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Title: Judge won't give man trial without a lawyer

A new date is set while former defender appeals his own sentence.

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A rape defendant who had faced the possibility of starting trial without a defense lawyer instead was ordered back to jail Tuesday - where his former lawyer may soon join him. Jackson County Circuit Judge William F. Mauer, irked because an attorney refused to participate in the start of a trial, had threatened Monday to put defendant James J. Hamilton on trial without a lawyer. He also ordered assistant public defender John Anthony Picerno to jail for 15 days. Picerno had said he wouldn't begin the trial because he wasn't prepared.

But after some research, Mauer instead appointed private lawyer John Quinn to represent Hamilton in a trial beginning Aug. 14. And the judge ordered Quinn's bill paid by the office of the special public defender, where Picerno works.

Mauer gave Picerno 48 hours to appeal before reporting to jail. Picerno's lawyer said he would file an appeal early today with the Missouri Court of Appeals in Kansas City.

Picerno refused to represent Hamilton because, he said, he had been doing too many other trials and was not adequately prepared for the complex case.

``It was a no-brainer,'' Picerno said. ``Either I obeyed the model rules of professional conduct or I obeyed the judge.''

Court rules require a lawyer to provide competent representation that includes thoroughness and preparation.

The issue, Mauer said, is who controls court dockets - judges or the lawyers and defendants. Defense lawyers had gotten repeated delays in Hamilton's trial as the defendant shifted among three public defenders. Picerno got the case May 3, after Hamilton eliminated a second public defender by suing him.

Picerno recently requested his first delay - which Mauer denied - because the lawyer said he needed more time to investigate and to get defense tests on DNA and fiber evidence.

``There are a lot of problems in their case,'' he said of prosecutors, ``and they wanted to rush it to trial before I had a chance to prepare.''

Assistant Prosecutor Amy McGowan declined to comment on the case.

A grand jury charged Hamilton, a vitamin salesman, with 16 felony counts last year for attacks on two Kansas City women. He allegedly kidnapped them, assaulted them and repeatedly raped and sodomized them.

The case is a strange one that could present some problems for prosecutors, according to court records.

Prosecution DNA tests of the assailant's body fluids, for example, were inconclusive. Although one victim told police her attacker had a scar on his penis, evidence includes a photograph of Hamilton's unscarred appendage.

Lawyer Bruce W. Simon, who represents Picerno on his appeal, is working on behalf of the Missouri Association of Criminal Defense Lawyers.

``You have a natural tension between a judge's desire to move the docket and a lawyer's desire to prepare adequately,'' Simon said.