate Judge Jonathan Feldman.

The report—*Continuing to Lead: The Merit Selection and Reappointment of the Monroe County Public Defender*—recommends a 12-member merit selection panel to identify qualified applicants and recommend three to five finalists to fill the Public Defender’s job when it’s vacant, with the Monroe County Legislature making the final determination. A four-member panel would assess the Public Defender’s performance after each term and make a recommendation on reappointment.

“We need a merit-based process to ensure that Monroe County is always served by a highly qualified, independent public defender who has the confidence of the community,” said Susan Schultz Laluk, president of the Monroe County Bar Association and partner at Hiscock & Barclay. “The time to make these changes is now, when there is no vacancy to fill and the public defender in place has earned community support.”

“This is not a Republican issue. This is not a Democratic issue. It’s a good government issue,” said Mark Moretti, member of the Public Defender Task Force and partner at Phillips Lytle. He and Laluk both emphasized that the recommendations are forward-looking and in no way reflect on the performance of current Monroe County Public Defender Timothy Donaher, whom they said is doing a good job. The report notes that more than 30 percent of trial defendants represented by Donaher’s office last year were exonerated.

“If the public defender isn’t doing a good job, innocent people will go to jail,” said Bryan Hetherington, MCBA president-elect and chief counsel at Empire Justice Center. “That’s a grave injustice and a public safety problem—because when innocent people are sent to prison, the guilty people who committed the crimes are still out on the streets.”

The MCBA formed the task force in January 2010. Chaired by Feldman, the other members were Moretti; Edward Nowak, former Monroe County public defender; Jill Paperno, second assistant public defender for Monroe County; and Connie Walker, confidential law clerk to Monroe County Court Judge Frank Geraci.

The task force report, unanimously accepted by the MCBA Board of Directors, was based on thorough research of national best practices and seven public meetings where the group received input from more than 125 people from across the community. It makes six recommendations to create a non-partisan, merit-based process for selecting and reappointing the Public Defender.

1. Establish qualifications, including that candidates should be licensed attorneys in New York and have at least three years of experience in criminal and/or family law. Currently, there are no specific qualifications that candidates must possess.
2. Advertise the position nationally, with MCBA paying the cost of the search.
3. Authorize MCBA to create a 12-member panel to screen candidates—three community representatives, three attorneys and three judiciary members, along with three non-voting county legislators. The panel would identify three to five qualified candidates for a vacancy.
4. The Monroe County Legislature would approve one of the recommended candidates.
5. The term of service would be increased from two to four years.
6. The MCBA would create a four-member committee—one community representative, one attorney, one judicial representative and one legislator—to make a recommendation to the Legislature regarding reappointments after each four-year term.

A 1963 U.S. Supreme Court case—*Gideon v. Wainwright*—set the stage for the nation’s public defender system. The Supreme Court held that defendants in criminal cases have a constitutional right to counsel, even if they can’t pay for it. Monroe County most recently selected public defenders in 2008. At that time, an advisory panel created by the legislature interviewed three local applicants, and legislators did not solicit outside candidates or additional community input.

Hetherington noted that five other New York counties are being sued over the way the public defender’s office is being run. He said that the recommendations will protect the county’s legal interests and support a long tradition of community collaboration and good government.

“In 1973, Monroe County was a leader in creating a system to ensure that a highly qualified and independent public defender was appointed by the legislature,” Hetherington said. “The county can continue to lead by adopting these recommendations now, when we don’t have to worry about how they affect candidates for an open position. We encourage the community to support this merit-based process to ensure that our county is always served by a highly qualified, independent public defender.”

About the Monroe County Bar Association

The Monroe County Bar Association, originally formed as the Rochester Bar Association, was organized in 1892. What started with just 25 members, has grown to more than 2,000 law professionals, committed to improving the quality and accessibility of justice; promoting respect and understanding of the law; enhancing professional growth, fulfillment, excellence, collegiality and diversity among its members; and serving as a voice for the law profession. The MCBA is actively involved with both the New York State Bar and the American Bar Associations and is considered one of the premier local bar associations in the country.

###