

Judicial Independence in Crisis (Part 2)



Edward H. Pappas

“Freedom and equality of justice are essential to a democracy.”

—Reginald Heber Smith

“It is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

—Lewis Powell, Jr., former United States Supreme Court justice

State courts are in crisis according to Margaret H. Marshall, chief justice of the Supreme Court of Massachusetts. And the reasons she cites are varied: “inadequate funding, an inability to provide adequate access for all, and the politicization of state judiciaries.” In my May column, I addressed inadequate funding for the judiciary. This month, I discuss lack of adequate access to justice for all. Next month’s column will cover the politicization of state judiciaries.

Challenging economic times exacerbate an existing problem: access to justice for individuals who cannot afford an attorney. In the words of Chief Justice Marshall:

The principle of equal justice... finds its most palpable expression in our state courts. There, our most vulnerable citizens come to seek access to their most basic needs—food, shelter, health care, physical safety. Many have no attorney, and neither legal services nor pro bono assistance can help all in need. Many have limited English proficiency or are functionally illiterate, yet competent translators and simplified forms can be hard to find.... The disabled are confronted by ancient courthouses with steep stairways and narrow corridors. Such circumstances are intolerable in a society founded on the principle of equal justice, and they are all too common in our state courts.

In Michigan, almost one-half of low-income individuals seeking legal help from

legal aid organizations are turned down because these organizations have insufficient resources. Statistics in Michigan also show that there is one lawyer for every 309 Michigan residents, but only one legal aid attorney for every 7,665 low-income residents. Additionally, more than 1.3 million Michigan residents are potentially eligible for legal services from legal aid organizations because they are at or below 125 percent of the federal poverty guidelines. These low-income individuals encompass people of all races, ethnic groups, and ages, and include the working poor, veterans, people with disabilities, and women and children who are victimized by domestic violence.

On April 21, 2009, I joined other presidents of state, territorial, and specialty bar associations across the country and signed the “Presidents’ Letter” requesting that Congress increase Legal Service Corporation (LSC) funding to “close the justice gap in America” and “help thousands of the most vulnerable Americans get access to critical legal assistance in matters where their home, their safety and their independence are at stake.” That same day, I traveled with other State Bar leaders to Washington, D.C., to join bar leaders around the country to urge members of Congress and their staffs to support increased LSC funding for civil legal aid to the poor.

The State Bar of Michigan’s commitment to access to justice is unparalleled. In addition to its annual trip to Washington, D.C., to lobby for increased LSC funding, the State Bar and its partners, the Michigan State Bar Foundation and Michigan legal aid organizations, have raised more than \$9 million in donor pledges, contributions, and planned gifts since the inception of the Access to Justice Fund in 1997, including over \$3.4 million for a permanent endowment, to fund legal services for those who cannot afford

them in civil cases. And Michigan lawyers devote thousands of hours each year without charge to help low-income individuals.

Additionally, the State Bar Justice Initiatives Committee has established statewide strategies for pro bono work, equal access to justice, and resource development. The volunteer lawyers who devote their time to justice initiatives are among the most dedicated leaders in our profession.

The State Bar is grateful to all the lawyers who volunteer their time and money to provide access to justice for all, but the need to support access to justice far outweighs available resources. As stated in the Presidents’ Letter:

Since 2006, one million more Americans now qualify for legal aid; the justice gap has grown and is likely to continue to grow this year as our country struggles to emerge from the current economic crisis. At the same time demand for help has increased, other major sources of funding for legal aid, including state appropriations, private giving and Interest on Lawyer Trust Account resources, are declining or under severe stress.

Lawyers are, and always have been, in the forefront of helping those in need, especially in difficult economic times. If you are too busy to devote your time to pro bono work, please increase your contribution to the Access to Justice Fund. If your practice has been slowed by the economy, please get involved in pro bono work. It will not only keep your skills sharp, but it will be extremely satisfying work. All lawyers have a responsibility to support access to justice, but more importantly, lawyers, because of their special skills, have the privilege and a special opportunity to do good by helping “the most vulnerable Americans get access to critical legal assistance.” ■