

The Kansas City Star
July 11, 1995

Edition: METROPOLITAN
Section: METROPOLITAN
Page: B1

**Judge orders public defender to term in jail
Lawyer says he's not ready for trial, so judge holds him in contempt.**

Author: *JOE LAMBE; Staff Writer*

Article Text:

A Jackson County Circuit Court judge on Monday ordered a defense lawyer to jail for 15 days after he refused to participate in a trial because he wasn't prepared.

Circuit Judge William F. Mauer also said he intended to proceed today with the kidnapping, assault and rape trial of James J. Hamilton - without defense lawyer John A. Picerno.

The issue in the dispute, Mauer said, is whether judges or lawyers and their manipulative clients control the court's docket.

"I think it's outrageous to jail an overworked public defender," countered Jackson County Public Defender Joel Elmer.

"One of the underlying issues here is proper funding of the public defender system." County Prosecutor Claire McCaskill said public defenders have more state money than ever before - enough that it is not an excuse for intentional delays.

A grand jury charged Hamilton with 16 felony counts last year for March 11 and March 22 attacks on two women in Kansas City. The 35-year-old vitamin salesman was accused of kidnapping, assaulting and repeatedly raping and sodomizing the women.

Because of Hamilton's lawsuit, Picerno, a special assistant public defender, was assigned the case on May 3 of this year. His office operates separately from the regular public defender.

Picerno argued Monday that he was not ready because he'd been working on too many other cases. He requested his first delay in the often-postponed trial. Mauer said the trial would go on - with or without Picerno.

"By his actions," Mauer said of Hamilton, "he has waived his right to counsel in this case."

He ordered Picerno to at least sit in the courtroom and answer any questions Hamilton might have as Hamilton defended himself.

Picerno refused.

"I'm going to tell you right now," the attorney told Mauer, "that I'm not going to stay in the courtroom while this process goes on."

Mauer held Picerno in contempt and gave him 48 hours to appeal to the state appeals court in Kansas City before reporting to jail.

Amy McGowan, assistant county prosecutor, argued that Picerno had shown a pattern of delaying cases by not being prepared.

Picerno countered: "I try a lot of cases, and I try the oldest ones first."

He noted in legal filings that his office includes three lawyers and one investigator who are now handling 85 cases.

Mauer told McGowan to research issues related to Hamilton going to trial without a defense lawyer.

At least one appeals court ruling has found against a defendant who went to trial without a lawyer in a similar circumstance - ruling that was a defense strategy.

The judge asked Hamilton whether he wanted to appear at trial today wearing jailhouse green or civilian clothes.

"I don't know," Hamilton replied. "I thought this was a hospital. ... I have a mental disease."

"I'm not going to play games with you," the judge said. "Have him over here at 9 in the morning."

Copyright 1995 The Kansas City Star Co.

Record Number: 308209