



REPORT OF THE
MASSACHUSETTS BAR ASSOCIATION

CRISIS IN COURT FUNDING TASK FORCE

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INTRODUCTION

The Governor's budget for Fiscal Year 2010 allocated \$559 million for the Massachusetts Trial Courts, slashing nearly 10 percent from the initial FY 2009 \$605.1 million appropriation to operate the commonwealth's trial court system.

In her 10th Annual Address to the Legal Community delivered Oct. 21, 2009, Supreme Judicial Court Chief Justice Margaret H. Marshall told Massachusetts Bar Association members that there had been disproportionate reductions in the Trial Court budget as compared to other governmental sectors of the commonwealth. The Legislature's overly optimistic assessment of the Trial Court Department's ability to collect revenues from financially squeezed court users, already paying among the nation's highest court filing fees, threatened to undo court reforms enacted in recent years. These budget reductions have endangered the system's ability to deliver justice in a timely and efficient manner as mandated



by the *Declaration of Rights of the Commonwealth*. Chief Justice Marshall determined that by the end of October 2009, the Trial Court's workforce was trimmed by 7.5 percent compared to July 2008 staffing levels. Overall, from July 1, 2007, through May 10, 2010, the Trial Court experienced a 9.7 percent decline in staffing, losing 740 positions.

Chief Justice Marshall recited a number of adverse consequences to the Trial Court system: from consolidation of the Natick and Framingham District Courts and the Winchendon and Gardner District Courts to delays in proceedings throughout the court system caused by a lack of sufficient courtroom and non-courtroom personnel. Since Chief Justice Marshall's address to the MBA last October, budget cuts have caused the closing of the Middlesex Probate and Family Court's Concord Session. This closure will impact the majority of the citizens in the Northern and Western portions of Middlesex County. Demographically, those litigants and their counsel will now be required to travel to East Cambridge to file their actions, handle uncontested matters, motions and evidentiary hearings. Counsel and litigants living in the towns of Ashby, Townsend, Concord, Carlisle, Bedford, Pepperell, Acton, Littleton and Ayer will join the morning commute to reach East Cambridge by 9 a.m. Already crowded sessions in East Cambridge and the remaining satellite Probate and Family Court in Middlesex County (Lowell and Marlborough) will be left to absorb the cases that had been reserved to Concord further depriving litigants of immediate access to justice. The judicial version of "musical chairs" to stay ahead of budget shortfalls continues throughout the commonwealth, most recently, in Gloucester, where officials are considering relocating the Gloucester District Court caseload to Salem.

Chief Justice Marshall noted that the crisis affects court systems nationally, not just Massachusetts. At the Benjamin N. Cardozo Lecture to the New York City Bar Association on Nov. 10, 2009, entitled "At the Tipping Point: State Courts and the Balance of Power," Chief Justice Marshall outlined efforts by other jurisdictions to cope with decimated

operating budgets. Those cost cutting measures included eliminating court reporters and replacing them with recordings, suspending civil and criminal jury sessions for a month to save on jurors' fees, not filling judicial vacancies and not recalling retired judges to sit on the bench, to assist with the workload.

THE MBA RESPONDS

There are many challenges confronting the Trial Court as it attempts to administer justice under these financial restrictions; and the impact on the strained court system is best reflected in the anguished faces of litigants frustrated by diminished court-related services and delays in their efforts to obtain justice from an overburdened court system. Insights may be gained from devoted, if overwhelmed, court personnel re-doubling their efforts to keep the depleted court operations from buckling. Further knowledge of the budgetary impact will be gleaned from the incisive detailed report prepared by the Boston Bar Association, analyzing a statistical demonstration of precise targets of funding losses regarding court employee attrition, inability to replace retired workers, outdated electronics and loss of tangible resources.

Indeed, the statistics are alarming, reflecting the perfect storm of a burgeoning caseload precisely at a juncture when the justice system is financially least capable of handling the growth. Excluding jurors and court staff, roughly 42,000 people on average pass through the commonwealth's courthouses daily. Reviewing a sampling of cases across the spectrum of substantive areas of law, in Fiscal Year 2009, Massachusetts courts handled 21,232 divorce cases, 26,051 juvenile delinquency complaints, 137,763 small claims cases, 38,685 landlord/tenant disputes and 23,293 foreclosure cases. In 2009, Massachusetts courts saw 270,208 criminal cases filed, and 269,323 criminal cases disposed.

