SEATTLE WEEKLY
News

State Supreme Court Rules Public Defenders Deserve Pensions; Seattle Times Editorial Board Embarrasses Itself

By Jonathan Kaminsky Tue., Aug 23 2011 at 12:00AM

Kevin Dolan.

What do you call someone who decides how much to pay you, has the final say on where you physically work from, and decides whether you can pick up extra work on the side? Washington state's Supreme Court, in a 5-4 ruling Friday, found that the proper term for such a person, or entity, is "employer." In a sign they got it right, the sage dispensers of opinion of *The Seattle Times* editorial board are whining about it, and in a highly disingenuous manner at that.

King County's first nonprofit public defense agency, The Defender Association, opened its doors in 1969. It did so because the county wanted its public defense to "be divorced as far as possible from the control of the entity which is placing the recipients' liberty in jeopardy, that is, from King County."

In the years since, the system has evolved to include three additional agencies: the Society of Counsel for the Representation of Accused Persons (which, yes, you may call SCRAP), the Northwest Defenders Association, and the Associated Counsel for the Accused (or ACA for short).

Kevin Dolan, the plaintiff in the case, has been a lawyer with ACA for 26 years. Over that time, Dolan argues, he and the rest of the staff at the four agencies have, for all practical purposes, ceased to be independent contractors, so much are they under the county's thumb.

For instance, the county reserves the right to veto the agencies' leasing of office space; replace the supposedly independent boards overseeing them; bar them from doing any legal work other than public defense; and veto any public defense work they do for other entities, like the city of Seattle. Also, by holding the purse strings, the county has effective control over wages.

All of which would be fine, Dolan says, except that unlike other county employees--the prosecutors, for example, and the judges, and the bailiffs, and the probation officers they share the courtroom with--they don't receive county pensions.

The ruling, Dolan says, "rights an old wrong. It ends the fiction that public defenders in the county are merely independent contractors."

As for the question of redress, and how much this is ultimately going to cost the county--which seems to be what the *Times* is so unhappy about--the justices left that to the trial court.

The ruling was 5-4. As the *Times* wrote in an editorial on Monday, Dolan's side "convinced only three justices . . . It prevailed because it won over two *pro tem* judges, one of them filling in for Chief Justice Barbara Madsen and the other Richard Sanders, who last November lost his seat."

What the *Times* didn't note, whether out of ignorance or malice, was that 1) it is standard procedure for justices to complete work on cases they've begun hearing even after they've been voted off the bench; 2) the reason Chief Justice Madsen sat out the case is that *her husband is a public defender*; and 3) Associate Justice Charlie Wiggins, who stood aside so Sanders could complete the case, actually *worked on Dolan's case before joining the bench*, thus making him ineligible.

By harping on the presence of two pro tem judges, the *Times* seems to be implying that the court's ruling--which is consistent with over 100 years of case law on the question of whether contracts are always binding in cases where one side holds all the cards (they aren't), as well as a 1956 Attorney General's opinion which found employees of a private UW student organization to be state employees entitled to retirement funds because the university had final say over everything the organization did--is illegitimate.

This, in our view (and in our best *Seattle Times* editorial board voice), is dishonest and wrong. The *Times* should be ashamed of itself.