

Taking a wait-and-see approach to recent legislation

To the editor:

“Innocent until proven guilty” is the cornerstone of American democracy. Thus, access to zealous representation for the indigent has been the goal when providing court-appointed attorneys in Massachusetts for those who cannot afford their own attorney.

This is true whether the court-appointed attorney is a public defender, who is a salaried employee of the commonwealth, or a private attorney working as an independent contrac-

tor and paid through the funding of line item 0321-1510.

Today, the public defenders remain woefully underpaid, as most of their salaries hover around \$35,000 a year (though that \$35,000 does include health insurance and state pensions). These public defender salaries remain about \$10,000 under similar positions in the executive branch, which has led to the loss of at least 64 of the current 120 public defenders in the last four years. This is a terrible loss of experience and training to the commonwealth.

The passage of recent legislation raised the payment for a tiny fraction of cases — the murder list cases — to \$100 per hour for private counsel. This is a movement, certainly, toward fair compensation that should lead to retention and increase of attorneys on the murder list panel.

However, the vast number of court-appointed cases will now be billed at \$50 an hour. The cases billed at \$50 an hour comprise more than 75 percent of all court-

appointed cases. These cases include defending parents in termination of parental rights cases, which can involve 15 or more days of trial, and hundreds of hours of preparation tying up an attorney’s total law practice.

It is important to realize that when attorneys must wait for four or five hours at a Juvenile Court for one case, those attorneys will only be paid for one hour of their time spent waiting. Only time will be able to show whether these increased rates, which together (2004 and 2005) are the largest rate increase in 20 years because there was no rate increase for the prior 20 years, will be sufficient to guarantee access to justice for the indigent and zealous representation. In a capitalist system, the market itself will show whether or not what was done will be successful; no one can know today.

The commission itself recommended increases the next two years, with a goal that rates in the commonwealth should reach the 75 per-

centile for rates paid to private attorneys appointed to represent the indigent, nationwide. I hope that the Legislature will also follow these recommendations.

As for the pilot programs, these are not really necessary. Such programs have been done in the past. The information is already available in filing cabinets. Certainly, the reporting and other requirements from them are financially burdensome on the limited staff of the Committee for Public Counsel Services.

It makes far more sense to raise the salaries for public defenders to parity with the executive branch attorneys who are in similar roles, such as at the Department of Social Services and Department of Revenue. Where CPCS has trouble retaining staff now, and no increase has been funded or legislated for their long-suffering and underpaid staff, how will CPCS find and retain 120 more attorneys at these inadequate salaries?

There are many other complex

provisions in the new legislation. It will take time, likewise, to see how these provisions will work. Nonetheless, it is exciting to see attention paid to the right to counsel.

As long as the result is that “innocent until proven guilty” is upheld, all will be well. Zealous representation for all citizens, whether or not they can afford to retain attorneys, and open access to the courts is fundamental to the Constitution written by John Adams. Open access to the courts must remain the prime goal of the legal profession.

I am grateful that the Legislature acted. It is the poor who were being hurt. By acting, the Legislature did not allow this crisis, and the harm to vulnerable indigent citizens, to continue into the fall.

Now the legal profession can only watch and wait to see how the Legislature’s remedy will fare as it is put into place by CPCS, the probation departments and the courts.

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