



ACLU Nebraska

941 'O' Street, Suite 706 • Lincoln, Nebraska 68508
tel. (402) 476-8091 • fax. (402) 476-8135 • info@aclunebraska.org

BECAUSE FREEDOM CAN'T PROTECT ITSELF

March 21, 2013

Dawson County Commissioners
700 North Washington St.
Lexington, NE 68850

Dear Commissioners:

ACLU Nebraska has begun reviewing the adequacy of public defender funding across the state. I understand this is particularly timely because Dawson County is preparing to accept bids for a new public defender. I am writing to ensure that you are aware of the legal framework surrounding this issue.

State and federal law require that the county provide an adequate budget to hire an appropriate number of attorneys for the public defender's office. For example, "Caseloads shall allow each lawyer to give every client the time and effort necessary to provide effective representation." *Neb. Rev. Stat.* 23-3406. Counties may not hire a brand new law graduate. *Neb. Rev. Stat.* 23-3407. And counties are encouraged to specify the maximum allowable caseload for both full- and part-time attorneys under the public defender contract. *Neb. Rev. Stat.* 23-3406. Caseloads are to be determined by looking to the standards of the American Bar Association. *Id.*

From my review of available public records, it appears that Dawson County has not been in compliance with these requirements.

The maximum caseload calculation was done decades ago by a federal commission—the National Advisory Commission on Criminal Justice Standards (NAC). While the American Bar Association (ABA) and legal commentators have begun to suggest that the NAC standards should be trimmed back, the NAC standards are a safe maximum number of cases for Dawson County to impose on public defenders at this time. Those case number limits are:

- No more than 150 felonies per year, per attorney.
- No more than 400 misdemeanors (excluding traffic) per year, per attorney.
- No more than 200 juvenile cases per year, per attorney.
- No more than 25 appeals per year, per attorney.

I understand that up to present time, the Dawson County Public Defender was a part-time attorney with a private practice, assisted by a part-time deputy public defender. However, it appears that last year alone, there were over 250 felonies filed in the county. That means that, even with occasional private counsel or conflict attorney appointments, the Dawson County Public Defender's office was far understaffed to meet the caseload.

Over-large caseloads violate not only state law—they violate the Constitution’s guarantee of adequate representation under the Sixth and Fourteenth Amendments. If Dawson County does not adequately fund the public defender’s office to permit enough qualified attorneys to cover the caseload, the county risks expensive civil rights lawsuits.

The ACLU has brought successful class action lawsuits for inadequately funded public defenders in Montana, Idaho, Utah, Connecticut, Pennsylvania and Washington. Consistently, courts recognize that when the prosecution is funded more than the defense, everyone loses. As the judge wrote in the most recent ACLU victory regarding under-funded public defenders in Pennsylvania:


“The people have ordained that the right to counsel exist as a bulwark against tyranny. It is the duty of those entrusted with the administration of our government that constitutional obligations be implemented in an effective way. Even when resources may be scarce, constitutional obligations must be afforded priority. Anything less would offend the sacrifice of those who created and defended our constitutional democracy.”

I urge you to review the caseloads for the last several years—including felonies, misdemeanors carrying potential jail time that are eligible for public defender services, juvenile cases, and mental health commitments—and refer to the NAC guidelines in order to calculate how many full- and part-time attorneys will be necessary for the county’s new contracted public defender.

You can find a helpful guidepost by reviewing the budget and funding for the Dawson County Attorney’s office. The scales of justice do not permit one side all the weight of support staff, investigators, interpreters, and access to scientific testing. Both sides of the equation—defense and prosecution—deserve equal funding for a fair process.

All these matters can be taken up by the policy board that Dawson County is required to convene for this process. *Neb. Rev. Stat.* 23-3405 says the county may not appoint and negotiate the contract alone: the county must have an independent policy board to ensure compliance with state law requirements.

If the county and the policy board follow the state statutes and adequately fund the public defender position, we will close our file on this matter. I must warn you that if the county does not meet its obligations under state law and the Constitution, ACLU Nebraska will consider a civil rights lawsuit as the only appropriate vehicle to remedy the problem. I look forward to your response to these concerns.


Amy A. Miller
Attorney at Law