

ORANGE COUNTY

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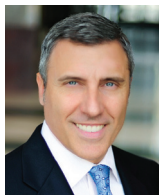
The Orange County Bar Association



OCBA President Wayne R. Gross on the
Court Funding Crisis

Plus:

The Debate on Gun Law Reforms
Crowdfunding via the Internet
Environmental Concerns About
California's Oil



Wayne R. Gross
President's Page

Making Justice a Reality for All

Presiding Judge Thomas Borris, Assistant Presiding Judge Glenda Sanders, and I, among others from the Orange County Bar, recently met in Sacramento to lobby for more funding to the state judicial branch. Sounds odd, doesn't it?

Before preparing for the trip, I did not contemplate that one of my jobs as OCBA President would be to lobby the legislature. But it turns out that it might be the most important task of my tenure. Since the fiscal crisis of 2008, the California judicial branch has experienced cumulative reductions of \$3.5 billion. This phenomenal number is difficult to grasp in the abstract. To understand what this really means requires an understanding of what courts have been forced to do in response to such cuts.

As an initial matter, Presiding Judge Borris and Assistant Presiding Judge Sanders have been masterful at managing this fiscal crisis for the Orange County Superior Courts. For example, Orange County is one of the first state court jurisdictions to have gone "paperless," making the processing of cases far more cost-effective than in the vast majority of other state court jurisdictions. Unfortunately, such steps have delayed but not prevented the courts from having to make increasingly difficult decisions that ultimately undermine access to justice. Orange County residents involved in small claims cases (less than \$10,000) may litigate such cases in various courts across the county. Residents who file such cases are often poor, cannot afford legal representation, and face a dispute that means a great deal to their lives. Until now, they have been able to travel to a courthouse nearest their residence, present their case to a judicial officer, often a commissioner, and receive their day in court. Due to the improper and unwarranted reductions to the judiciary's budget by Sacramento, however, the Orange County Superior Court, in July 2013, will be forced to consolidate all small claims matters in one courthouse, the Newport Beach Harbor Court, to make the administration of such cases more cost-effective. This means that residents who live far from Newport Beach will have to find their way, often using public transportation, to the one remaining courthouse where such cases can be heard. Of course, this assumes there will be commissioners to hear such cases. As I mentioned in my previous President's Page, these same budget cuts have placed the jobs of the vast majority of Orange County commissioners in jeopardy.

As bad as Orange County has it, other jurisdictions have it even worse. As reported by the Open Courts Coalition of California, the following events illustrate the severity of the problem:

- In Los Angeles, a man successfully fought a wrongful eviction with the help of *pro bono* lawyers. He died sleeping outside waiting for the order to be processed.
- In San Diego, a woman filed for a restraining order against her abusive spouse. Unable to get a hearing due to budget cuts, and at risk of physical abuse at home, she slept in her car at the superior court.

- In San Mateo County, due to cuts in staff and service hours, from July to September 2011, more than 100 women were unable to receive timely restraining orders.

These are only three of the countless examples of the decimating effect of court underfunding. Currently, the judicial branch budget represents only one percent of the General Fund—one penny out of each dollar. This is not enough. Indeed, the General Fund share of the judicial branch budget has fallen from fifty-six percent in fiscal year 2008-2009 to only twenty percent in 2012-2013. In a desperate attempt to secure funding from alternative sources, courts have increased fees charged to litigants, effectively creating by necessity a user-fee system that will disproportionately affect the indigent.

The Open Courts Coalition proposes an effective solution to the problem, which includes restoring \$150 million that was reduced from the judicial branch budget in fiscal year 2011-12. Of course,

this means that Sacramento must reverse course and treat the judicial branch as a co-equal branch of government that needs the appropriate amount of funding to provide access to justice to all California residents. The purpose of my recent trip to Sacramento was to convince Orange County-based legislators to advocate for such funding. The good news is that they understand the problem. The bad news is that they, by themselves, lack the power to do what's needed. The governor, as well as numerous legislators, possess such power but, as of yet,

have refused to take action. Accordingly, I will be seeking the support of bar presidents across the state to join the OCBA in conveying to Sacramento that action must be taken.

JFK's administration fostered powerful principles that sought the assistance of the citizenry to tackle the challenges of the era. He believed that positive change first started with an idea. I share that belief and now seek your help. As members of one of the largest voluntary bars in the country, we have the power and the ability to bring about change. We must use that power to ensure that access to justice remains a reality for everyone, including the indigent and vulnerable most in need of our judicial system. To harness such power, I have asked the OCBA to create an email address, ideas@ocbar.org, that will enable you to share your suggestions and offers of assistance. Together, we can make sure that Sacramento does what it must do to make justice a reality for all.



Wayne R. Gross, the 2013 President of the Orange County Bar Association, is a founding partner of Greenberg Gross LLP, where he focuses on trial practice, complex civil litigation, and white collar defense. He previously served as Chief of the Orange County U.S. Attorney's Office and prosecuted cases of national and international significance. His email is wgross@ggtriallaw.com. Follow Wayne on Facebook: www.ocbar.org/PresidentFacebook.

