

What follows is a response provided to *Isthmus* by Dane County District Attorney Ismael Ozanne in response to Judge William Hanrahan's comment regarding a "lack of readiness" in the DA's office. The judge's quote, shared with Ozanne, was: "This is happening with some frequency. Witnesses are not being subpoenaed. Motions are not being filed. Discovery is not being provided. Motions are not being responded to."

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From: **Ozanne, Ismael** <Ismael.Ozanne@da.wi.gov>
Date: Fri, Jul 14, 2017 at 9:05 PM
Subject: RE: Dismissed Case
To: Bill Lueders <blueders@gmail.com>
Cc: "Fischer, Alexandra" <Alexandra.Fischer@da.wi.gov>

Bill

Depending on the court and the caseload of a prosecutor, it is not uncommon for some prosecutors to have 20 or more cases set for trial in a given week. Sometimes, the courts set more than 10 cases in a day for a single prosecutor (recently, I believe one prosecutor had 17 trials on the calendar for the following week all set for a single day). Many of these cases ultimately resolve after being set for trial, but this means that at some point a prosecutor may have to make a decision on whether he or she subpoenas all 10, 20, 30 cases he or she might have in a week. Obviously, more experienced prosecutors have a better perspective on what likely will go to trial, but even they get this wrong sometimes. We have to balance tying up witnesses, having deputy sheriffs out serving witnesses, and scheduling meetings with witnesses for trials against other day-to-day job responsibilities. Outside of major cases, such as serious sexual assaults and child abuse cases or homicides, some courts rarely consult the prosecution or the defense on scheduling trial dates. This varies from court to court, but frequently trial dates are set and only after they are set do we find out that witnesses are not available. In cases involving the state crime laboratory or state hygiene laboratory, analysts are frequently under subpoena in other counties. For law enforcement witnesses, many departments require their sworn personnel to plan time off months in advance. Other witnesses may have work or family conflicts. In the past, and in the present, we have done what we can to try to ask the courts to accommodate things. Combined, all these issues may make it seem like we are not as prepared as we could be, but I still believe that my office works hard to bring cases to trial.

Our office has generally provided discovery either by mailing it or by making it available for pick up in our office. The State closed a mail distribution center in Madison so all our mail goes to Milwaukee before it comes back to Madison. Our office in the past has tried handing out discovery at court dates and we have also looked into other means of electronic distribution. There are some pros and cons to these methods but we may be forced to shift how we do things. In terms of sending out discovery, we have created automatic prompts for our support staff about when to prepare and send out discovery.

Motion practice varies from court to court, and prosecutor to prosecutor. I am not in a position to say that our office should file more motions because I think the need and desirability to do so is different in each case. Not every evidentiary issue needs to be litigated prior to a trial nor can every issue be litigated prior

to trial, because some unforeseen issues may arise. In terms of responding to motions, I expect people in my office to comply with deadlines to file written responses, but many courts have not in the past required a written response and instead have allowed attorneys to orally argue motions. In cases in which a judge does not direct us to file a written response to a defense motion, I certainly agree that a written response may be helpful but I also think we are clearly entitled to be heard even in the absence of a written response.

I am not sure how to address Judge Hanrahan's general comment about "lack of readiness" without knowing the full context of what he meant, but I will say that I have always been more than willing to meet with any judge or group of judges to discuss how my office can work better with the courts to serve the public. I have also met with defense attorneys to discuss if there is common ground upon which we can jointly advocate changes to the courts. I think it is important to recognize that each group – the courts, the prosecutors, and the defense bar – have different missions, but that we also all desire a fair and functioning criminal justice system. For my part, I think that such a system needs to reflect the fact that my office has a finite set of prosecutors, that I cannot simply institute a quota system on how many cases we prosecute, and that I need to do my best to match up cases with a prosecutor who is capable of handling cases of that type or complexity.

As to the other case I will have to get the information to you on Monday as I do not remember the name of the defendant.

Thank you,

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