Public Perception of Fairness

To the Editor:

I have read the article co-authored by Evanne Dietz and Candace Crowley ("Equal Access: Our Continuous Need to Increase Public Confidence in the Fairness of the Legal Profession," May 2006). I wholeheartedly concur that there is a continuous need to increase public confidence in the fairness of the legal profession.

As we all know, these are tough times economically—for the federal government; state, county, and local governments; businesses; and those either employed or unemployed. It is particularly difficult for single custodial parents in need of appropriate child support. Health insurance premiums and childcare costs are as outrageous as gas prices. Medicaid and Department of Human Services (DHS) benefits are a great help. There is other help as well.

There are 83 counties in Michigan. In most prosecutors' offices there is a division known as the Family Support Division, Family Law Division, or Child Support Division. Notwithstanding the variance in name, the functionality of each division is the same: file and litigate civil cases for custodial parents who are in need of child support.

Three statutes in particular require involvement of the prosecuting attorney (PA)/family division office: The Family Support Act, MCL 552.451 et. seq.; the Status of Minors and Child Support Act, MCL 722.1 et. seq.; and The Paternity Act, MCL 722.711 et. seq. Assistant prosecutors obtain child support orders for children born during a marriage whose parents are not residing together, for children whose parents are legally established but are not married, and for children born out of wedlock without a legal father.

Anyone, regardless of income, qualifies for this legal service from these offices provided they first contact the DHS. Obtaining benefits from the DHS, such as Medicaid, cash assistance FIP payments, etc., is not required. The DHS personnel procure information and forward it to the PA offices. Once the PA/family division offices obtain the appropriate orders, cases are enforced by the Friend of the Court (FOC) offices.

Because of budget reductions at the federal level (passage of the Deficit Reduction Act), Michigan is expected to lose $55 million for its child support program. The program consists of the DHS, PAs and FOCs. Some people are advocating eliminating the functions of the PA offices and combining them with the FOC offices as part of a budget reduction measure. Other cost-cutting procedures are available.

The integrity of our justice system would not be well-served by such a measure. The FOC offices have always been in a difficult situation as far as public perception goes. If they are successful in their efforts, half of the public is upset because the system has been too rough on them. If their efforts are not successful, the other half of the public is upset because they weren't. Too many members of the public believe that the FOC favors the custodial parent.

Advocates of creating an administrative system for the establishment of child support orders in Michigan fail to take into account the public confidence in the fairness of our profession. Any efforts to eliminate PAs/family divisions from establishing support orders in favor of FOC offices or administrative offices doing so would undermine the already shaky public perception of fairness. By entrusting establishment and enforcement activities within one branch of government, either legal or administrative, our very Constitution suffers. The doctrine of separation of powers is not some idle concept.

Family support prosecutors perform a very valuable function. They do so efficiently and professionally. They have the "commitment to service" that was referenced in the "Equal Access" article. We would not be increasing public perception of fairness by eliminating family support prosecutors in favor of an all-encompassing system. Likewise, we would not be serving the public by eliminating dedicated attorneys who often help indigent custodial parents in favor of an administrative system.

Tony Paruk
Howell

Equal Access to Justice or Equal Access to Lawyers?

To the Editor:

After reading this article ("Equal Access: Our Continuous Need to Increase Public Confidence in the Fairness of the Legal Profession," May 2006) for the second time and becoming angry all over again, I feel that I must write to "sound off."

I am offended that so much is made about equal access to justice, because what is really meant is equal access to lawyers. There is no longer justice in the state of Michigan outside of the dictionary; certainly not in the courtroom, and certainly not in the appellate courts. This took place over time, and we lawyers merely complained but did nothing about it. Now, the arrogance of the perpetrators has reached monumental proportions, and we must do more than complain.

There was a time when I was proud to be a Michigan lawyer; Michigan law was cited by other states and we had a judiciary that had the respect of other states.

I have heard directly from other Michigan lawyers whose feedback is the same as mine, giving credence to what I had also heard from lawyers in other states. In discussing appellate decisions regarding personal injury cases, people outside the state think that I am kidding when I tell of the current state of the law. They cannot believe that our judiciary has usurped the province of the jury by means of a dictionary; that the lawyers have not acted to fix the problem and have been complacent about it.

While the State Bar of Michigan runs around looking so officious and pretending that by seeking "equal access to justice" that they are actually accomplishing something, the rights of the citizens in the state are being eroded.

I want to give you all something to think about!

There can be no justice if the legislature, which is supposed to represent the will of the people, passes a law, and the courts, which are supposed to be fair, impartial, and independent, change the law by the use of a dictionary. Conversely, there can be no justice if the legislature uses a dictionary to create a tortured definition of something, and then enacts a law that uses the tortured definition to disenfranchise some portion of the society that elected its members.

For example, in the late 1970s, our elected representatives in Lansing decided that certain traffic offenses would no longer be considered as misdemeanors. It was felt that the traffic offenders were improperly demanding their right to a trial by a jury of their peers and were clogging the courts. So, they created a legal fiction. Traffic misdemeanors would now be considered as "civil infractions." By allegedly decriminalizing the traffic code and by no longer incarcerating traffic offenders, the system would be streamlined. Instead of a trial, there would be a hearing before a magistrate or a judge, depending on whether the defendant wanted a lawyer to represent him or her. At the hearing, the prosecution (in a formal hearing) or the magistrate alone (in an informal hearing) would make a civil finding of responsibility. Since the burden of proof was reduced to "a mere preponderance of the evidence," it is almost impossible for a defendant to win a traffic case. But the system is streamlined. One only has to sit in a district courtroom for a few hours to see that this is now "Big Business." Thousands of dollars in fines are generated in each courtroom. It is so easy now, because with the reduced burden of proof, if one argues that the light turned amber as the car entered the intersection, and the police officer says that the defendant could have stopped, guilt—oops, I mean responsibility—is proven.

