

Timely Justice Threatened by Fiscal Challenges

By Chief Justices Margaret H. Marshall and Robert A. Mulligan

Although economists seem to agree that the worst of the economic downturn may be over, we expect that the worst still lies ahead for the Massachusetts court system. After a marathon year of unprecedented expense cutting measures, the projections for the Commonwealth's finances remain bleak into 2012. The dire financial conditions threaten the court system's ability to achieve our essential purpose. Despite the best efforts of chief justices, judges, clerks, probation and court staff to minimize public impact of deepening staff cuts, the court's ability to provide access to justice, timely delivery of justice and courthouse security is steadily declining.

Beyond the courtroom dramas that reach the media, tens of thousands of people are affected daily by delays in the administration of justice, mainly in civil sessions. They include tenants facing eviction, parents wanting to be reunited with children, unemployed parents who cannot make support payments, and elderly and mentally ill patients who need guardians.

In fact, nearly 42,000 people, excluding jurors and employees, already travel to our courthouses each day, and we know that court business increases during fiscal crises. We also know that the growing number of self-represented litigants who need more staff time and resources is driven higher by the economy.

Against the backdrop of increasing needs for access to justice, the current fiscal crisis threatens to overtake our capacity to meet those needs. More than 400 fewer Trial Court employees now serve the public than in 2008. Funding for the fiscal year beginning July 1, 2009, currently stands at \$554 million – almost \$50 million less than our original appropriation for last year. This is an immense cut for our branch of government, which represents only two percent of the state budget.

Improved management practices have helped us reduce costs and increase effectiveness. Such measures include energy efficiencies, centralized procurement, and wider use of technology to schedule court events from bail hearings to pre-trial conferences. MassCourts and case management data now enable analysis of caseflow and backlogs to assist resource deployment, and multi-department courthouses allow better utilization of facilities and security staff. However, there are few resources to redeploy or better utilize.

We appreciate the Legislature's supplemental budget for the courts and consolidation of budget line items to allow streamlined fiscal management. Legislators also have understood the need to consolidate some courts to eliminate lease expenses. In addition, many private landlords have made significant concessions in court leases to their own financial detriment.

However, at its core the delivery of justice is people oriented and people intensive. All Trial Court departments are struggling with staffing issues, as we reach one year of the hiring freeze, lose experienced staff to retirement incentives, seek voluntary work hour reductions and terminate positions. The Trial Court had run a lean operation, targeting 85 percent of the level recommended by the National Center for State Courts' staffing model. This year, staffing will likely drop below 70 percent system wide.

Escalating vacancies are eroding the court's ability to deliver justice. Our court officers and probation officers are essential to assure public safety and the availability of defendants, witnesses, and jurors for court appearances. In recent months the Superior Court has delayed trials due to the unavailability of court officers.

Administration of justice requires the availability and attention to detail of experienced, knowledgeable staff. Countless behind-the-scenes duties handled by courthouse employees to initiate a case and keep it on track are backlogged due to a shortage of case specialists and clerks. Updating dockets, contacting parties, creating calendar events, generating notices, judgments, defaults and executions – each step needs personal attention and accuracy to ensure due process.

Due to lack of staffing in some Probate and Family Courts, it now takes weeks, not a day, to initiate complaints for modification and summonses, delaying the effective date of any approved change in child support payments. Delays initiating divorce cases and issuing a summons affect the entry of automatic restraining orders on assets. And inadequate resources also jeopardize the well-being of children who need advocates to investigate allegations of abuse or to assess educational needs.

Foreclosure cases in the Land Court now take six to nine months rather than six weeks. Delays in time-consuming land permitting cases postpone economic investment and job creation, which communities desperately need.

Faced with staffing shortages throughout the Trial Court, court employees are doing more with less. They are displaying remarkable dedication and cooperation in taking extraordinary measures in these challenging times.

However, the delivery of justice cannot and should not rely on stopgap measures over the long term. It is unrealistic and unreasonable to expect that such efforts can be sustained. Growing delays are all but guaranteed.

The bar's impressive range of pro bono assistance strengthens our renewed efforts to expand access to justice at a time when it is most needed. We also must expand our partnership with the bar to innovate and streamline practices and case management. Bar leaders have demonstrated tremendous commitment to the courts, even as the economy has taken a heavy toll on the legal community. Continued support and assistance from the bar are critical to obtaining the essential court resources required to protect the economic well-being of families and businesses.

Despite all these difficulties, we remain steadfastly focused on the court's core mission – the delivery of justice – as our guiding principle in the demanding days ahead. And while collaboration between the Commonwealth's courts and formidable legal community reinforces our perseverance, the upcoming months and years present unprecedented challenges to our ability to deliver justice, as prescribed by our state constitution, “promptly and without delay.”