

No Courts, No Justice, No Freedom

You Don't Know What You've Got Till It's Gone



Julie I. Fershtman

May 1 is Law Day, a day traditionally devoted each year to the recognition and appreciation of our fundamental liberties. Established 54 years ago by President Dwight D. Eisenhower, it is a day when we reaffirm our respect for the rule of law and dedication to our country's democratic values. In years past, national Law Day themes have included "Liberty Under Law: Empowering Youth, Assuring Democracy" in 2007; "E Pluribus Unum" in 1995; and "Law—The Language of Liberty" in 1983.

This year's Law Day theme is "No Courts, No Justice, No Freedom," and the American Bar Association chose it to highlight the importance of our nation's courts and advocate for greater funding to safeguard our system of justice. No state has endured greater economic stress than Michigan, and no state has been more forward thinking and effective in addressing the problem of court funding than Michigan.

The National Court Underfunding Problem

American Bar Association President Wm. T. (Bill) Robinson III has reported on the scope of the problem nationally. Forty-two states have reduced court budgets, 34 have reduced staff, 39 have stopped filling clerk vacancies, and 23 have reduced courthouse operating hours. The ABA has reported that in California, an uncontested divorce can take up to 18 months. Judges in Georgia, North Carolina, and Ohio have asked their communities to donate office supplies so their courts could function.

Michigan's Court Underfunding Problem

As reduced state revenues have shrunk budgets, many Michigan courts have been

forced to do more with less. In fact, the August 2011 report from the State Court Administrative Office (SCAO), while recommending the elimination of 45 judgeships, also stated that 24 new judgeships were needed for 8 Michigan counties, and 3 district courts needed 7 new judgeships.¹

The National Center for State Courts (NCSC) reported on the severity of the economic crisis's impact in our state's trial courts:

Michigan's trial courts are primarily locally funded. The state funds the Supreme Court, the Court of Appeals, and the State Court Administrative Office (SCAO). The state funding also includes appropriations that cover salaries, FICA payroll taxes, and defined contribution pension costs for trial court judges (other benefits received by the trial court judges, like health care and life insurance, are locally funded) and for certain payments to courts and local funding units which are disbursed based on statutory formulas using specified caseload and judgeship information. These appropriations make up nearly two-thirds of the total gross state-funded budget.

Michigan's state funding was reduced from \$259.2 million in FY11 to \$256.9 million in FY12. The reduction has led to a decrease in the number of judicial officers (two court of appeals judges and six trial court judges). Most local trial courts are

facing reductions in their budgets as local revenues decrease, but the impact varies significantly from location to location.

The Michigan courts have endured several years of budget reductions at both the state and local levels, which have caused stresses in the system. They have taken a number of steps at the state level to respond to the fiscal downturns, including:

- layoffs of permanent and temporary employees;
 - hiring freezes and position consolidations (almost an 18% decrease in FTEs since FY00);
 - unpaid furlough days (both voluntary and mandatory—in FY09, judicial branch employees took six unpaid furlough days);
 - short-term court shutdowns;
 - judge salary freezes (judges last received a pay increase in January 2002);
 - staff salary freezes (from FY04 to FY11, state judicial branch employees received 13% less in cost of living increases than unionized executive branch employees—8% vs. 21%);
- * * *
- court fee enhancements, with the added revenue used to replace general funds in the judicial branch appropriation;
 - court fines and fees collection programs; ...²

No state has endured greater economic stress than Michigan, and no state has been more forward thinking and effective in addressing the problem of court funding than Michigan.

Courts must remain steadfastly dedicated to improving efficiencies through innovative programs and new ways of doing business.

The NCSC report went on to note that, despite significant cuts and limitations, Michigan courts have managed to perform efficiently.

The State Bar's Proactive Efforts: Judicial Crossroads Task Force

The ABA has strongly encouraged lawyers to gather at state capitols this year to protest underfunded courts, but Michigan has taken another path that began nearly two years ago. In 2010, the State Bar organized the Judicial Crossroads Task Force that included numerous members of the bench and bar throughout the state. Its subcommittees addressed court structure and resources, technology, business impact, and access to justice. Its *Report and Recommendations*, issued last year and available through the State Bar's website, recognized that Michigan's financial challenges, which would impact court funding, were likely to continue for several years. The report offered several recommendations regarding the future of our state courts. In particular, some of the Structure and Resources Committee's recommendations included:

- Supporting attrition-based reductions of judgeships to the extent they do not adversely impact current levels of service or public safety.
- Supporting the consolidation of court services on a sub-county, county, or multi-county basis pursuant to concurrent jurisdiction plans designed and approved by all courts within the jurisdiction.
- No later than 60 days after a vacancy occurs in any trial court, the SCAO should review the judicial resource needs of the court, and the Supreme Court should recommend to the governor and legislature whether the seat should be filled or the judgeship eliminated.

The report also suggested numerous specific improvements and innovations such as

business courts and technological upgrades and changes to help courts function in a more accessible and effective manner.

In August 2011, the SCAO recommended that the legislature cut 45 trial-level judgeships by attrition, such as when a judge dies, retires, or is ineligible to run for re-election based on constitutionally imposed age limits. This year, Gov. Snyder signed into law the elimination by attrition of 36 trial court judgeships and 4 Court of Appeals judgeships.

Court Accountability

During these challenging economic times, courts must remain steadfastly dedicated to improving efficiencies through innovative programs and new ways of doing business. Specialty courts are an excellent example and have gained widespread acceptance. Recent statistics from the SCAO indicate that Michigan now has a total of 159 problem-solving courts. Among Michigan's 100 drug and sobriety courts are 42 adult treatment courts, 29 DWI courts, 16 juvenile drug treatment courts, 10 family dependency drug treatment courts, and 3 tribal treatment courts.

Michigan's 59 other problem-solving courts include 17 teen courts, 12 mental health courts, 7 domestic violence courts, 5 veterans treatment courts, 5 child support courts,

4 truancy courts, 3 baby courts, 3 homeless courts, 1 parole violation court, 1 prostitution court, and 1 community court. Specialized business court pilot programs, which the Judicial Crossroads Task Force recommended, were launched last year in Macomb, Kent, and Oakland counties.

You Can Help

Our democratic way of life requires, of necessity, open and accessible courts. They are the very heart and soul of a free society. We must keep the doors to our courtrooms open to ensure that everyone's legal rights are respected.

I urge all members to actively support access to our courts and to help the public understand how our legal system is threatened by inadequate funding. Continue encouraging your elected representatives—especially county commissioners who appropriate funds for trial court operations—to ensure that our courts receive adequate funding. Consider taking part in Law Day observances or join forces with your local bar association or civic group for courthouse tours, legal clinics, mock trials, or lectures.

And, of course, I wish everyone a very happy Law Day. ■

FOOTNOTES

1. State Court Administrative Office, *Judicial Resource Recommendations* (August 2011), p 8, available at <<http://courts.mi.gov/SCAO/resources/publications/reports/JRRSummary2011.pdf>> (accessed April 18, 2012).
2. The National Center for State Courts <<http://www.ncsc.org/information-and-resources/budget-resource-center/states-activities-map/michigan.aspx>> (accessed April 18, 2012).