In actual practice, however, the finding of "responsibility" brought with it a civil judgment for money damages, which, if not paid, could result in a finding of civil contempt and either jail or a loss of driver's license. As any restriction of liberty is considered an incarceration and as we have abolished debtors' prison, this meant that the "civil infraction" was merely a thinly veiled criminal conviction—however, without the constitutionally mandated right to the criminal standard of proof and the right to a trial by jury. Furthermore, if the "responsible party" is found responsible for too many civil infractions, the limitation of that person's liberty by suspension or revocation of driving privileges can last for a considerable time. All accomplished by the clever use of a dictionary.

What is even more striking is that a civil process server is not entitled to use "hot pursuit" or lethal force to effectuate a service of process; however, the traffic officer who is serving the civil infraction complaint may do so. The civil infraction complaint is one page of a three-part packet of papers, the second page of which is entitled "misdemeanor" and the wording of which is identical to that of the civil infraction copy.

"It is obvious that the right to equal access to justice has been taken away from *everyone* within the state of Michigan. We do have equal access to attorneys; just not equal access to justice."

Obviously, even if traffic offenses are defined as civil infractions, they are still criminal in nature; however, the defendants have been deprived of all of the rights granted by the U.S. and Michigan Constitutions. And the members of the State Bar have neither said nor done anything about this in their quest for equal access to justice. However, this writer filed an amicus curiae brief in the then-pending case of *People v Schomaker,* which raised all of these points. The Supreme Court slickly allowed the filing of the brief, but refused to grant rehearing to the defendant. And so they got a "sneak preview" of the poker hand without having to rule on the issues raised. Now it is obvious that the right to equal access to justice has been taken away from *everyone* within the state of Michigan. We do have equal access to attorneys; just not equal access to justice.

Fast-forwarding to the present time, although handicapped people are given federal protection pursuant to the Americans with Disabilities Act, under Michigan law, property owners do not have to accommodate their disabilities. A blind woman who was injured by slipping on debris in a handicap-access lavatory was told that the property owner did not have to accommodate her because she was not "average" and only "average" citizens were owed duties in this state.

Most recently, the No-Fault law, which makes absolutely no reference to the period of time during which a person must be "seriously impaired" to surpass the threshold, has been legislated from the bench to require permanency. In my many readings of the law, I fail to see what wording within that law gave the court the power to create such a threshold requirement. And what has the Bar done about it? Besides complaining among ourselves, we certainly have not advertised this usurpation of power, or this erosion of the separation of powers to the voters.

This smacks of Germany in the 1930s when, using the power of the government in legitimate procedures, the powers that existed enacted legislation that defined certain of the citizens of the country to be "untermenschen," or sub-humans, and, by doing so, stripped them of their human rights as well as their civil rights. Once this was done, their property was confiscated and they were placed into concentration camps where they were tortured and killed.

The main principle of advertising is to define a problem to the marketplace, and then demonstrate how the product solves the problem. Well, our problem is that in Michigan there is no equal access to justice. How are we going to solve that problem?

We lawyers cannot allow the rights of our citizens to be taken away by the use of a dictionary. We cannot allow ourselves to lose sight of our real responsibilities. We must not just fight for equal access to lawyers, but we must fight for equal access to true justice.

I was once proud to be a Michigan lawyer; I want again to be proud of my state and my profession. I want equal access to *justice* for all of the citizens of the state, and I want to be able to provide it to them.

Ronald A. Steinberg
Farmington Hills

A Belated Acknowledgement

To the Editor:

We enjoyed the online edition of the August 2006 *Michigan Bar Journal* and its many articles dealing with disabilities law. The excellent article written by Charles Wilson, which chronicles my much-publicized case against the City of Detroit, was absent one very important fact. Crucial to the success of the bus case, and to the success of our firm in general, is attorney Marya Sieminski. Ms. Sieminski was captioned on the bus suit from its initial filing. Her hard work, insight, and leadership regarding the management of that suit were instrumental to its ultimate success. She should be acknowledged for her ability and key contributions.

Richard Bernstein and David Cohen
Farmington Hills

Salary Complaints Fuel Lawyer Jokes

To the Editor:

I read President Tom Crammer's August column ("Enough's Enough," August 2006) advocating an increase in judicial pay, and do not disagree with his analysis. One comment stuck out, however, which may help explain our fair profession's struggle to be respected by the public. He notes that Judge Luttig's letter of resignation from the federal bench cited as a reason the approach to college age of his two children and thus the need for more income. I vividly recall that two former U.S. attorneys here in Michigan resigned their six-figure salaried appointments in recent years for the same (publicly-stated) reason.

Yes, college education is expensive. (I know. I am in the middle of trying to see my five kids through college.) But how can we expect to win the respect of "regular folks" when lawyers with six-figure salaries, exceeding the income of over 95 percent of the public, claim to need *more* money so they can pay for college? Might this be perceived as elitism at its most arrogant? What about the kids of folks whose income is, say, a "mere" $80,000? Would these lawyers suggest those kids eat vocational cake? Could these lawyers (and their sympathetic colleagues) get away with giving this explanation for resigning at a union hall or a family picnic? That lawyers and judges have the opportunity to make a high, even lucrative, income can be justified. But to *complain* that a $175,000 salary (not counting any spousal or other income) is too little to get two kids through college will do nothing to stop the lawyer jokes.

Randy Petrides
Flint