



John Paff <opengovtissues@gmail.com>

Public Defender Account

1 message

John Paff <paff@pobox.com>
To: jodonohue@hillwallack.com

Mon, Dec 10, 2012 at 7:58 PM

December 11, 2012

James G. O'Donohue, Borough Attorney
Borough of Bound Brook

Dear Mr. O'Donohue:

Thanks for taking the time to speak with me last week regarding the Borough's public defenders. To summarize our conversation, you said (and the Borough's response to my OPRA request bears out) that the Borough does not file liens against defendants who use the public defender's services in accordance with N.J.S.A. 2B:24-13(b), which states:

*To effectuate such a lien for the municipality, the municipal attorney **shall** file a notice setting forth services rendered to the defendant and the reasonable value thereof with the Clerk of the Superior Court. The filing of the notice with the Clerk of the Superior Court shall constitute a lien on property for a period of 10 years from the date of filing, unless discharged sooner, and, except for such time limitations, shall have the force and effect of a judgment. Within 10 days of the filing of the notice, the municipal attorney shall send by certified mail, or serve personally, a copy of the notice with a statement of the date of the filing to or upon the defendant at the defendant's last known address. If the municipal attorney shall fail to give notice, the lien is void. (Emphasis supplied).*

You said that since the public defender typically meets with the client/defendant only briefly on the day of municipal court hearing, the value of his or her legal services does not exceed \$200, thus obviating the need for a lien. You also said that as a practical matter, it wouldn't serve the taxpayer's interests for you to file liens against defendants since your legal costs in preparing and filing those liens would likely eclipse any money the liens would bring back to the Borough.

Attached to this e-mail is a ledger that I received from the Borough on the public defender account line for this year. As you can see, the account balance has been decreasing over the year. At the beginning of the year, the ledger balance was \$4,981.50, against which \$1,250 was encumbered, leaving a true balance of \$3,731.50. As of November 27, 2012, however, the ledger balance was -\$2,039.50 subject to a \$275 encumbrance, bring the true balance to -\$2,314.50. This, it appears to me that expenses exceeded income by \$6,046 during this eleven-month period.

If my calculations are correct, then it is not true that the value of public defender services equals the public defender fees that are collected. Rather, Bound Brook taxpayers have subsidized these indigent defendants' legal services by about \$6,000 so far this year. If this is so, it appears that either a) you are mandated by statute to enter liens against the defendants or b) the public defenders are being paid more than the value of the services they provide.

While I tend to agree with your position that it would cost more to enter the liens than the expected recovery from those liens, I think that that type of policy argument should be proposed to the legislature and, no matter how compelling, does not justify a departure from a statutory mandate.

Would you let me know your thoughts on this matter?

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