

Despite Pay Raise, Attorney Shortage Still a Problem in Rural Counties

BY JEFF M. BROWN

The extra criminal charges defendants might rack up before they're appointed an attorney can have a ruinous effect.

The recent pay raise for prosecutors, public defenders, and private attorneys who represent indigent criminal defendants by appointment was much needed, but the shortage of lawyers in rural Wisconsin remains.

A recently enacted state budget package that boosted pay for prosecutors and public defenders has yet to have an effect in rural Wisconsin, according to Bayfield County Circuit Court Judge John Anderson.

"The crisis is still here," Anderson said. "There aren't enough lawyers here on the criminal and the juvenile side. That's true throughout almost all rural northern Wisconsin."

Anderson, the only judge in Bayfield County, said the shortage of public defenders and of private attorneys willing to represent indigent defendants means the time from charging to initial appearance can stretch from three to 12 weeks. As a result, some defendants end up back in court on new charges before they've had an initial appearance on the first set of charges.

"If you have someone with a profound addiction – and it doesn't really matter what the addiction is – your chances of maintaining sobriety in the community on a bond is not great," Anderson said. "And they get caught again and then have another charge."

'You Can't Change the Demographics'

The legislation, enacted in July as part of Wisconsin's biennial budget, raised salaries for prosecutors and public defenders. It also upped, from \$70 per hour to \$100 per hour, the amount the state pays to private attorneys who take indigent defense cases.

According to Anderson, the boost in the private rate paid by the state may have a limiting effect.

"If an attorney is charging \$250 an hour in rural Wisconsin and getting it, the move from \$70 an hour to \$100 an hour isn't going to be enough to make a big difference," Anderson said.

Another factor, Anderson said, is the added red tape that comes with a public defender appointment.

"Most attorneys do not want to take public defender cases, even though they pay the same rate most counties do, because the state's billing system



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Bayfield County Courthouse in Washburn, Wisconsin. Construction on the courthouse began in 1894, two years after the county seat moved to Washburn, and was completed in 1896. The courthouse cost \$31,737 to build. The neoclassical building features a domed cupola, a portico with Corinthian columns as its front entrance, and quoins at the corners. The courthouse was added to the National Register of Historic Places on January 17, 1975.

and how long it takes to get paid is much different, so the attorneys would rather be appointed by the county," Anderson said. "They won't make more money, but they'll get the money faster and they won't have to jump through as many hoops."

The relatively low pay is only one reason for the shortage of criminal-defense attorneys in greater Wisconsin.

"The reality is that [the pay raise] doesn't change the number of attorneys," Anderson said. "There are a

speaking for every judge in rural northern Wisconsin – if it wasn't for the ability to have lawyers from all over the state take criminal-defense work by Zoom, we'd be in crisis mode. We have a serious problem, but we're not in crisis mode. [Videoconferencing] is the only thing keeping the wheels on."

Anderson, who has been a judge for 20 years, said the court system should use Zoom more often – and not only for initial appearances and pretrial motions.



"To be frank – and I think I can speak for every judge in rural northern Wisconsin – if it wasn't for the ability to have lawyers from all over the state take criminal-defense work by Zoom, we'd be in crisis mode."

–Judge John Anderson, Bayfield County Circuit Court

certain number out there who are not going to practice criminal-defense law. ... You can't change the demographics; you can't change the availability."

Zoom to the Rescue

According to Anderson, videoconferencing is another tool to address the shortage of criminal-defense attorneys in greater Wisconsin.

"The big thing that changed was when the pandemic introduced us to Zoom," Anderson said. "We've been able to allow attorneys from all over the state to take cases throughout rural Wisconsin."

The technology was a lifesaver.

"To be frank – and I think I can

"In my personal opinion, I think there's a great deal of under-use of videoconferencing," Anderson said. "You don't want to be using it for jury trials, but I think the use of Zoom for witnesses to appear in a jury trial – certainly in the civil arena – is substantial." Anderson cited a recent medical malpractice case over which he presided as an example. The trial took three weeks and included testimony by 13 expert witnesses from across the U.S. Each testified over Zoom.

"The attorneys loved it," Anderson said. "There were huge cost savings and the technology worked very well, because I have a very high-tech courtroom."

The potential utility of videoconferencing on the criminal side of rural dockets is even greater, Anderson said.

"If we don't mine some young attorneys from Milwaukee, Madison, La Crosse, Wausau, Green Bay, and Eau Claire with the promise that they can appear by Zoom for everything but extremely substantive hearings and a jury trial ...that's the only reason they'll agree to take cases."

Anderson acknowledges that courts shouldn't use Zoom in every case or for all types of proceedings. But he sees which way the wind is blowing.

