

Attorney fees draw criticism

State pays Seattle lawyers more than others doing similar work

For more than a decade, Washington state has paid \$9,500 a month plus regular legal fees to two big Seattle law firms to represent indigent clients in their appeals – an arrangement that was unknown to the chief justice of the state Supreme Court and one that has angered lawyers in Spokane, who are paid much less for the same work.

The discovery of the arrangement comes at a time when lawmakers are slashing budgets in every state agency, and officials at the Office of Public Defense are struggling to explain why it maintains such a two-tiered system.

The state is constitutionally bound to appoint attorneys for appeals just as it does for criminal defendants who don't have enough money to pay for a lawyer in trial court proceedings. The Office of Public Defense hires attorneys to pore over lower-court transcripts, conduct legal research and craft arguments aimed at convincing appellate judges to overturn clients' criminal convictions.

The \$9,500-a-month payments to both the nonprofit Washington Appellate Project and the legal firm of Nielsen, Broman and Koch are "cost of doing business" fees, according to OPD Director Joanne Moore. The two firms exclusively handle all the indigent appeals in the Seattle area.

"It was decided more than 10 years ago that the cost of doing business in King County was significantly higher than the rest of the state," Moore said. "It was done after getting the state market-rate comparisons of rent costs. It was quite a bit higher for businesses in King County than anywhere else in the state. That was the basis of that decision."

Washington Supreme Court Chief Justice Barbara Madsen said last week that she was unaware of the arrangement, but pointed out that OPD's budget decisions are made by its advisory committee.

"If there is not a justification, that would not be reasonable," Madsen said of the extra monthly pay. She added, however, that she is "a huge admirer of Joanne Moore. She has just done amazing things with that office. If she were to pay an overhead differential without a solid basis, I would be very surprised."

The discovery of the fee payments came after attorneys in the Spokane area began questioning what they perceived was a different set of rules for attorneys doing the same

work in Seattle. Some have sought more compensation for work that typically pays about \$2,300 per case.

Before he was appointed to the Division III Court of Appeals, Judge Kevin Korsmo appealed cases for Spokane County. He knows many of the attorneys who do indigent appeals and he recently learned through them about the “operating expenses” for the two Seattle firms.

“That’s a pretty significant chunk of change,” Korsmo said. “I would question whether that’s in the best interest of the taxpayers.”

In addition to the monthly operating expenses – which are on top of per-hour billings – attorneys from the Seattle firms are appointed to represent cases out of Division II, which is the region south of Tacoma, and Division III, which encompasses the rest of the state east of the Cascades. When Seattle attorneys travel to Spokane for oral arguments, the state pays their travel expenses – a practice that’s not offered to attorneys anywhere else in the state.

Said Korsmo, “It’s one thing if you can’t find qualified people over here (in Spokane). But I’m not convinced that’s the case.”

Washington Supreme Court Justice Debra Stephens used to work as an attorney in Spokane before serving on the Court of Appeals.

“We have limited resources even in good times,” Stephens said. “It is important that the program be administered in an efficient and equitable way. When there are concerns being raised by the people who are doing this work, I think we need to listen closely ... because it is tremendously important to the criminal justice system that these indigent clients have access to the legal system.”

Spokane attorney Paul Wasson quit doing indigent appeals following years of frustration with the system, he said. “It’s nothing other than a bureaucrat-friendly system that has gotten carried away with the belief that the coast is better than us, I guess,” he said. “So we get punished over in Eastern Washington by holding down our costs and working out of our houses. I’m glad I’m out of it.”

The state Legislature created the Office of Public Defense in 1996, and by all accounts it has made tremendous strides in appointing qualified attorneys to handle appeals and providing continuing education to attorneys to help them write better briefs.

But attorneys in the Spokane area always felt left out when they asked for extra compensation, Wasson said.

“My dad used to say, ‘The road to hell is paved with good motives, son.’ The whole idea was to provide some uniformity. Raise the price for all of us,” he said. “We thought everyone was uniformly being under-paid.”

Spokane attorney Jan Gemberling said the attorneys in those two big firms are highly qualified and served a valuable role. They took any case the state would throw at them, from murder cases to appeals for sexually violent predators.

Gemberling, who works out of her basement, said she writes as many appeals as the state will give her. After paying her legal assistant and partner, she took home \$34,000 last year.

“I make less than I ever did as a law clerk at the Court of Appeals. It’s not acceptable pay. That’s the real reason for the grievances.”

Still, Gemberling said the answer is not for the state to pull the rug from underneath the Seattle firms.

“They have built really good practices, and to do something punitive to good lawyers who are doing good work seems wrong to me,” she said. “But there are attorneys starving like me, and this two-tier system is no longer justified. Now it really does seem unfair and needs to be re-thought.”

Recently, Gemberling and others were angered to learn about how OPD paid for the recent appeal of Tyler Gassman and two other defendants in connection with a Spokane robbery that both they and a key witness claim they didn’t commit. Gemberling’s partner received \$3,000 for her work on behalf of one of the defendants, but the state paid \$9,000 to an attorney from one of the Seattle firms for essentially the same legal argument on behalf of another defendant.

“All of us outlying lawyers are kind of shocked to find out these guys are getting paid more,” Gemberling said. “That discrepancy bothers me deeply.”

Moore, who makes \$123,000 a year, said the attorney for the Washington Appellate Project got extra pay in the Gassman case because she worked on a sentencing matter that was not an issue with the other two defendants.

“These two firms are our only two big firms doing appellate work in Washington,” Moore said. “We do require the firms, as part of their obligation to provide training and support for other attorneys. Many attorneys frequently talk to them about case work. That’s a great benefit to the state.”

But attorneys like Gemberling, who require up to 36 cases a year to make it economically viable, have another issue. Last year, the OPD assigned 137 appeals split between the two Seattle firms that originated from elsewhere in the state, including Spokane.

“In a year like this, there are not enough cases to go around,” she said. “Many attorneys feel like that is taking bread out of their mouths.”

Kennewick attorney Jim Egan said he stopped doing appeals after growing frustrated with how Moore has managed OPD.

"I guess it's her idea to have these two firms do all or nearly all of the appellate work in Washington," Egan said. "Maybe someday in a perfect world Ms. Moore will have all the best attorneys in these two firms and they will do a great job. But the problem is that it is so selective and secretive.

"She is continuing to tell contractors that she's trying to get more money for them," Egan continued, "and has never admitted that she is paying her favorites an extra \$9,500 month."