

DEFENSE

From page 1

Justice for poor defendants in Southwest Florida remains a poorly funded proposition, along with other court systems throughout the state and nation. Public lawyers in the 20th Circuit represent clients in Lee, Collier, Charlotte, Hendry and Glades counties. They are taking so many cases with so few resources that clients are on the verge of having their constitutional right to an adequate defense violated, Ms. Smith said.

The court system's 80 public lawyers provided defense for 54,742 cases in 2008, including juvenile, misdemeanor and felony; or, 11,979 more cases than in 2006. But the state Legislature in Tallahassee cut their budget by \$986,000 over that same period and set an increasingly smaller cap on the total number of employees, from 140 in 2006 to 128 today.

"We understand that these cuts have been across the board, but we've already been through a couple of rounds of this," said Michael Orlando, the deputy public defender in Collier County. "We just would like to make sure that the cuts don't reach a level where service is affected."

Rep. Nicholas Thompson, a Fort Myers Republican, is a former prosecutor and vice chair of the state's appropriations committee for civil and criminal justice.

"It's a difficult situation for us," he said. "As a former prosecutor, working the other side of the room, I'm very sympathetic to what's going on. Every year I try to preserve as much money as possible. I think (funding for the court system) should be a larger percentage of the state budget. I'm going to try to find a way to get a higher allocation for public courts."

Quality of defense

Karen Miller, a 20-year veteran of the 20th Circuit public defender system, is regularly assigned felony cases that carry life-altering verdicts. In the case of at least one client, she wasn't able to call as many experts as she would have liked to give testimony.

"In order to convince the state, I wanted to have the kid evaluated by a psychologist to try to give us some insight and decide if sending him to prison for a long time is really good for him and society in general," she said. "We just have a lot less money for those types of things."

In such cases, it doesn't necessarily mean the defense was inadequate or that lawyers like Ms. Miller didn't use every reasonable means to defend their clients.

"You're not entitled to spend all the money available for a defense," said Pamella Seay, an attorney who teaches advanced courses in legal ethics at Florida Gulf Coast University.

But, she added, "If you cannot provide appropriate representation, you cannot take on the case."

In some district courts in Florida and other states — notably in Miami-Dade County — lawyers have quit, citing increasing workloads. The public defenders' office there won a trial in which a Florida judge said they could refuse some clients to better defend others.

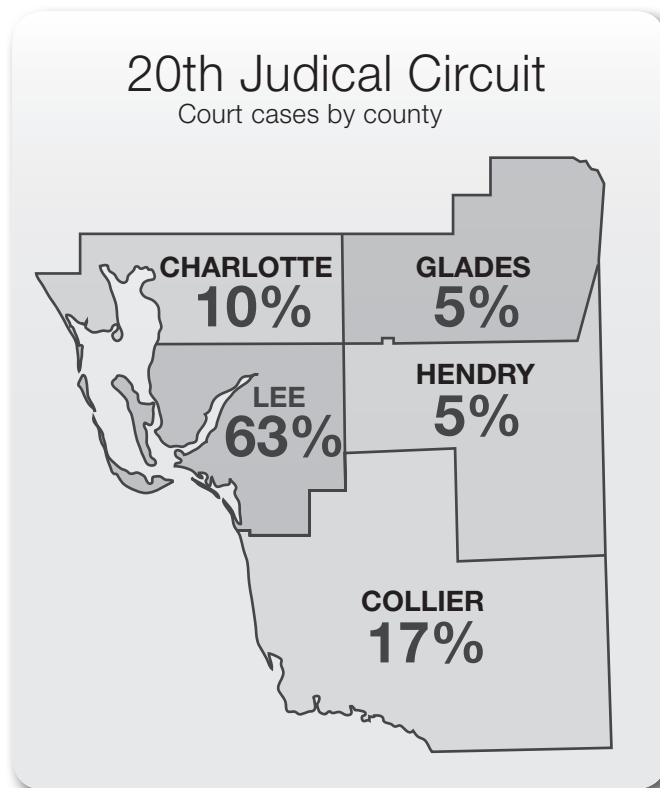
The state appealed the decision, arguing that in a climate of economic woe, public defenders should share the budget cuts just like everyone else. FGCU Professor Seay disagrees.

"There are some things that should be placed above others," she said. "And I think (that includes) the defending of



Karen Miller, deputy public defender, argues for a client in a 20th Judicial Circuit courtroom in Fort Myers. Some public defenders have as many as 80 cases at a time.

EVAN WILLIAMS/FLORIDA WEEKLY



the rights of anyone, whether it's a guy caught dealing drugs or someone who is just an accidental arrestee or someone that is truly innocent — and yes, that does happen."

