



# Criminal Appointments

By James Maceroni, Maceroni & Maceroni PLLC

Lost in the controversy last March regarding the appointment of counsel in the Stephen Grant case is the much larger and more serious issue of Michigan's broken public defense system. I have no doubt that an attorney from the A list could have been assigned to the case that would have been fully capable of representing Mr. Grant. The question is, could any attorney on the list actually afford to represent Mr. Grant while providing a defense on equal footing with the money and resources of the prosecution?

Steve Rabaut and Gail Pamukov provided Mr. Grant with the kind of defense that should be provided in every criminal prosecution, especially a capital crime. Such a defense requires a tremendous amount of time. Unlike the prosecution, defense counsel is not compensated for pretrial work, but rather only paid for the days actually spent in trial. A trial is won or lost during pretrial investigation and preparation. I have no doubt that by providing Stephen Grant a constitutionally effective defense, both Ms. Pamukov and Mr. Rabaut are essential-

ly volunteering much of their time. The problem is not that they are doing their jobs as our prosecutor's office claims, the problem is that most court appointed counsel can not afford to provide the same defense. There are few

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attorneys established enough in their practice to take on such an involved and publicized case for little to no pay. When court appointed attorneys are not compensated for their time, nor given resources on par with that of the prosecutor's office to prepare their case, the defense of their clients will suffer, and thus our system of justice suffers. Stephen Grant received exactly the kind of constitutional defense to which he was entitled. This is basic constitutional law. A vigorous defense helps to ensure not only that the accused rights are being

upheld, but that the government is acting legally not only in the prosecution of that individual, but in the prosecutions that preceded it, and the prosecutions that follow. Most reading this article understand this. However, we

all know how difficult it can be to explain to people who do not practice criminal law, why it is important that an accused is afforded his right to counsel and a vigorous defense. As attorneys, and especially criminal attorneys, it is our obligation to explain to lay people why this is so important to our system of justice, why it is important not only to the accused, but to them.

This is not only an obligation of the defense bar, but of prosecutors as well. This fundamental message becomes much more difficult when our Prosecutor publicly

objects to Mr. Grant receiving two attorneys claiming he is receiving "special treatment", then files an appeal in a subsequent capital case in which the judge ordered a second attorney, claiming that this is somehow unfair. The absurdity of this argument is highlighted by the fact it is made, at least in the Stephen Grant case, while our Prosecutor is flanked by at least one member of his administration, and more than one assistant Prosecuting Attorney, all of whom are working on the prosecution of Mr. Grant, and all are getting paid to work on the prosecution of Mr. Grant! Yet, it is somehow unfair that the defendant is appointed two attorneys, to essentially work for free. What should be obvious to any attorney, and something that as a criminal bar we have to start being much more vocal about, is that the problem is not that Stephen Grant was appointed two attorneys to represent him while on trial for a capital crime. The problem is that we don't provide every defendant charged with a capital crime at least two attorneys.

There is now, and there

is every few years, a push for fair wages for court appointed criminal defense attorneys. Indeed, the amount of pay given to court appointed counsel for the work we do is a joke. However, a push for more fees without a subsequent overhaul of the entire system of court appointed counsel in Michigan is worthless. While most attorneys who do court appointed work represent their clients to the best of their ability, we all know criminal defense attorneys who simply don't, or despite their sincere efforts their abilities do not match that which the case demands, or they simply can't afford to spend the time required on a case at the expense of

neglecting their other cases. In addition, the disparity between the resources of the prosecutors office, and the resources of the average court appointed defense counsel is nothing short of momentous. This is a problem in Macomb County, and throughout the State.

In February, the Michigan Coalition for Justice filed a lawsuit against the State of Michigan, and Governor Granholm in Ingham County Circuit Court. Quite simply, the lawsuit asks the Court to fix the public defense systems in three counties, Muskegon, Berrien, and Genesee. It alleges that the State has neglected its "Constitutional duty by failing to fund or

provide oversight for public Defense services. Instead, delegating to each of its 83 Counties the responsibility for funding and administering the right to counsel in trial courts within their borders." In addition, a study requested by the State Legislature, and conducted by the National Legal Aid and Defender Association in conjunction with the State Bar of Michigan, is due to be released soon. The study focuses on a cross section of approximately ten counties across the State. Michigan is ranked at or near the bottom of the Nation in both the quality of representation it provides to indigent clients, and the compensation it provides for the attorneys who represent them.

Last November, the MCBA Criminal Law Committee held a meeting in which one of the attorneys of record of the lawsuit spoke about the Michigan Coalition for Justice and its goals. At that time, there were several attorneys who voiced concern about the lawsuit as they didn't see it as addressing their concerns of a fair wage for their work, or

worse they saw it as a direct attack on the work they do. The two issues of fair wages for attorneys and quality of representation for indigent clients are inseparable. A poorly funded indigent defense system inevitably leads to inadequate representation of counsel, regardless of the effort or skill of counsel. The goal of the coalition is to establish a uniform state system of indigent defense, with both fair pay, and better training and oversight of defense attorneys to ensure quality of representation. The lawsuit is not about individual attorneys, or an attack on our work. As attorneys, both prosecutors and defenders, we have all sworn to uphold the same Constitution. Improvements to our public defense system is something we should welcome based on the belief that our system of justice only works when defendants are represented by competent legal counsel who vigorously advocate for their clients. Towards this end, progress towards a more uniform, fully funded public defense system, is something we should welcome and work to advance. ■

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