"The court system is like anything else – we have customers," Anderson said. "And our customers are attorneys, and the attorneys want to use it. Sooner or later, you have to bend to the customers' desires. There's no way to get around it."

'Like an Albatross Around Their Neck'

Addressing the criminal-defense attorney shortage in greater Wisconsin remains a pressing need, given the toll the shortage levies on indigent defendants. According to Anderson, the extra criminal charges defendants might rack up before they're appointed an attorney can have a ruinous effect.

"I would say that somewhere between 10% and 30% of the damage that's done to defendants is done by the simple filing of the original complaint," Anderson said. "[Even] if it gets dismissed, it doesn't matter – it floats out there like an albatross around their neck. The public looks at it, employers look at it, landlords look at it."

Anderson said that the district attorney in Bayfield County often holds off on bringing bail jumping and other charges typically filed against defendants who re-offend while waiting for an attorney to be appointed for them. But, he said, that's not the case in every county.

"I think that's admirable," Anderson said. "But not every DA is going to agree to do that."

'We're Still Struggling'

The pay raise package was aimed at prosecutors as well as public defenders. But if raising pay has had an effect, Bayfield County District Attorney Kimberly Lawton has yet to see it.

"We're still struggling for attorneys, even at the higher rate," Lawton said.

According to Lawton, the shortage in Bayfield County, which has only a dozen practicing attorneys for a population of 16,000, has been years in the making.

"Our bar has lost some people to retirement or to moving to bigger cities," Lawton said. "There just has not been a lot of attorney growth in this area," Lawton said. "I can think of maybe one new attorney, but three or four have left."

Lawton relies on a part-time assistant district attorney for help, but even that help was hard to come by.

"The only reason I have an assistant DA is because I stole her from Ashland County," Lawton said. "They're struggling to find any assistants over there."

'It Also Hurts the Victims'

Lawton said the attorney shortage harms victims as well as defendants and too often thwarts justice.

"We have cases that drag on for way too long," Lawton said. "That hurts the defendant because they may be in custody. It also hurts the victims who are waiting for resolution."

"It also hurts the cases, from an evidentiary perspective. I've had cases that have been out so long that the witness died or the police officer died, so now we can't prove the case."

The shortage also makes it harder to settle cases, something that's essential to greasing the wheels of justice.

"All of a sudden, you'll have too many cases, all at once," Lawton said. "If you can't settle the cases, you can't keep them moving, and you have too many open, [which] leads to worse outcomes for everybody."



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- Kimberly Lawton, Bayfield County District Attorney

Benefits of Rural Practice

Lawton, who was first elected district attorney in 2016, said too few attorneys consider the benefits of rural practice when looking for a job.

"I love where I work," Lawton said.

"I enjoy the fact that you get to know the local bar pretty well. And with the judges, you have enough cases with them that you can predict about how they're going to rule."

Lawton, who practiced briefly in

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Madison before moving to Washburn, said that both practice and protocol in a rural courtroom are more laid back.

"I don't wear a suit to court unless it's a jury trial," Lawton said. "Up here, that's the culture. There have been long-term public defenders who've worn sandals to court. In the past, district attorneys would wear jeans to court, and that was okay. I love that."

She and her husband also love the lower cost of living.

"Up here, I have a really cute three-bedroom, two-bath ranch, and we bought it for \$140,000; our mortgage is only \$800," Lawton said. "I would have to make so much more money to live in Madison or Milwaukee."

'It's Actually Pretty Amazing Here'

Lawton hopes that spreading the news about the quality of life in rural counties such as Bayfield County will help

fill the shortage of criminal-defense attorneys there.

"It's actually pretty amazing here," Lawton said. "There are just a lot of misperceptions about rural practice. ... I think a lot of people don't even put this area on their radar when they're looking for jobs."

Anderson knew about the benefits of working in Bayfield County long before he went to law school. He grew up in Washburn, the county seat, where his family ran a grocery store for four generations.

"If someone came to me and said, 'You have to work this job until the day you die,' I'd be okay with that," Anderson said.

Outsized Impact

For Anderson, the impact he can have as an judge practicing in Bayfield County is worth a lot.

During a jury trial last year, a prospective juror asked that he be allowed to answer a voir dire question outside the presence of the other prospective jurors, because the question touched on a private matter.

"We went into this small courtroom, and when I was done questioning him, he looked at me and said, 'Judge Anderson, I just want to say, 'Thank you' because you saved my life.'"

It turns out the prospective juror had once appeared before Anderson as a defendant.

"I hardly remembered him, but he thought I'd saved his life," Anderson said. "Those are the types of things that keep me going." **WL**

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