From FY 2004 to FY 2009, new case filings in the Trial Court increased 10.2 percent. The caseload for the Appeals Court for FY 2009 climbed 11.4 percent compared to FY 2008 figures, both in civil and criminal filings. But statistics tell only part of the story.

In preparing this report, the 10-member MBA Crisis in Court Funding Task Force drew on their own interactions with the overtaxed justice system and gathered information concerning delays and neglect from their colleagues in the bar. To gauge the scope of the impact of budget cuts on the Massachusetts courts, however, task force members interviewed attorneys, clerks, court officers, judicial case managers, probation officers and judges working in the Trial Court who contend daily with the symptoms of the budgetary cutbacks. Finally, the task force portrayed the human suffering that is the byproduct of the budget crisis by interviewing litigants and witnesses victimized by the underfunded justice system. The stories of these individuals confronting the budget-related deficiencies of the Massachusetts Court system in its current state, may reach lawmakers and the general public who thus far have remained indifferent to the pleas of the organized bar to restore draconian cuts to the Trial Court budget.

As this report concludes, because of the efforts of dedicated court personnel, justice happens daily in courts throughout the commonwealth, despite understaffing.



Scratching beneath the surface, however, reveals the gossamer thread holding the resource-starved system intact. The employees of the Trial Court system may not be able to endure this much longer.

THE PRICE OF FEWER COURT CLERKS AND COURT OFFICERS

Suffolk County Superior Court Civil Clerk-Magistrate Michael Donovan has witnessed his once 123 staff members and 10 assistant clerk magistrates who handled 10 trial sessions pared to a staff of 41. Clerk Donovan notes that he has not hired anyone in nearly six years.

As task force members found at Probate, Juvenile, District and Superior Courts statewide, the effects of reduced court staff ranged from reduced hours that inconvenienced the public and their lawyers, to extensive delays in getting hearings scheduled, to an increased security risk in volatile courtrooms undermanned by court officers.

IMPEDIMENTS TO JUSTICE

Because of budget cuts, the Somerville District Court civil clerk's office closes daily from noon to 1 p.m. Consequently, *pro se* litigants, whose numbers are increasing every day, and lawyers are unable to review summary processes, small claims or other civil case files in person, and cannot call the court for information during that time. Being denied access to the court poses an inconvenience for the public at large and their attorneys. The cost of delays in completing work trickles down to the client.

Other court personnel, such as interpreters, secretaries and guardians *ad litem*, are among the earliest casualties of slashed court budgets. In Middlesex County, three Probate and Family Court Judges must share one secretary; the remaining Judges share two-and-a-half secretaries. In Norfolk County, one Probate and Family Court Judge who has been without a secretary for months, types and prints orders from her bench. This practice denies other litigants access to her to hear their cases. The lack of a fully staffed secretarial pool results in judgments and orders taking weeks to get processed. This processing backlog causes serious delays in the payment to custodial parents in support matters, and delays custodial appointments and various other orders that affect the immediate needs of the litigants and their families.

One Worcester County Probate and Family Court Judge recalled a Vietnamese couple seeking a divorce that involved a removal issue. Because of reduced funding, the court was unable to find an interpreter. During the Vietnamese couple's fourth consecutive appearance at which an interpreter could not be found, the wife became hysterical, telling the court that she would lose her job if forced to take off another day to appear in court. To prevent such an occurrence, the judge improvised and, after obtaining the consent of both parties, moved the proceedings along by having one of the parties' relatives serve as interpreter, a pragmatic, but not ideal, solution.





Task force members heard similar stories of delays of several weeks (and in one specific instance, two months) in issuing domestic relations summonses, scanning documents, obtaining docket numbers and the like, because support staff and assistant judicial case managers were pressed into emergency situations and were, therefore, unable to handle their routine daily duties. In Middlesex Probate and Family Court there had been five support staff handling the recording and mailing of summonses. Today there are two support staff employees attempting to handle the same workload.

Visitation, custody, support and asset protection are impacted by such delays. Litigants suffer anxiety and the public develops a poor image of the courts. Indeed, one judicial case manager likened the budget-constrained Probate Registry to a “slow train wreck.”

