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Opinion

Another Voice / Criminal justice

Another Voice: New York should settle lawsuit and properly fund the state's public defenders

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By Tim Donaher and Lisa Schreibersdorf

Imagine you were charged with a crime. You would search for the best attorney you could afford, for you would know that your future depended upon being represented by zealous counsel who had sufficient time and resources to provide you with excellent representation. You will need a dedicated, well-resourced attorney as you are facing a prosecutor supported by the almost unlimited resources of the state.

This basic truth about our criminal justice system – that it works only when both the prosecutors and defense counsel are zealous, competent attorneys who have sufficient resources to represent their clients – is why the U.S. Supreme Court held 50 years ago that the Constitution guarantees the right to a state-provided attorney for all criminal defendants who cannot afford counsel.

Sadly, tens of thousands of New Yorkers face prosecution each year and are represented by attorneys who do not have those resources. New York public defenders are zealous, caring and dedicated attorneys who are often unable to provide the best representation to clients because they lack access to expert witnesses and investigators, support staff or sometimes even office supplies or a computer. Furthermore, insufficient state support for our important function results in understaffed offices where attorneys handle caseloads significantly higher than is recommended by various bar associations.

The state provides abundant resources to prosecutors and police agencies, while simultaneously ignoring its constitutional responsibility to provide adequate resources to public defense attorneys. As but one of many examples, according to a recent finding by the New York Civil Liberties Union, the state provided dedicated public defenders in Onondaga County only \$28,161 for investigators in 2011, while funding the prosecutors with 35 times as much. This significant disparity of resources has led to an unbalanced and broken criminal justice system for us all.

The state is about to go on trial for its failures; the first trial of its kind in the nation as a result of a lawsuit brought by the NYCLU. The case exposes the failure of our system to ensure proper funding for effective counsel.

New York must do better. Our state oversight agency, the Office of Indigent Legal Services, must have enough funding so that public defenders have the resources to represent their clients and keep the system honest and fair. Caseload limits need to be implemented to provide our attorneys time to work on the cases of each of their clients.

It should not require a trial for New York to fulfill its constitutional responsibilities. Gov. Andrew M. Cuomo and the Legislature should settle the lawsuit.

Tim Donaher is interim president of the Chief Defenders Association of New York. Lisa Schreibersdorf is the association's interim president-elect.