



Massachusetts Association
of Court Appointed
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PRESS RELEASE

CONSTITUTIONAL RIGHTS APPLY TO ALL

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On Monday, August 9, a Justice of the Hampden Superior Court issued an Order releasing three defendants from custody, in compliance with the recent *Lavallee* decision.

At the 2:00 p.m. Court session, Judge Peter A. Velis issued an Order for three defendants being held in jail without a lawyer to be “transported forthwith to the Court, no matter what the hour.” Judge Velis stated that he would wait until the defendants arrived in order that they could have a Hearing to determine if they should be released from custody pursuant to the Order of the Supreme Judicial Court in the *Lavallee* case. The three defendants were transported from the House of Correction to the Superior Court within two hours. In the case of a fourth defendant, the Assistant District Attorney withdrew the request that he be held on bail, as this defendant was serving a sentence for a criminal charge in a separate matter.

When the three defendants arrived, Judge Velis conducted a Hearing and made a finding that the three defendants had been held in custody more than seven days without being appointed a lawyer to represent them in violation of their constitutional rights. Judge Velis issued an Order releasing the three defendants from custody. The Defendants had been held on bail amounts of \$250,000, \$10,000, and \$5,000. The charges against these defendants include: distribution of cocaine, carrying a firearm without a license, aggravated rape, use of a firearm while committing a felony, second offense distribution of heroin in a school zone, and second offense distribution of cocaine in a school zone.



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Their charges remain open at this time but will be reviewed on August 16. At that time, if no lawyer has been found to represent the defendants, the charges may be dismissed.

Judge Velis has issued an Order for 14 defendants now in custody to be brought to the Hampden Superior Court on Thursday, August 12. These 14 defendants have also been held in custody without being granted their right to counsel.

Judge Velis is the Regional Administrative Judge (RAJ) for Hampden County and has been designated by the Supreme Judicial Court to oversee the implementation of the *Lavallee* Order. Judge Velis will designate one courtroom in the Hampden Superior Court facility to be the Administrative Court for implementing the procedures necessary to identify defendants who have been denied their right to counsel, and have them transported to the Court so that the Court may conduct a Hearing and issue any necessary Orders.

The *Lavallee* Order also mandates that the charges against anyone who has not been assigned a lawyer after 45 days must be dismissed. On Friday, August 6, the Single Justice of the Supreme Judicial Court issued Orders for two other Hampden County defendants that their charges will be dismissed beginning this week, if no lawyer is found willing to represent these defendants. The charges for these defendants include sixth offense OUI, unarmed robbery, and breaking and entering in the night with the intent to commit a felony.



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MACAA recognizes the courageous actions of the Hampden Superior Court today, in following through on the unpopular process that was defined in the *Lavallee* decision, namely the release of citizens who have been held without attorneys, in violation of their constitutional rights.

MACAA President, Tom Workman stated that "It is our hope that the legislature will work with the leadership of MACAA to formulate a solution that solves the current crisis. Starting a dialog is an important first step, we invite the legislature to meet with us so that a meaningful solution can be implemented. This is a real emergency, we must set aside politics and solve the problem with great urgency."

The Order of the Hampden Superior Court was issued five weeks after the *Lavallee* Order. On July 2, 2004, the Supreme Judicial Court issued a unanimous decision in the case of *Lavallee v. Justices of the Hampden Superior Court*. The SJC ordered that defendants held more than seven (7) days without benefit of counsel were entitled to relief in the form of immediate release and in the case of defendants with outstanding charges greater than forty-five days without appointment of counsel the Court ordered the dismissal of those charges. The SJC upheld the ideals and the true meaning of the Constitution for all without regard to income and reaffirmed that representation of counsel under the Sixth Amendment is "a fundamental constitutional right".

The Court found specifically that the constitutional rights of such individuals had been violated as a direct result of the "shortage [that] has been caused by the low rate of attorney compensation". The chronic underfunding of rates paid to court appointed counsel has resulted in the detention of numerous indigent defendants without representation.



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The SJC expressed concern over the public safety issues raised by such a decision and recognized that many of the defendants now eligible for release have been charged with serious offenses. The SJC decision stated that "public safety comes with a cost. One of the components of that cost is the level of compensation at which counsel for indigent defendants will provide the representation required by our Constitution."

Massachusetts has been the third lowest compensating state for attorneys who represent the indigent. Massachusetts is one of the most expensive states in the country, in terms of the cost to operate a business or a law practice. When compared to the twenty-four other states and jurisdictions that increased compensation for attorneys who represent the poor, the Massachusetts recent \$7.50 increase was one-third of the average increase provided by other states, and was the third smallest increase on record over the past ten years.

The economic factors of being in one of the most expensive states to live, starting from one of the lowest pay levels, and then receiving an increase that is one of the smallest on record combine to create an environment where it is impossible for most attorneys to operate a law practice and not subsidize the state.

The courts in Springfield have reached out to the over 40,000 attorneys licensed in Massachusetts, asking them to work at the recently increased compensation structure. Less than five attorneys have responded, a result of the clearly unfair situation forced on those who work for the poor.

We all study, in grade school and in high school, the shameful conduct of the monopolists in the early part of the twentieth century. The antitrust laws are designed to prevent the concentration of power in the hands of a small group, who in turn pay sweatshop wages, and adopt practices oft seen by the schoolyard bully. In Massachusetts, 80% of the



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business of criminal defense, and defending the poor, is controlled by the Commonwealth. It is because the state has yielded all the power, and has by law prevented the attorneys from organizing in a union, that the abusive practices have continued for so many years.

MACAA President, Tom Workman stated that “For the past few years, attorneys who do this work have held on financially, trusting that an increase was imminent. The expectation was that the increase would be fair, and the resulting compensation would at least cover the costs of operating their law offices. The recent \$7.50 increase, amounting to a 12% increase over more than 20 years for some attorneys, has resulted in an acceleration of the crisis, as many attorneys evaluate their own law practice, and realize that fair treatment was an illusion.”

Please direct all questions or requests for change in contact information to Nancy McLean, Press Secretary, Massachusetts Association of Court Appointed Attorneys, nmm@cape.com, cell phone 617-529-6349.

MACAA

The Massachusetts Association of Court Appointed Attorneys is a non-profit corporation established in 2003 for the purpose of ensuring that the highest quality of legal representation is given to each and every person entitled to court appointed counsel regardless of ability to pay. MACAA encompasses all attorneys on all legal panels where counsel are appointed for indigent persons: defendants in the criminal system; juveniles involved in delinquency matters; children before the Court under the stubborn children statute; parents and children involved in Care and Protection proceedings; mental health proceedings; proceedings before the sexual offender registration board; and proceedings for the commitment of sexually dangerous persons. MACAA was formed and is run on a voluntary basis by its own members. There are approximately 2,400 attorneys in Massachusetts who accept court appointed cases. The Committee for Public Counsel Services is the state agency charged with training and oversight of these attorneys.