A judge from the Hampden County Housing Court reported on a situation that reflected the collateral damage caused by budget cuts. A tenant had timely filed an “answer” and a “request for discovery” in a summary process case, in which the landlord was seeking to evict the tenant. The tenant properly served the landlord by mail. Filing a request for discovery has the automatic effect, by court rule, of postponing the trial for two weeks. Because of this, the tenant did not appear at the originally scheduled trial date, and properly so. Unfortunately, due to staffing shortages in the court, the documents filed by the tenant did not make their way into the court file by the time of the original trial date. As a result, the landlord appeared on the original trial date. Because the sessions clerk did not have the documents filed by the tenant in her file, she didn’t realize that the trial had been postponed by operation of the rule, and defaulted the tenant. The tenant was later compelled to appear with a “motion to vacate the default” and a “motion to compel discovery,” both of which were allowed. Although the consequence of the short staffing was not devastating in an emotional sense, both the landlord and the tenant had to take time off from work to come to court to correct an erroneous disposition that was directly attributable to the court’s inability to process documents timely despite their best efforts.

PHYSICAL DANGER TO THE PUBLIC

Far more serious is the budget-induced shortage of court officers in courts such as the Worcester Juvenile Court, which sometimes results in courtrooms staffed by a lone court officer. In one instance, after a judge ordered a juvenile detained, the court officer escorted the youth to lock up, leaving the courtroom temporarily without a court officer.

During that time, a group of known gang members entered the courtroom and began to berate the detainee’s mother, and intimidate her, as well as the clerk and judge. Fortunately, another court officer searching for an attorney entered the courtroom, observed the dangerously escalating situation, and summoned other court officers from other courtrooms who quelled the disturbance.

On a separate occasion in the Worcester Juvenile session, a court officer wrestled with a defendant whom he was attempting to handcuff, prompting the presiding judge to press the panic button connected to the court officers' command post. Because of reduced staffing, the response to the distress call was slowed. Although reinforcements did arrive and restore order, the original court officer involved in the fracas suffered minor injuries.

The problem is not confined to Worcester County. In the past year, Probate and Family Court sessions in Middlesex and Essex Counties lost approximately 30 "blue shirt" security staff to budget cuts. The result is untenable. In Middlesex Probate and Family Court, only two security officers aided by a 20-year-old metal detector, screen the public and attorneys wishing to enter the courthouse. Sometimes, the lines can contain more than 150 people. One task force member was told of an incident in which a 209A defendant tried to enter the Old Third District Court in East Cambridge armed with an ice pick and a knife. Although, the ice pick triggered the metal detector alarm, the knife did not. Fortunately, the Cambridge police, who had been called by security, found the knife on the individual and arrested him.

HARMFUL IMPACT ON CHILDREN AND FAMILIES

Due to financial cutbacks, courts have been forced to discontinue educational guardian *ad litem* appointments for educational advocacy and to limit any other GAL investigations to a maximum of 10 billable hours. This statewide mandate meant that despite two requests from counsel, a Probate and Family Court Judge declined to appoint an educational GAL in the case of an 11-year-old special needs youth from Chelmsford who had been taken away from his parents and was in the custody of the Department of Children and Families. The child, who suffered from a language processing delay/disorder, is residing in a residential facility that is paid by the state and costs approximately \$153,000 per year. Counsel for the child was stymied in her efforts to get the child's Independent Education Plan reviewed and signed and to move the subsequent re-evaluation on track because of the cost-saving measure eliminating the educational GAL appointment. As a result of the child's inability to have his IEP reviewed and signed off, the child remains in the custody of the Department of Children and Families.

Task force members learned that some probation departments, because of a lack of funding, no longer monitor job search orders, under which child support obligors are ordered aggressively to seek employment, submit evidence of job applications and report the results of their job search weekly to probation personnel. The impact of relaxing oversight of job search orders is that child support orders are not being enforced. When child support orders are not paid, the taxpayers end up subsidizing



children and payee custodial parents through transitional assistance and other government benefit programs.

Courts are still reeling from the last round of budget cuts that eliminated day care centers that operated, for instance, at the Suffolk and Middlesex Probate Courts. Litigants unable to afford babysitters either forego appearing in court, or show up with young children in tow to the detriment of the parents, children and the courts.

The Probate and Family Court, task force members found, in many ways bear the brunt of the court budget cutbacks. In one case, for example, the maternal grandmother of a four year old and a six year old needed assistance completing “petitions for guardianship” and supporting pleadings, as she sought to care for the children whose mother was battling a heroin addiction. An assistant judicial case manager fluent in Spanish was called on to aid the Pro Bono Family Law Facilitator. This assistance enabled the court personnel to complete the documentation and prevent the Department of Children and Families from assuming custody of the children. Due to this time-consuming interruption, the assistant judicial case manager was unable to complete her assigned duties that day, this translating into “stale” pleadings being mailed to counsel or litigants impeding time requirements for proper service under court rules.

