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Justice Under Fire

By Donald R. Frederico

Do we know how good we have it? Massachusetts is among the minority of states whose judges all serve by appointment, not election. Successful candidates are rigorously vetted by the Judicial Nominating Commission, carefully reviewed by the Joint Bar Committee, and mercilessly grilled by the Governor’s Council along the way to being nominated and confirmed. Once seated, they are insulated from the ebbs and flows of politics, and untainted by the scourge of campaign financing that overshadows judicial elections in other states.

Our citizenry also benefit from a sound judicial structure. It includes a trial court boasting four specialty departments (housing, juvenile, land, and probate and family) as well as three departments of general jurisdiction (BMC, district and superior); an intermediate appellate court to handle a high volume of appeals; and a Supreme Judicial Court with discretionary jurisdiction to review cases of the greatest importance. Staffed by hundreds of highly qualified judges and thousands of dedicated court personnel, our courts, though not immune from criticism, stand as beacons of justice in today’s politically charged world.

Yet our third branch of government is under fire, on several fronts. One such front is budgetary. The Governor and the legislature have cut millions of dollars from the trial court’s budget over the last few years. Additional cuts this year would add significantly to the existing, severe strain on the court’s ability to administer justice. Other salvos have been launched as well. The Governor’s budget last year proposed and this year again proposes to consolidate the Probation Department with the Parole Department, moving Probation from the judiciary to the executive
branch. The Governor separately has proposed transferring the public defender function, historically located in the judicial branch, to the executive branch, and placing the management of the Trial Court in the hands of a non-judge manager.

Some may argue that the courts brought the movement for change on themselves. After all, although the legislature for years tied the Trial Court’s hands in managing the now disgraced Probation Department, the department’s scandal occurred on the judiciary’s watch. And while there are perfectly valid reasons why the costs of public counsel services have risen in recent years, the cost increases nevertheless fuel the Governor’s argument for stripping the public defense function from the courts.

But there are important, enduring principles at stake in these debates that must not be sacrificed to budgetary exigency or political expediency. The merits of these or any other proposals affecting vital functions of our state court system must be viewed in this light: that the judiciary is not a state agency existing at the whim of the executive or legislative powers, but is a separate and equal branch of our constitutional form of government, charged with the essential responsibilities of administering the peaceful resolution of disputes, protecting public safety, and preserving civil liberties by keeping the other two branches in check. Although the Governor holds the power to appoint judges, and the legislature controls the purse strings, any initiative to deprive the courts of any significant portion of their power must be based on sound policy reasons, not on convenient reactions to a current need or emotionally fraught crisis.

As the only natural constituency for the judiciary, the organized bar has a special responsibility to defend the judiciary’s proper role as a co-equal branch of government. We must be ever vigilant against unwarranted assaults on the courts’ constitutional powers and unwise intrusions on their traditional authority. This does not mean that the bar should automatically side with the courts in every debate about how they go about their business, or what lines of business they should be in. There likely will be times when the Boston Bar Association supports the contrary views of the other branches, or when we choose to abstain from the debate altogether. But we can and should play the role of watchdog, identifying potential threats to the constitutional separation of powers, subjecting proposals for significant change to careful scrutiny, and letting our voices be heard when proposed legislation would diminish the ability of the courts to fulfill their vital roles.