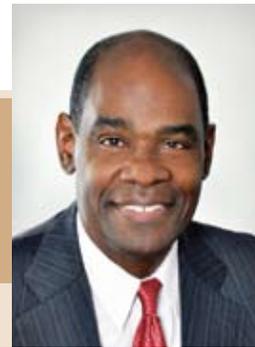


Judicial Crossroads

The Journey Toward Judicial Reform



W. Anthony Jenkins

I want to publicly thank Edward Pappas and Barry Howard for their leadership of the Judicial Crossroads Task Force, and I also want to thank each and every member of the four committees who labored for the past 18 months to produce a thoughtful, sober report on the workplace of lawyers—our court system. The report offers a multitude of recommendations for starting our journey toward a stronger, more responsible, efficient, and accountable court system. I urge all Michigan lawyers to take a keen interest in the report and weigh in on its implementation. I urge our new governor and members of our legislature to do likewise. I know that our new chief justice is doing so.¹

The unveiling of our new governor's proposed budget and accompanying analysis of its measures and import for getting Michigan's fiscal house in order is an opportune time for our government leadership and the Bar to pay closer attention to a multitude of problems that now beset our court system, including the following:

- Local governments are responsible for funding 60 percent of our courts' operating costs. The state's contribution is less than 2 percent of its general fund. With the economic downturn, local governments will face deeper cuts and have greater difficulty funding our court system.
- Nearly 50 percent of indigent persons who qualify for and seek legal aid are turned away because of lack of resources.
- Increasingly, working-class and moderate-income families (many of whom do not speak English as their first language) are representing themselves in court, risking injustice and straining an already overburdened system.

- Our system of public defense continues to be widely regarded as one of the nation's worst.

Notwithstanding these and many other problems, I am optimistic that the report represents a genuine opportunity for improvement. Among the many promising recommendations that appear to be receiving early attention are (1) reshaping and resizing our judiciary, (2) adopting new tools of technology, and (3) creating a business dispute docket.

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Reconfiguring the judiciary is premised upon the use of an objective, respected formula for determining the relative caseload of our various courts and the cost savings that may be achievable.² The importance of drawing the right conclusions from the available data and implementing them wisely cannot be overstated. The significant number of baby boomers among our judiciary and the unprecedented loss of judicial talent and experience we face in the coming decade are undeniable. Preparing for and managing the loss of talent and experience is a major challenge of our time but also presents a unique opportunity to "right size" our judiciary to optimize the delivery of court services with minimum disruption while preserving the high caliber of judicial talent we

presently enjoy. With careful planning, including natural attrition by retirement, death, or ineligibility, the distribution of judgeships can be accomplished with cost savings and without sacrificing the quality of justice or court services.

The changes proposed by the report are not merely about numbers, however. They also include "bottom-up" restructuring of the architecture of our court system and the mechanisms for delivering justice and services. To that end, the report recommends the creation of a judicial council to provide administrative direction for the trial courts, an advisory board to provide leadership and coordinate planning and evaluation efforts, pilot programs for statewide self-help websites and self-help centers for the increasing number of pro se litigants, and other initiatives focused on access and fairness to address perceptions of bias, language barriers, child welfare issues, and indigent defense reforms.

The report offers promising reforms on yet another front: new tools of technology. Central to these proposals is the adoption of a standard technology infrastructure, a uniform statewide case management system, and a centrally managed fund of selected revenue streams to properly pay for new technologies that would be available to all system users. Reform in this area would improve the quality of information available to all users, including the public, and help overcome issues we currently face with our decentralized system, which include some courts operating with technological tools that are not compatible with those being used by other courts.³ The status quo is cumbersome, unnecessarily costly, and a burden for product and service improvements on a system-wide basis.

In short, new technologies offer savings, convenience, and better justice. While rolling

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out a new uniform system and protocols offered by technology is an expensive proposition in terms of dollars and cents, the long-term cost savings, ease of administration, and quality of justice are significant countervailing factors that should not be overlooked.