The Budget Crisis Is Real, and Expedited Jury Trials Can Help

by MIKE MAGUIRE

Orange County courts are in trouble, which really means that Orange County residents who seek resolution in our courts are in trouble. Without adequate funding, the court simply cannot handle the caseload it once did. Major reforms are needed, and fast. This past March, the Orange County Chapter of the American Board of Trial Advocates (ABOTA) collaborated with the Superior Court in presenting a free CLE seminar addressing this threat to civil jury trials. More than 160 Orange County attorneys, judges, and court personnel attended the session co-sponsored by the Orange County Trial Lawyers Association (OCTLA), the Association for Business Trial Lawyers, the OCBA Business Litigation Section, and the Association of Southern California Defense Counsel.

The seminar provided a realistic assessment of the court funding crisis and advocated shortened or expedited jury trials as one avenue to bridge the growing chasm between litigants and justice. The goal of the seminar was to get more trial attorneys to understand, consider, and use expedited jury trials (EJTs) as well as other innovations, such as using six or eight-person juries or stipulating to limit issues, witnesses, and lengths of presentation.

Assistant Presiding Judge Glenda Sanders noted that California courts are becoming less funded by the General Fund and increasingly through fees charged to litigants—a disturbing trend that could create different classes of citizens: those who can afford litigation, and those who risk being priced out of access to court. With 92% of the Orange County Superior Courts' budget going to compensation expenses, if the courts suffer additional budget cuts the only feasible way to manage will be in further cuts to court staffing and services.

Mark Robinson, Jr., President of the Orange County Chapter of ABOTA and National President-elect of ABOTA in 2014, showed data from the National Center for State Courts (NCSC) demonstrating that

California leads the nation in the length of civil trials. On average, California civil trials last 8.86 days compared to the national average of 3.6 days. Mark noted that each unnecessary hour of trial presentation was forever lost to other litigants and waiting trials.

Judge Gail Andler pointed out that perhaps your patent litigation requires a week of litigation with extensive questioning

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of experts. But your breach of contract case might actually benefit from a shortened time frame that cuts right to the core issues, appeals to jurors' limited attention spans, and relieves jurors' stress that can result from having to spend several extra days on jury duty. Judge Robert Moss discussed the success of six and eight-person juries, and trial attorneys DawnMarie Favata and Robert Gibson related their EJT experiences, including having sufficient time to present their cases.

Experience demonstrates that shortened trial time does not favor one side or the other. EJTs yield the same percentage of plaintiffs' and defense verdicts and mirror

verdicts in traditionally longer trials. New York, South Carolina, Utah, Florida, Clark County in Nevada, Multnomah County in Oregon, and Phoenix, Arizona already have such programs. Washington, Minnesota, Louisiana, Idaho, New Mexico, and Nevada are all in the process of adopting shortened trial programs. Moreover, you might be required to use EJTs or other trial-shortening methods in the future. The California Judicial Council is looking at many options in the face of this funding crisis, and Texas just adopted mandatory expedited jury trials in all civil cases with damages less than \$100,000.

Now more than ever, we need to use EJTs to best utilize the court's limited and dwindling resources. Aside from the obvious benefits of a shorter, less expensive process, EJTs can help bridge the growing funding gap—but only if trial lawyers opt to use them. EJTs have been available for over two years but are hardly used by attorneys, who might not fully understand the benefits, or may be resistant to change. The more we educate trial attorneys and share our positive experiences with EJTs, the faster we can overcome that resistance and conserve resources. Please join us as we work collectively to keep courtrooms open, protect the right to a civil jury trial, and preserve access to justice.

Try an EJT—you will like it. Or agree to shorten trial presentation or decrease the number of jurors. It will be good for your client and for Orange County.



Mike Maguire is the Managing Attorney of Michael Maguire & Associates, Employees of the Corporate Law Department of State Farm Mutual Automobile Insurance Company in Costa Mesa. Mike is Vice President of the ABOTA Foundation, Past President of the OC ABOTA chapter, and Past President of the Orange County Bar Foundation. He can be reached at mike.maguire.gq57@statefarm.com.

A View from the Bench

Due to the budget cuts to the judicial branch by the governor and the legislature over the past four fiscal years, most of the trial courts across California have reduced services to the public and to the members of the bar. Virtually all trial courts have reduced the operating hours of the clerk's office, laid off civil court reporter staff, laid off court commissioners, and have closed courtrooms and/or court buildings. Travel to the trial courts in California has become an almost insurmountable undertaking for many indigent or disabled members of the public. However, the worst is yet to come, especially for our own courts here in Orange County. Under the upcoming fiscal year state budget proposal by Governor Brown, the Orange County Superior Court will have to dramatically adjust operations to survive a budget deficit of forty million dollars or more beginning on July 1, 2014.

A recent study by the National Center for State Courts revealed that, across the United States, the judicial branch in the other states comprises about 2% of each total state's budget. In California, the judicial branch receives barely 1% of the total state budget. Our court greatly appreciates the support of the Orange County legal community in necessary local operational changes. Yet, every member of the legal community in Orange County and in the state of California must continue to do whatever can be done to persuade the governor and the California legislature to fully fund the judicial branch in order to ensure access to justice for all citizens.



***Honorable Thomas J. Borris**, Presiding Judge, and **Honorable Glenda Sanders**, Assistant Presiding Judge, Superior Court of California, County of Orange.*