If an appellate court overturns the state's decision, lawyers say, it could mean a violation of their clients' rights. Aside from the Sixth Amendment, which guarantees the right to counsel, other landmark court cases have guaranteed the right to counsel for the poor (*Gideon vs. Wainwright*, 1963); and, the right to "effective" counsel (*McMann v. Richardson*, 1970).

It could also mean public lawyers will continue taking on more demanding schedules without compensation. Among younger defenders, having \$100,000 in school loans is not uncommon. Starting pay is \$42,100 per year.

"That's living expenses," Ms. Smith said. "That's being able to get an apartment and make a car payment... We have not seen a cost of living raise in two years. In many cases, we haven't been able to give merit wages either."

More cuts?

Lawmakers are considering further cuts.

"The (state) Legislature is asking to look at how we would operate if we would receive a 15 percent reduction," Ms. Smith said. "Yesterday, I spent the afternoon in Hendry County, covering court for people who are on maternity leave. I personally will be covering it for the next three months. There are no other places for cuts to come from."

Meanwhile, Ms. Smith said the "presumed innocent" are waiting in jail while an overcrowded court system

processes them.

She isn't willing to continue taking all their cases in the future without seeing an increase in funds. Otherwise, clients might get a rushed or hurried defense by a staff that is already being pushed to "the breaking point."

"I think we do a fantastic job of stretching the dollar," she said, "but we will not jeopardize our clients rights."

Rep. Darryl Rouson, a former prosecutor for Pinellas County who sits on the state's civil and criminal justice appropriations committee, empathizes. But he predicts more budget cuts for the 20th Circuit.

"The court system, in effect, is imploding under this weight of the bad economy," he said. "We see judges working with increased loads. We see the staff, including magistrates, being cut back. And so the public defenders are not alone..."

"At this point, every agency is going to suffer. From what I'm seeing and what I'm hearing and from the guidelines I'm seeing, every agency can expect some cuts (in the new fiscal year). Just last week we were told to expect a \$3.2 billion deficit right off the bat, which means cuts again. Today I'm seeing numbers that are worse than that, at \$5 billion, which could mean deeper cuts than we were anticipating."

Turning away clients

One possible consequence of public defenders turning away clients is being unable to prosecute them. Another includes farming the clients out to even more expensive private defense lawyers, which the state would be obliged to pay for based on their Sixth Amendment rights.

At least one agency, called The Regional Conflict Counsel, is in place to handle some cases the public lawyers cannot. But none of the options are free. Ms. Smith questions how the state will pay to make use of other resources.

"It's still more costly than if you just funded the public defenders office adequately," she said. "And if there are mistakes, and appeals, it costs more in the long run."

The public defenders office is able to recoup a fraction of its expenses by charging clients a \$50 application to

apply for getting a public defender if they are convicted of a misdemeanor; for conviction of a felony, they pay \$100. But these fees are minimal and since having legal defense is a right, it's hard to enforce payment — not that it ends up adding that much revenue anyway, Ms. Smith said.

"Having to rely on collections is not a good position to be in," she said.

Personal toll

Public defenders in the 20th Circuit say representing their clients zealously is a passion that sometimes supersedes family, friends, personal lives and lunchtime.

"I take pride in providing my clients with the same level of defense as private lawyers," said Giovana Upson, an assistant public defender in Naples.

As they take on larger caseloads, it might mean being marked with a "death stare" from a judge if they have to ask the court for more time to defend their clients.

"I don't feel like my representation for the client is suffering, but I feel like I'm suffering," said defender Ms. Miller. "I'd like to have a life besides work. I have kids, a dog..."

"Everybody's feeling the push, but most of us, we call them 'true believers.' We really believe in our clients. But I think it takes a personal toll, trying to keep the clients happy."

That's why Ms. Smith takes issue with the reputation public lawyer's have for being the bottom rung of defense attorneys. "When people assume they're getting a lesser quality, it's kind of offensive to us because we're in here day after day doing the heavy lifting of the judicial system," she said.

FGCU Professor Seay agreed.

"The public defenders office does have a really challenging job because they get some of the worst cases," she said.

But that's a part of the excitement for Amanda Jacobsen, a 27-year-old assistant public defender. She regularly skips lunch to manage her caseload, crams extra work in at red lights and has no regrets.

"Even though the pay is not great, I'm very happy here," she said. "The camaraderie and my supervisors are all wonderful. It's very exciting. It's fast paced."

When she graduated from the Florida Coastal School of Law in Jacksonville about a year-and-a-half ago, Ms. Jacobsen decided on practicing civil law. At the last minute she switched to criminal law. "Now I look back and I think, how boring of a life would I have had?" she said. "I couldn't imagine." ■