A Hampden County lawyer reported that she was no longer going to take cases in the Juvenile Court. The lawyer was frustrated by the lack of progress of cases in that court in the wake of the budget cuts. She explained that recently she was in the Holyoke Juvenile Court on a particular day when there were two judges sitting. There are only two courtrooms available, so theoretically there should have been a lot of progress that day. However, because of the shortage of session clerks, one of the courtrooms was closed down for a significant period of time, leaving approximately 20 attorneys and their clients waiting around. The assistant clerk magistrate was doing double-duty, both sitting as the sessions clerk, because no one else was available to sit, and conducting scheduled clerk magistrate hearings. The results of this inefficiency are clear: numerous families waiting months, and sometimes years, for the courts to determine the fate of their reunion or permanent separation; Committee for Public Counsel Services paying attorneys for more waiting time than would otherwise be necessary; and the duplicative administrative process of the overburdened court staff in continuing many cases yet again. This example

demonstrates that this one series of events in a single day poses a devastating emotional and physical toll on many children and parents. There is no grief index against which one can measure the agonizing encounters litigants have experienced with the overtaxed courts. Two additional anecdotes are representative of the numerous accounts told to task force members.

The first involves the Worcester County Registry of Probate, which, despite being



overburdened, does its best to assist the ever-growing number of *pro se* litigants. In this case, the mother had relocated to South Carolina, with the court's permission, and a visitation schedule had been ordered. During the children's visit to the father in Massachusetts, he threatened not to return the youngsters to their mother because of her alleged neglect.

The mother telephoned the Probate and Family Court to see if the father had filed a modification complaint, to determine what recourse she had to retrieve her children, and whether her presence in Massachusetts



would be required. The clerk who first answered the call was assisting another *pro se* litigant on an urgent short order of notice. The docketing clerk to whom the mother's call was transferred was busy interpreting for a Spanish-speaking guardian. The end result was that the mother, at great expense, traveled from South Carolina to Massachusetts. The court was further burdened with crisis intervention.

In another matter, a woman who secured a District Court abuse prevention order against her spouse and an order for custody of the couple's three small children, found herself trying to secure a support order from the Probate and Family Court. Ideally, the process of filing the necessary pleadings and forwarding them with the summons for service is generally accomplished in 24 to 48 hours. Recognizing the exigent circumstances of the plaintiff living 35 miles from the court, clerks helped her by processing the case immediately so the plaintiff could hand-deliver the summons and notice of hearing to the sheriff before heading home. The concerted effort by the Probate and Family Court staff enabled the plaintiff to schedule a support hearing in two weeks, instead of four weeks. These examples underscore the need for court personnel to come to court on weekends, evenings and early mornings to keep up with the unending tide of paper work and processing in the trial courts.

SHORTAGE OF SUPPORT STAFF HAMPERS WORK OF JUDGES

The protracted shrinkage of the Trial Court's budget extends beyond the support staff and affects the administration of justice. In one disturbing Probate and Family Court modification of child support case, a father has been waiting for more than six months for a hearing seeking relief from a court-ordered \$200 weekly child support payment because his two children reside with him. Complicating the matter is that the now non-custodial mother is disabled, unable to care for the children due to her disability and receiving SSDI income. The maternal grandmother is the person who has retained coun-

sel to contest the modification of the child support action.

The father has been to court on three different occasions seeking but unable to obtain a hearing to eliminate his child support obligation due to a congested calendar. At his most recent court date, the assigned judge, burdened by the single calendar system, was scheduled to hear a staggering 58 motions. A second judge heard the father's case, but rather than act on the motion, gave the father a March pretrial date, seven



months following the initial modification filing. The original judge sent a memo to the covering judge to see if the motion was acted upon. Meanwhile, the father remains in limbo, still paying \$200 in weekly child support to the disabled mother while he has custody of the two children.

