She's short on space, staffers, funding

BUT NEW PUBLIC DEFENDER CHIEF WANTED THE JOB

By Brandon Ortiz

BORTIZ@HERALD-LEADER.COM

Pablo Alcala | Staff

Rebecca Ballard DiLoreto was director of the Department of Public Advocacy's post-trial division. Photo by Pablo Alcala | Staff

An abandoned room at the Fayette County Public Defender Office on Church Street has so much mold in the drywall from a leaky roof that it's considered a health hazard.

Three lawyers are crammed into the library, the only space left for them to have an office. With few support staff members to handle minor tasks, the office's 18 underpaid, overworked lawyers copy files and archive case files themselves. They share printers.

And, according to the state Department of Public Advocacy, the Lexington office has the highest average caseloads in the state, at 651 per lawyer per year.

Rebecca Ballard DiLoreto officially took over this chronically underfunded but scrappy office earlier this month. Some might consider it a step down, since she previously managed a staff of 70 at the Department of Public Advocacy's well-oiled post-trial division, which recently argued a case all the way to the U.S. Supreme Court.

But this is a job that DiLoreto, 49, has long wanted. Its a job the Lexington native and Sayre High School graduate took a significant pay cut to get.

For her it's less of a job than it is a cause.

"I believe that there is nothing more important in this country than equal justice," she said. "That's why it's worth it to me."

But she is taking over the office during the most tumultuous period in its 40-year history.

The old system

From 1963 to August 2007, a non-profit called Fayette County Legal Aid Inc. provided criminal defense for the indigent and was proud to call itself the oldest public defenders' office in the state.

But its funding from the Urban County Government and the state remained static its last five years. By the end it was down to 13 lawyers, wasn't filling vacancies, couldn't make payments into its employee retirement plans and struggled to keep up with surging caseloads.

It reluctantly agreed to have the state take it over in August. It was a messy and very public break-up. Legal Aid's popular longtime director, Joe Barbieri, left, and one of the office's most experienced lawyers followed him.

"The good thing is we do have a strong foundation with the lawyers who are there and stayed with the program," DiLoreto said. "Without them, the ability to have continuity of service would be challenging. But we need help."

DiLoreto was named the interim director Aug. 1, and split time between Lexington and the Frankfort post-trial division. She became the directing attorney for good on Jan. 15.

The office has gotten new computers and was finally connected to DPA's intranet system, which has access to templates of motions, training manuals and the internal e-mail system. Employees were moved into the state merit system, and some attorneys got modest raises.

Most important, five new attorneys were hired and others were contracted to relieve caseloads.

But the office is more than $1 million over budget. DPA chief Ernie Lewis said the high caseloads created the risk that lawyers would be too overworked to adequately represent their clients. He said the office hired the lawyers on the assumption the General Assembly would grant it emergency funding during this session.

"We took a gamble," Lewis said.

The Lexington office needs $1 million to finish this fiscal year, which ends in June. It is asking for an additional $2.1 million for the next fiscal year, which would bring its total budget to $2.9 million.

DiLoreto said she wants to hire three more attorneys, three clerical workers, another investigator and two social workers.

Lewis says the office is running on fumes. "Right now it is very difficult," he said.

But Lewis acknowledges that the request comes at a bad time. Gov. Steve Beshear has estimated that the legislature will have $580 million less to spend next year. He has asked agencies to brace for potential budget cuts of up to 12 percent.

State Rep. Jesse Crenshaw, D-Lexington, sits on the Appropriations and Revenue Committee. He says it's too early to say how the office's funding request will fare. Beshear will release his proposed budget next week.

But Crenshaw said legislators must make sure the office has enough money to provide adequate representation to those who cannot afford to hire lawyers.

"I know that it is a budget crunch, but when you're talking about essential services I think we need to help fund it as best we can," he said.

Seeking new office space

Legal Aid has agreed to transfer the deed to the building at 111 Church Street, which was built in the 1930s. The non-profit bought the 6,281-square-foot building in 1989.

Barbieri was proud that Legal Aid did not have to pay rent, which he said was a savings of $113,000 a year.

But Lewis and DiLoreto say they're going to have to move out of the building and begin leasing office space. For starters, the building is not accessible to those with disabilities. (As a non-profit, Legal Aid benefited from loopholes in the Americans with Disabilities Act. The state, however, does not.)

DiLoreto also says the building is not big enough to handle more staff.

An architectural report by Sherman Carter Barnhart in Lexington estimates that the building needs $1.3 million in immediate repairs, including a new roof. DPA spokeswoman Dawn Jenkins says it would cost $1.4 million to build a new office, not including demolition and nuisance abatement costs.

The DPA has asked for $60,000 to rent a new office. But Jenkins said that figure was based on rental rates in Covington, and that the cost is likely to be higher in Lexington.

Barbieri questioned the need for a new office. He said Legal Aid wasn't able to spend much to maintain the building, but "it was not crumbling." He said it has never failed any city code inspections.

Lewis said he wanted to keep the office, but the DPA doesn't have the money to make the needed repairs.

The state Department of Real Properties will oversee a bidding process to find a new office to rent. Lewis said it will most likely take six to nine months.

Changes in the works

Since DiLoreto was running two offices at once from August to Jan. 15, she says she hasn't had time to implement many changes.

She has started a system of "vertical representation," in which the same lawyer handles felony cases start to finish. In the past one lawyer would handle preliminary hearings in district court and then pass the case on to more experienced hands.

First Assistant County Attorney Brian Mattone thinks it will improve representation.

"Universally, we (county prosecutors) think that it's been quite a seamless transition with her taking over," Mattone said. "They have hired some new attorneys who are really good, really qualified. They work just as hard as ever."

Mattone and his boss, Larry Roberts, had initially opposed the state takeover. Commonwealth's Attorney Ray Larson and several judges also were opposed.

Prosecutors were worried that the state would require public defenders to file more legal motions, even when they weren't necessary.

But Mattone said that fear has not materialized. If anything, public defenders are showing up to court earlier and discussing their cases sooner with prosecutors. That has helped things run more smoothly, he said.

Lexington native

DiLoreto, the seventh of eight children, was born at the old St. Joseph's Hospital on Limestone. She was the valedictorian of her class at Sayre, and got her undergraduate degree in American studies at Amherst College in Massachusetts.

Like many public defenders, DiLoreto leans left. She staunchly opposes the death penalty and oversaw *Baze vs. Rees*, a challenge to Kentucky's method of lethal injection that has reached the U.S. Supreme Court. This week she attended a conference on ending racism, and when she enrolled at the University of Kentucky law school in 1983 she was contemplating going into labor law.

She ran a Catholic social justice and peace center when she was in law school.

DiLoreto said she wanted to be a lawyer to help poor people. But she did not initially plan to become a public defender.

She got a surprise interview while in law school with the DPA in Frankfort. A friend who worked there couldn't make it to lunch, so he scheduled her for a job interview with the office's director, Paul Isaacs, who is now a judge in Bourbon, Scott and Woodford counties.

DiLoreto became a law clerk in law school, then went to work as a public defender for Lewis at the Richmond office after she graduated in 1985. She became the director of the post-trial division in 1997.

She says it's a defense lawyer's job to show juries the other side of the story.

"The public only sees the bank robber," she said. "Our job is to say that isn't just who our client is."