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News

District, probate judges fill in to avoid backlog

Circuit court seeks to reduce visiting judge costs by using sitting judges

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By Jameson Cook, Macomb Daily Staff Writer

Macomb County Circuit Court is taking advantage of rules that allow sitting judges at other courts to serve in downtown Mount Clemens to help ease the circuit court budget.

Judge Joseph Boedeker of 39th District Court in Roseville and Macomb Probate Judge Kathryn George recently did stints as substitutes on the Macomb circuit bench, and Judge Dennis LeDuc of 42nd District Court in Romeo is expected to fill in for a few days in March for circuit Judge Edward Servitto.

Chief Judge Mark Switalski is deploying other judges to save money since the court must pay about \$390 per day to a visiting judge to fill in for jurists on vacation or sick time. The visiting judge pool consists of retired jurists. Sitting district and probate judges already are earning a salary mainly paid by the state so the arrangement costs the county virtually nothing.

"It's an effort to conserve money in places we haven't tried before," said Switalski, who took over as chief judge Jan. 1.

The visiting-judge budget of \$50,000 is miniscule compared to the court's \$10 million spending guide, but every cut helps as the county government is strapped for money and facing a more than \$20 million projected budget deficit in 2011, Switalski said.

Switalski is also eyeing the possibility of trying to keep a steady flow of judges in a courtroom that will become vacant in 2011. Macomb County will lose one of its 13 circuit seats to save money as one of two retiring judges — James

Biernat and Antonio Viviano — will not be replaced.

"I'm being mindful of the fact that down the road we'll have a vacancy in one of these downtown courtrooms," he said.

The State Court Administrative Office endorses district and probate judges filling in for circuit judge, spokeswoman Marcia McBrien said. She said the practice is common in Wayne County and other counties.

That would also help maintain the current pace of moving the docket, he noted.

There has been some discussion about moving one of the two probate judges — George of Pamela O'Sullivan — to the circuit court. The state Court Administrative Office recommended such a move last year in its every-other-year report.

There has been no public comment about which probate judge could move.

George recently substituted for Switalski, who is a family division judge. Switalski said he expects O'Sullivan will substitute for a family judge in the near future.

George said she enjoyed filling in for Switalski. Before taking the probate seat in 2004, she practiced in family law, she said.

O'Sullivan likely will get a chance to substitute on the circuit bench, he said.

Switalski also serves as chief of the probate court as a continuation of a third jurist serving in a mostly administrative role due to prior dysfunction at probate court. He replaced retired judge Kenneth Sanborn, who served as a special chief judge for 1 1/2 years.

Switalski said the practice of using district judges at circuit court isn't new to Macomb County. He recalled substituting for circuit judges when he was a judge in 39th District Court.

Boedeker, a good friend of Switalski's, served for 2 1/2 weeks while Biernat has been on a six-week leave for hip surgery. Boedeker partially kept up with his own docket in district court.

"It was challenging," he said. "The most difficult part was juggling my own docket."

He said he adjourned some cases, heard some cases early on the morning and on slow days at circuit court. Judges Marco Santia, Catherine Steenland and a magistrate also took over some of his hearings, he said.

Boedeker said the biggest difference between cases was due to civil cases in circuit court having a value of at least \$25,000 while district court cases involve amounts less than \$25,000.

"The types of cases in circuit court are more complex," said Boedeker, who said he practiced in circuit court before he became a judge. "I had to hit the books, do some research and brush up on the law in a few areas."

Boedeker is more familiar with criminal procedure since district courts handle felonies before they progress to circuit.

Volunteering for the higher court doesn't mean Boedeker aspires to it. Re-elected to his current post in 2008, he said he does not plan to run for the circuit vacancy occurring next January.

"I would not rule out anything, but I am not planning on running," he said.

However, Kathy Viviano, 41, of St. Clair Shores, does plan to run. The daughter and sister of sitting Macomb County circuit judges, she has filed to run this year for the vacancy coming on the Macomb County Circuit Court bench.

She is the daughter of Judge Antonio Viviano and sister of Judge David Viviano. She has filed to run for a six-year judgeship that will be open due to the retirements of her father and Judge Biernat.

"I am very proud of my father and brother and their service to the community," Viviano said. "I think their reputation for integrity and fairness can only help me in this election. With that said, I am running on and want to be judged on my own credentials."

Viviano said she has practiced "extensively" in civil, criminal and family law. She worked five years with a Detroit law firm and in 2004 formed a law firm with her David in Mount Clemens. She was named as city attorney for the city of Center Line in 2006, the first woman named to such a post in the county. Between college and law school, she was operations manager of Viviano Flower Shop in St. Clair Shores.

Viviano said she "can bring real world answers to our court's fiscal issues" and would like to bring several improvements to the court.

She boasts endorsements from Sheriff Mark Hackel, Treasurer Ted Wahby and Public Works Commissioner Anthony Marrocco.

She is the second attorney to announce intentions to pursue the seat. Assistant Prosecutor Michael Servitto, the son of Judge Edward Servitto, announced earlier this month.

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