On most days in the Boston Municipal Court Central Division for criminal business, there are roughly 40 criminal cases on for trial daily, though usually only one judge sits in the trial session. Older cases and custodial cases take precedence. Of course witnesses, both civilian and police are subpoenaed for each trial. Each day, numerous witnesses leave the court having taken time off from work to attend what amounts to yet another continuance. The end result is criminal trials being extended out further and further, but still taking precedence over their civil counterparts. Plaintiffs in the Boston Municipal Court civil trial sessions routinely wait more than a year for their cases to reach trial.

In the Worcester Superior Court Civil Clerk's office, a 20 percent reduction in clerical staff must contend with a 10 percent surge in the case docket. What results is a juggling act to ensure session clerks are available to staff the courtrooms. The addition of two new civil sessions to address the backlog of civil cases has compounded the problem. Courtroom clerks voluntarily have scheduled vacations to coincide with those of their assigned judge to ensure the continuity of the civil session.

DESPERATELY SEEKING INCOME

An outgrowth of the cash-strapped Trial Court is the incessant search for new revenue streams and a greater reluctance by judges to grant assistance to needy court users. In Woburn District Court, for example, attorneys requesting a photocopy of any document are presently charged \$1 per page. Task force members heard complaints about low-income individuals being "nickel and dimed" on photocopy fees by the Probate and Family Courts in particular.

The commonwealth instituted a \$25 fee merely to appeal traffic tickets. If unsuccessful, the driver is assessed another \$50 fee if he or she appeals the matter to a judge. Until July 1, 2009, motor vehicle infractions could be appealed to a magistrate hearing at no cost to the driver. If a person wants to file a criminal application, there is a new \$15 fee. Probation

supervision fees have increased in some instances from \$21 a month to \$50 a month. Fees for filings in the Probate and Family Court and the Registry of Deeds have dramatically increased. Yet the increased fee revenue is not fully earmarked for the court system to address its shortages.

On the other side of the ledger, in the wake of the budget shortfall, judges are more hesitant to grant fee waivers on affidavits of indigency or to limit the waiver amount. In one case, an elderly gentleman who was just above 125 percent of the poverty level was required to pay an increased court-appointed attorney fee. The courts across the commonwealth have become efficient revenue agents for the state. However, direct budgetary benefit to the courts has been elusive. The Trial Court is under considerable pressure to collect revenues in the face of decreased budgetary appropriations. In FY 2010, total revenue collections top \$127.6 million, compared to \$126.8 million in FY 2009, despite fewer employees and diminished resources to collect the monies.

OVERCROWDING AND DETERIORATING HALLS OF JUSTICE

Another consequence of the significant state budget shortfall is the lack of necessary court facilities bond funds to repair declining courthouses. Jurors', witnesses' and litigants' initial encounter with the commonwealth's justice system can hardly inspire confidence when the face of justice is so severely pockmarked.

Since the Winchendon District Court was closed in a cost-savings measure, the Gardner District Court has tried to accommodate Winchendon, but space constraints require District and Housing Court judges to share a lobby, when the Housing Court holds its session there. No private space is available for litigants to mediate their disputes with housing specialists. Worse, there are two District Court judges and one Housing Court judge, but only two available courtrooms.

Conditions at the Middlesex Probate and Family Court continue to worsen. The facility has only one handicapped-accessible entrance, and users entering any of the three entrances (including the sole handicap entrance) to the courthouse are confronted by falling plaster and concrete. Bathroom vents in the facility, which were constructed in the late 1800s, cannot be cleaned for fear of discovering asbestos. The private sector would not tolerate these working conditions and neither should the hard-working court personnel and tax-paying members of the public.

CONCLUSION

We recognize that nearly all state agencies have been stung by the devastating budget reductions. The Massachusetts Court system is not a state agency. It is a co-equal branch of government. It is the branch of government that is charged with protecting the rights of our citizens. Article XV of the Declaration of Rights provides that our citizens "ought to obtain rights and justice freely and without being obliged to purchase it; completely, and without any denial, promptly and without delay, conformably to the laws." These rights, as provided by our forefathers, are no longer a reality. Justice in Massachusetts is delayed everyday, despite the yeoman's effort by the men and women who staff our courthouses day in and day out. Reflecting on crippling effects of the recession on the courthouses of the commonwealth, Suffolk County Clerk-Magistrate Michael Donovan noted: "Collection cases are up; *pro se* [representation] is up, mortgage foreclosures and credit card defaults are all up. The only thing that's declined is the resources we need to serve the public." The Legislature and the Governor must restore funding to the courts. Adequate staffing is critical to providing each citizen with their most basic right to access to justice.