

Comments by Joseph Daniel, Attorney at Law, Florence, AL

On May 19, 2005 Lauderdale County District Judge Deborah Bell Paseur granted my motion to withdraw from the representation of a Tennessee man facing capital murder charges in the State of Alabama. This individual is suspected of being involved in the shooting death of a Florence resident. My request to withdraw was based on Rule 1.16(b)(5) of the Alabama Rules of Professional Conduct which allows appointed counsel to withdraw from a case "if the representation will result in an unreasonable financial burden on the lawyer."

As a result of an Opinion issued by Attorney General Troy King, the State of Alabama has refused for now to pay appointed lawyers for overhead expenses in cases involving not only poor defendants, but also abused and neglected children and juveniles whom the State says they care for and hopes to rehabilitate. The result of this opinion which is just that, an opinion and not law, has been an unexpected cut in pay for appointed lawyers of approximately one-third. As the State has not determined if Mr. King's opinion is correct, the State Comptroller is holding in abeyance, overhead expenses earned since February, 1, 2005. The additional accounting measures made necessary by this situation have resulted in a delay in payment of any fees earned and approved by Judges for many months.

My practice is by choice, and in response to a sense of call I have answered to work for those in our society who otherwise have no voice or representation, limited almost exclusively to the representation and defense of the poor and our children. Because of the crisis in our system, I have only been paid one time in five months and I am realizing financial devastation. Imagine if you will going to work one day and learning that your pay has been reduced by one-third, without warning. Few people could survive financially, even if they continued to be paid the remaining two-thirds of their earnings. Lawyers who do this sort of work are not even being paid for that remaining two-thirds in a timely and reasonable manner.

The result for me is an inability to meet financial obligations and care appropriately for my family. The Internal Revenue Service, my mortgage company and even local utilities are scratching at my door wanting what little I am able to scrape together, waiting for the State to resolve this matter. My child's education and health care are on hold. We lost our health insurance for a time and our utilities, phone and cable have been disconnected on more than one occasion. We wonder when the finance company will come and take our transportation. When compared to the consequences this crisis has on those I represent, our inconveniences are insignificant.

The real victims are the State's children, the State's families and those whom for whatever reason, guilty or innocent, find themselves in our failing court system. I know of few people who delight at the thought of their hard earned and paid tax dollars going to the defense of the poor but our system, which I believe to be in most ways, the best in the world, does not work unless every citizen, accused or victim, rich or poor, is afforded effective representation and assistance of counsel as required by the constitutions of the

United States and the State of Alabama. Even for those accused of the most heinous offenses that currently face possible death at the hand of the State, the State for all of her people, must maintain a system that approaches a level playing field with competent, committed counsel, lest the guilty go unpunished, the innocent be killed and the child get lost and left behind.

For the children whose only crime is having been born into a family where abuse, neglect, addiction or violence is part of a daily existence; our court system is their only hope. Both professionally and personally I live daily with the reality that often for these children, their only help comes in the form of a social worker from the Department of Human Resources and a lawyer appointed by the State to represent their interests and fight for their protection. I am the proud father of a child adopted out of the system and I shudder at the thought of my son being left in the care of a State who now appears not to take these matters seriously.

Who would say to the child being neglected and abused that we simply will not adequately provide someone to protect your rights and see that you are taken care of? The State of Alabama is saying that now to the poor, the defenseless, and those who for whatever reason find themselves on the fringes of society. Dependency cases involving children can take years to resolve and compensation comes only with resolution. Few lawyers now will be able to continue working in these vital cases and waiting years for uncertain pay; not because of greed but because of the necessity of caring for our own families.

So why does my financial condition prevent me from providing effective representation to an individual charged with capital murder? Because the defense of such a case constitutionally and morally requires that one not be unnecessarily disadvantaged because of poverty. The State that brings charges and looks to impose death on such a defendant, if found guilty, has at its disposal, lawyers on salary, investigators, experts and clerical staff. While our Judges will approve the payment of extraordinary expenses for investigators and experts to aid the defense, the appointed lawyer is required to arrange for and finance the cost of these aids until the State reimburses those expenses, often months or years down the road.

Because I have not received payment for services already rendered, I have depleted my resources and I am no longer in a position to front these costs or seek financing for the same in my name. And, as capital cases, like child dependency cases, can take years to resolve, I am no longer reasonably able to invest hundreds of hours in work for which I will not be paid for months or years when I can go the local municipal courts and represent defendants charged with being minors in possession of alcohol, driving under the influence, harassment and criminal mischief, and be paid quickly the now identical rate of pay that will be paid for a capital murder defense. Yes, the rate of pay for a lawyer representing a 20-year-old college student charged with drinking a beer and facing a fine of \$50 or \$100 is now the same as the pay for the lawyer representing the man or woman charged with capital murder and facing the death penalty or the child removed from his or her home because they are being abused sexually.

While I remain committed to the representation and defense of the poor, child and capital defendant alike, I must first provide my own child a roof over his head, food on our table and an education to better his life. I must also as it stands now, provide the overhead expenses of keeping a modest office with part-time staff open to be available to provide legal services for those whom I am appointed to represent.

Those of us who represent the poor and our neglected and abused children out of a sense of moral duty, do so not expecting to become wealthy. We must however be paid a respectable and reasonable fee for our work, expertise, education and experience. If we are not, everyone loses and our system fails. The guilty will never be punished appropriately, the innocent will be wrongly convicted and our children will suffer because they were perhaps born without choice, into poverty. Today the State of Alabama is refusing to take care of her people.

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