

State sues prosecutor

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A prosecutor with the Merrimack County Attorney's office abruptly resigned last week after the state Judicial Council sued him for allegedly defaulting on a \$149,000 debt it says he incurred while working as a court-appointed defense lawyer.

Robert R. Bennett of Pittsfield, who has been with the county attorney's office less than a year, left within an hour of learning of the lawsuit, said County Attorney Dan St. Hilaire.

The lawsuit stems from Bennett's previous work as a private defense attorney in Derry, where he accepted state money to represent people in criminal cases who could not hire their own lawyers.

According to the lawsuit, Bennett accepted nearly \$10,000 in overpayment from the state for some criminal cases. In addition, the Judicial Council says Bennett owes it another \$139,000 for 289 criminal cases he accepted but never confirmed resolving.

Bennett, who also recently worked as a state police prosecutor, wouldn't comment when reached at home yesterday. The state Judicial Council filed its lawsuit last Wednesday in Merrimack County Superior Court, after Bennett is accused of reneging on a private settlement he and the council had

negotiated.

This is not the first time Bennett has been accused of mishandling cases, including those the state paid him to take. Twice in 2004, the state Professional Conduct Committee reprimanded Bennett after finding he neglected his clients' cases by not keeping them informed or missing filing deadlines. The committee's files also indicate Bennett was warned in 1998 for similar behavior.

In response to one of those reprimands, Bennett said he had medical issues. In another, he said he had neglected his professional work because his daughter had nearly been kidnapped from an Epsom convenience store.

The committee also dismissed four conduct complaints against Bennett between 2002 and 2004: In one case, the committee cleared Bennett of wrongdoing. In the other three cases, the committee said it could not proceed with its investigation, because the inmates who had filed the complaints lost touch with the committee. Bennett had been appointed to handle their cases by the state.

The state Judicial Council, which oversees the payment of court-appointed lawyers, received permission from a judge last week to attach Bennett's Pittsfield home and what remains of his Derry law office, the sum of which is estimated at \$300,000, to recover any awarded costs.

According to the lawsuit, Bennett held a contract with the state Judicial Contract

from 1993 to 2002. The terms required him to submit a "case card" within 30 days of finishing each case, confirming that he had resolved the matter. If he didn't file the card, Bennett would reimburse the state for any money he received for the case and forfeit any money he had coming.

If the case went to another attorney, Bennett would also lose money, according to the contract. And because the contract paid Bennett in advance, in monthly installments, he would have to refund the state if he ended up taking fewer court-appointed cases than expected. The contract also required Bennett to keep his case files for at least three years, and he wasn't to destroy them without telling the Judicial Council first.

According to the council's lawsuit, Bennett violated several terms of that contract.

Bennett neglected to file his "case cards" in nearly 400 cases, which represented nearly \$191,000, according to the lawsuit. He also accepted \$9,687 for cases he never took, the lawsuit said. The Judicial Council said it tried repeatedly to contact Bennett between 2002 and 2004 about these matters. (During that time, Bennett had left his law practice and was working for WKXL radio in Concord.) In late 2004, Bennett signed a settlement with the Judicial Council acknowledging his poor record-keeping and overpayment. He agreed to reimburse the council \$9,687 and file half his "case cards" within 30 days. He was to file the remaining cards in the following 30 days, according to the settlement.

Bennett also agreed to pay the council's

attorney fees if he failed to live up to the terms of the agreement.

According to the lawsuit, Bennett eventually repaid the \$9,687 he owed, although not as soon as required. But he filed cards for only 126 of his court-appointed cases. When the council investigated those cases, it found that Bennett had been overpaid again by nearly \$10,000.

In some instances, he was paid twice for a case, once when it was opened at the district court level and again when it was transferred to the superior court. In other cases, Bennett indicated he had resolved the case when, in fact, it had been taken over by another attorney, according to the lawsuit.

The other 289 missing "case cards", for which Bennett had been paid \$138,555, remain outstanding, and the council believes Bennett has destroyed the related files. Without the files, the council says it cannot investigate whether Bennett earned the money he was paid.

The Judicial Council is asking that Bennett be ordered to pay it nearly \$149,000 to cover the unrecorded cases and the overpayments he collected. Bennett must respond to the lawsuit by July 6, but he is to appear in court on May 1 for a preliminary hearing.

St. Hilaire said he was unaware of Bennett's unresolved matters with the Judicial Council when he hired him in June 2005. But unless Bennett disclosed it, St. Hilaire wouldn't have known because it was not a public matter until last week, when the council filed its lawsuit. Neither did St. Hilaire know of the past complaints before the state Professional Conduct Committee.

St. Hilaire said he hired Bennett from the state police, where he was a prosecutor for a year, did a criminal background check and made sure Bennett was in good standing with the state bar. But St. Hilaire did not check with the attorney discipline office. He said he will do that in the future.

Claude Ouellette, who oversees the personnel division for the state police, said his office also did not check the files at the attorney discipline office before it hired Bennett in May, 2004. But Ouellette said he now considers it a good idea too.

While with the county attorney's office, Bennett primarily prosecuted cases in Franklin District Court. St. Hilaire has divided his pending cases among the office's other attorneys and plans to advertise for a replacement.