Finally, an interesting and important insight that appears to be emerging in national discussions about the justice system funding crisis is the critical role that a healthy court system plays in promoting a healthy economy. Faced with devastating budget cuts to its state court system, the State Bar of Georgia commissioned a study, the key findings of which may be relevant for many, if not all, state court systems:

- The court system in Georgia is a key economic development foundation of the state as the efficient disposition of civil, domestic relations, and criminal cases impact Georgia's business and social climates.
- Court delays due to lack of proper funding represent a "dead weight" cost to the economy in terms of lost economic output, labor income, and fiscal revenues. Those delays also adversely impact other nonquantifiable measures of socioeconomic well being.⁴

The Georgia study is noteworthy for Michigan because the two states have similar profiles in terms of population figures, lawyer demographics, and gross state product. The Georgia study estimates that the economic impact of judicial underfunding in Georgia is between \$337 million and \$802 million.

Perhaps as a harbinger of studies to come, the Georgia study recognizes the need to consider the interests of the business community as a part of court reform. In that

regard, the Judicial Crossroads Task Force has recommended the creation, on a pilot basis, of a specialized business docket as a measure to improve the resolution of business litigation and disputes.⁵ The recommendation was made over concerns such as the potential for additional costs and administrative burdens, and the possibility that a business docket would drain resources away from other court users. According to the report, the experiences of business dockets (or business courts) in other jurisdictions do not support such concerns.⁶

Rather, the experience elsewhere indicates that business dockets ease pressure on overcrowded state court systems. That is, removing complex commercial cases from other parts of the courts allows those parts to function more efficiently and reduces the possibility that a few complicated commercial cases displace the time and attention that many other cases pending in those parts can receive. Efficient resolution of disputes by judges experienced in these areas and skilled at handling these cases could go a long way in helping businesses streamline the dispute process and thereby devote additional resources to the production and sale of goods and services.

The challenge of intelligently reforming our court system involves hard work, to be sure, but it is important work and not for the short-winded. To quote Chief Justice Young, upon whose shoulders rests the responsibility for managing our court system in these difficult times:

Changing our workplace environment—like attitudes—requires a great deal of energy and attention and over a long period of time.⁷

While Chief Justice Young's advice was directed at the ongoing challenges of expanding real opportunity within our profession to those who have historically been excluded or marginalized, his comments are equally applicable to the urgent task of court reform.

So I urge you not to stay on the sidelines during this discussion; rather, you should review and weigh in on the report whether your advocacy relates to funding of our court system, allocation of judgeships, new technology tools, the impact on business, or another facet of the proposed reforms. Your input is important in the weeks, months, and years ahead as we start this journey toward an improved court system.

Again, my thanks to the committees for a job well done. ■

I would like to acknowledge and thank SBM Executive Director Janet K. Welch for her contributions to this article.

FOOTNOTES

1. Chief Justice Robert P. Young Jr.: "[The task force] has produced a thoughtful and detailed report that merits serious consideration." Press release from the Michigan Supreme Court <<http://courts.michigan.gov/supremecourt/Press/YoungStatement-01-26-11.pdf>>. All websites cited in this article were accessed February 25, 2011.
2. The application of a weighted caseload methodology is scheduled to be completed in upcoming months.
3. According to the report, 75 percent of existing courts are using the state-based Judicial Information Systems (JIS) and are eager to implement Next Generation JIS when it is ready, while 25 percent of our courts have developed case-management systems in piecemeal fashion over some 22 separate court systems.
4. The Washington Economics Group, Inc., *The Economic Impact on the Georgia Economy of Delays in Georgia's State Courts Due to Recent Reduction in Funding for the Judicial System* <<http://www.gabar.org/public/pdf/news/2011%20Georgia%20Bar%20Economic%20Impacts.pdf>>.
5. The Business Impact Committee of the Judicial Crossroads Task Force was charged with reviewing the ways in which Michigan's court system serves the business community and determining if procedural and/or structural changes would improve the system.
6. For recent business court news and developments in support of this finding, see *Journal of Business & Technology Law*, University of Maryland School of Law at <<http://www.law.umaryland.edu>>.
7. Remarks of Robert P. Young Jr., Minority Corporate Counsel Association Regional Conference, Chicago, Illinois, March 31, 2004.