



PRESIDENT'S PAGE

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Justice at Risk: The Chronic Underfunding of Our Courts

"Penny wise and pound foolish" is the phrase that comes to mind when I consider the years-long underfunding of our local courts. While the concept of keeping a tight rein on the state budget is not a bad idea, it seems incongruous for court funding to remain at austerity levels long after the most recent fiscal crisis ended. The OCBA's mission is "To Enhance the System of Justice, To Support the Lawyers Who Serve It, and To Assist the Community Served By It." Each of these goals is threatened by the severe and chronic underfunding of our courts.

Funding Cuts and Cost Increases

Overall, the Orange County Superior Court has lost about \$16 million in funding over the last five years. At the same time, several pieces of legislation have actually increased the court's expenses. For example, Proposition 66 assigns the responsibility of ruling on habeas petitions to the trial courts, which could require the addition of at least an additional full-time judge to handle the petitions, as well as up to eight legal research attorneys. Proposition 57, which allowed for parole consideration for nonviolent felons, changed policies on juvenile prosecution, and authorized sentence credits for rehabilitation, good behavior, and education, increased the burden on the court. Although the court received some additional funding in this context, it does not pay for the increased workload. Similarly, Proposition 63, which requires court involvement in certain convicted criminals' obligations to relinquish their firearms, places additional burdens on the court. AB 1401, which allows social services to obtain a court order allowing juveniles to stay in social services custody, would require access to a judicial officer every hour of every day. Additionally, the court is required to preserve body-worn camera evidence, in some cases indefinitely, which presents funding challenges to the court. Further, the recent restrictions limiting the use of retired judges has necessitated the hiring of additional court commissioners. Presiding Judge Nakamura states:

Abuses in the Assigned Judges Program led the Chief Justice to implement strict changes to the program that severely limit our ability to use retired assigned judges. The Chief Justice has made it clear that use of assigned judges should not be operationalized and only used as backfill for vacancies and mandatory education. Our guarantee of program hours has been decreased by half, or 150 days a year. That is the equivalent of seven to eight judges. This is the greatest challenge to our court at this time.

Retirement benefits for court employees also present financial challenges to the court. In order to address past funding shortfalls, the court was forced to reduce its headcount by approximately 425 full-time equivalents over the past decade. But today, when the cost of benefits is added to the wages of the 1,475 current court employees, the overall expense is about the same as what it was for 1900 employees in 2008. While we are all fortunate to have such a talented, dedi-

cated, and hardworking staff and management team, the financial reality is that the insufficient funding by the legislature is creating tough trade-offs for the court.

As a result of underfunding, the court faces significant challenges in providing access to justice for our community. For example, the nearly 800,000 residents of southern Orange County do not have access to a nearby courthouse. Most civil cases have no bailiffs or court-provided court reporters. The increasing demands of criminal cases affect the availability of courtrooms for civil cases. On a positive note, the court has received some new funding to improve access and self-help services, which it is implementing this year.

Importance of an Independent, Well-Funded Judiciary

Our country was founded upon the idea of separation of powers among three independent branches of government: executive, legislative, and judicial. When one of those branches does not have the resources necessary to function effectively, the entire construct is threatened. A society based on rule of law is key to stability of the country. Without a smoothly functioning judiciary, our business, familial, and societal disputes can remain unresolved, resulting in a lack of faith in the judicial process by the public. Quite simply, our constitutional form of government requires a strong and independent judiciary with the resources necessary to ensure fair and efficient delivery of justice.

Creation of the OCBA's Court Funding Task Force

There used to be an abundance of attorneys among the members of the California legislature. Recently, there are fewer and fewer lawyers serving in Sacramento. There seems to be a corresponding reduction in the understanding of the critical role of the courts in our society, of the benefits of providing meaningful access to justice to the community, and of the fundamental principle that the judicial branch of government is the third co-equal branch of government.

The OCBA is creating a new task force, led by former OCBA President Ashleigh Aitken, to address the chronic underfunding of the courts. The Court Funding Task Force will seek to bring attention to how the courts provide access to justice for the community and how underfunding is negatively affecting this mission. The task force will also work with the Bench Bar Coalition, which is composed of judges and leaders of local and statewide bar associations and legal services organizations. The task force will assist the Coalition as it fosters communication, performs legislative outreach, and coordinates the activities of the judicial community with the state.

I look forward to the work to be done by this important committee. If you are interested in serving, please email me.



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