Justice for Whom?

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What does justice look like? Is justice a concept? Is it an ideal, a moral principle, a quality, a theory, or any number of other descriptors? What is justice to a family for which basic human needs are at stake, such as adversarial proceedings involving shelter; sustenance; safety; health; or child custody, care, or control? Is justice a court in which process trumps a fair outcome? Where procedure prevails over truth? Where the poor forfeit important rights because they are unrepresented?

As lawyers, we understand better than anyone that a court setting does not guarantee justice and that achieving true justice in most cases requires access to meaningful help, including representation by a lawyer, to protect and defend basic rights.

In her State of the Judiciary address delivered to a joint session of the Michigan legislature on April 14, Chief Justice Marilyn Kelly said that "for far too many, access to justice is a nice idea, not a reality."[1] She noted the grim toll that Michigan's downward spiral has taken on already stressed civil legal services organizations. Today, one in three people in Michigan qualifies for free civil legal aid because of low income, but due to a lack of resources, more than half of those who seek help from a provider of legal services to the poor are turned away. Chief Justice Kelly noted that the most recent statistics indicate that at least one party is unrepresented in more than 40 percent of the caseload in many courts, and in some courts it is over 70 percent.

What can be done? The chief justice concluded her address by saying, "With your help, we will address the challenges of the coming decades—including making access to justice a reality for all."[2] Her commitment and leadership toward reaching that goal is already evident. In August 2009, Chief Justice Kelly created the Office of Director of Access and Fairness within the Michigan Supreme Court and named Lorraine H. Weber, a longtime advocate of equal justice, to the position. "'Through this new position, we hope to promote greater public access to, and confidence in, the justice system, particularly for the poor and others who have encountered barriers based on their race, gender, or ethnic identity,' said Kelly."[3]

Working in collaboration with the Michigan Supreme Court is the State Bar Justice Initiatives Committee, co-chaired by Court of Appeals Judge Cynthia Stephens and Terri Stangl, executive director of the Center for Civil Justice in Saginaw. On April 12, the State Bar convened its first annual Justice Initiatives Summit. Forty-one attendees—representative of industry, law firms, every level of court, academia, prosecutors, bar associations, and public-interest attorneys—engaged in spirited discussion and envisioned strategies to address the needs of the unrepresented.

Meanwhile, the 30 members of the Access to Justice Committee of the State Bar Judicial Crossroads Task Force are tackling a broad range of issues and strategies to deal with challenges to access to justice presented by Michigan's transition to a new economy. Their recommendations will be presented to the task force in June.

While data collection, assessments, research, and analysis are in order, the outlines of change are beginning to emerge in three broad areas:

(1) The justice gap must be closed by developing the means to assist the self-represented. In recognition of this need, Chief Justice Kelly announced in the State of the Judiciary address the formation of the Solutions on Self-help (SOS) Task Force, co-chaired by Lorraine Weber and Michigan State Bar Foundation Executive Director Linda Rexer, to implement self-help strategies in Michigan. Self-help local centers, which are operating in Kent, Berrien, and Washtenaw counties, help the unrepresented complete and properly assemble documents, provide instructions on what to expect in court, and explain the next step after court. One study in Grand Rapids revealed that court staff spent less time (the equivalent of 2.5 full-time workers) answering questions from the self-represented after implementation of the Kent County center.

(2) A Web-based, self-help initiative allowing the unrepresented to obtain user-friendly legal help to complete forms or

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access information that may help mitigate a legal problem or prevent the need to go to court has proven successful in other states. A good example of this initiative, referenced by Chief Justice Kelly, is Illinois Legal Aid Online, which can be found at http://www.illinoislegalaid.org. Specialized training for judges and court personnel is also essential to closing the justice gap in this area.

(3) "Unbundling"—lawyers offering affordable à la carte legal services similar to the discrete legal services often characterized by transactional services to businesses—allows more people to afford attorney representation. For example, a person who cannot afford full representation may be able to afford an attorney on a limited basis to prepare a pleading or to obtain counsel before appearing in court—a win-win for both the client, who would otherwise have no legal help, and for the lawyer, who has a paying client whom he or she can help. Forty-two states have a rule that permits some form of unbundling, which is sometimes called limited assistance representation (LAR) or discrete task representation. LAR permits attorneys to assist an unrepresented litigant on a limited basis without undertaking a full representation of the client on all issues related to the legal matter for which the attorney is engaged. Massachusetts has a LAR order that became effective May 1, 2009. LAR standing orders and pilot project information can be found at http://www.mass.gov/courts/sjc/limited-rep.html. While Michigan's rule does not specifically address LAR, it can be undertaken in appropriate circumstances with the informed consent of the client. Of course, any effective provision of unbundled legal services requires careful adherence to ethical standards and training of attorneys, judges, and court staff so that everyone, including the client, understands the limits of the representation.

Finally, there are some civil legal needs of the poor so fundamental to their well-being that free representation is compelling, even—or perhaps especially—in these difficult economic times. The idea of a "civil Gideon" is being explored in many states. This movement is examining whether there should be a civil right to counsel for cases in which basic human needs are at stake, such as termination of parental rights, child custody, and deportation cases.

There is obviously much work to be done in Michigan to address the needs of the unrepresented. Best practices in programs for the self-represented need to be explored, including those for persons with literacy and language barriers or those who need to be directed to an attorney for help. The choice as to which strategies should receive the highest priority may be driven by economics, analysis of the most urgent areas of needs, or which option is most politically palatable at the time. Justice is not for silo thinkers. Both access to justice and effective court operations are greatly facilitated by services for those who seek to represent themselves. With the new SOS task force created by Chief Justice Kelly and creative solutions generated by the State Bar Justice Initiatives Committee and the Judicial Crossroads Task Force, we can meet the great and continuing challenge of providing services for the unrepresented and do justice to the true definition of justice: justice for all. ■

FOOTNOTES

1. State of the Judiciary address delivered by Chief Justice Marilyn Kelly, *Michigan's Courts in the New Millennium: Facing the Challenge, Fulfilling the Mission* (April 14, 2010), p 11, available at <http://courts.michigan.gov/supremecourt/AboutCourt/2010%20State%20of%20the%20Judiciary.pdf>. All websites cited in this article were accessed April 19, 2010.
2. *Id.* at 14.
3. Press Release, Michigan Supreme Court, *Lorraine H. Weber of Detroit Named Director of Access and Fairness for Michigan Supreme Court* <http://courts.michigan.gov/supremecourt/Press/LWeber.pdf>.