

CONCORD MONITOR

Published on *Concord Monitor* (<http://www.concordmonitor.com>)

[Home](#) > Justice delayed

Justice delayed

By *Annmarie Timmins*

Created 08/08/2010 - 00:00

Citizens pay the price for strain on state courts' budgets

Embed multimedia (photos, galleries, audio):

[Cuts in the Court system](#) [1]

[Merrimack County Superior Court furloughs](#) [2]

Marital Master Deborah Kane Rein has 16 divorce or custody cases awaiting resolution at the Concord family court. She knows each is an urgent matter to a family in crisis.

A mom doesn't want her 7-year-old visiting his imprisoned father. A man says his ex-wife is not paying taxes on the home they still own together. A woman is accused of leaving her child with an underage babysitter.

Rein also knows some of those families will wait at least two months before they get her orders because state budget cuts have eliminated the judges and clerical staff needed to move cases faster. What she doesn't know is how long is too long to wait.

"If you don't find a method by which they can work out some of their disputes, (the disputes) are going to get worse," Rein said.

"For some of them, it's the worst time of their entire life."

Judicial officials say stories like this are playing out in courts across the state because continual budget cuts have left the entire court system, from district court on up, perilously understaffed and unable to keep up with the nearly 230,000 cases filed each year.

That's dire, court officials say, given all the ways that the courts touch people's lives, from landlord-tenant disputes, domestic violence cases and divorces to juvenile crime, major business disagreements and murder trials.

"Courts are essential to commerce as well as civility," said Chief Justice John Broderick, who fought budget cuts at the State House this year. "There needs to be access to the courts. There needs to be rules of the road. We need to be capable of giving answers in a timely manner. It is fundamental to who we are as a nation, and either we don't value that anymore or we need to fund it."

Right now, the state is far short of funding it, Broderick and others working in the courts said in recent interviews. In fact, a group of lawyers has begun to talk about suing the state for under-funding the courts; they are meeting later this month to decide how to proceed.

As part of statewide cuts to all branches of government, the Legislature has cut \$10.5 million from the judicial branch's budget in the last four years, said Laura Kiernan, court spokeswoman. The annual judicial budget stands at \$76.1 million for 2010 and \$74.1 million for 2011, according to Kiernan.

As a result of the cuts, the courts have been unable to fill nearly 60 clerical jobs, about 10 percent of the non-judicial staff, or to replace 10 retired judges - five in the district court, four in the superior court and one in the probate court. And gone are the retired judges who were filling in part time because there is no more money to pay them.

In short, that's left far fewer people to handle an increasing number of cases filed each year, court clerks and judges said.

Budget cuts have forced Broderick to close all the state's courts about once a month. More recently, the judicial branch announced it was eliminating about three months of civil jury trials in superior courts and 20 percent of court sessions in district and family courts.

As a result, civil cases are being bumped a year or more to make room for criminal cases, which must be heard by deadlines that ensure speedy trials. That means most civil lawsuits - those brought by patients disputing medical treatment or accident victims seeking compensation, for example - won't reach a jury until next summer at the earliest.

"With civil cases, we are not saying we will never get them scheduled," said Judge Robert Lynn, head of the state's superior courts, which handle the more serious criminal and civil cases. "But it is certainly true that for the next year, it will be rare to get a civil jury trial."

But even giving criminal cases priority isn't protection enough, several defense lawyers said. They predict it won't be long before a dangerous felon is freed because an overlooked court couldn't get to him in time.

The money problems plaguing superior court are also hitting the district courts, the busiest courts in the state, said Judge Edwin Kelly, chief of the district and family courts. District courts, which handle misdemeanor offenses, traffic violations, stalking cases, smaller civil claims and juvenile matters, handle 83 percent of all the cases filed in the state each year, Kelly said.

Criminal cases, landlord-tenant disputes and domestic violence cases are still being heard in a timely way because state law sets strict deadlines in those cases. But a shortage of five judges statewide and fewer court sessions are making it nearly impossible for people to pursue small claims cases, those everyday disputes over car crashes, property damage and unpaid bills.

"The word is spreading quickly," Kelly said. Small claim defendants "are not quite so anxious to come up with the money (they owe) if they know their case won't get into court."

Kelly said the state's courts are the most strapped he's seen in his 20 years as an administrative judge - "and we've seen some tough times."

But so far, there has been no public outcry or objection to the court slowdowns.

Broderick said he wonders if it will take a felon freed on a technicality who then commits a high-profile crime for the public to appreciate what it's losing in a diminished court system. He pointed to the state Constitution, which guarantees a person the right to prompt justice in all matters, not just criminal cases.

"The fear I have is that we are not fulfilling that promise," Broderick said. "It's not a promise that I made or I wrote or even one that I get to vote on. It's in a document from 1784. Every day that passes, I wonder more and more if we are meeting it."

'We are not functioning'

Bill McGraw, clerk of the Merrimack County Superior Court for nearly 20 years, wonders that too, especially now. Last week, McGraw began closing the clerk's office daily at 1 p.m., three hours early, so his staff could catch up on languishing cases.

Other courts in the state, including Concord District Court, have also begun limiting their hours to the public.

People can leave pleadings in a bin outside the Merrimack County clerk's window all day, but afternoon phone calls and visits at the clerk's window are going unanswered.

McGraw said staff reductions - his nine-person office has three vacancies - left him no other choice.

As of July 1, he said nearly 500 criminal and civil files had important mail seeking action on cases that had not been docketed. Some of the mail, which might be a request to suppress evidence or move a hearing date, was five months old. About 150 trial and hearing notices hadn't been mailed. And nearly 350 files, criminal and civil, contained a judge's ruling that had yet to be sent out.

As a result of the backlog, two men were turned away last month when they arrived at Merrimack County jail to begin serving jail sentences. The clerk's office hadn't finished the necessary paperwork, McGraw said. They were told to return to the jail later.

"We cannot do our job," McGraw said. "We are not functioning. (The employees) certainly want to do a good job and they cannot. We've been doing triage for years. Now we are just trying to save a couple of limbs."

Lawyers and the people at the center of civil and criminal cases are feeling the cuts, too.

McGraw recently had to reschedule 18 criminal trials and 137 civil trials because of the court's decision to eliminate three months of jury trials. Some civil cases were rescheduled a month or less out, but it's almost certain the cases will be continued again then, McGraw said.

The cases cover a wide range of issues.

The town of Bow and the owners of a condominium complex have been in court since 2008 over a \$3 million tax assessment dispute. Their June trial date was just moved to the summer of 2011.

A Hooksett couple and a brain-injured Hampton woman have been in court since 2008 trying to resolve a \$120,000 land dispute that's allegedly left the Hampton woman destitute. Their June trial has also been rescheduled to next summer.

The state's most complex civil case, which pits the state attorney general's office against several oil companies accused of groundwater pollution, is pending in Merrimack County Superior Court. It also faces a long delay because the court system cut pay to the retired judges filling in on cases. Judge Peter Fauver, who is handling the groundwater case, has offered to remain on it for free. (A few district court judges have also offered to sit for free occasionally to help out.)

"These cuts have been going on for several years," said Concord attorney Finis Williams, who had a civil case recently rescheduled in Merrimack County. "The court system was on life support and now (the Legislature) is close to extinguishing it."

Rush to judgment

Williams called the cancellation of three months of jury trials "unacceptable."

It took him five years to get another civil case - this one involving a real estate dispute - before a jury in Hillsborough County, partly because of a judge shortage, he said. Williams won a \$150,000 verdict in February after many delays.

Now Williams wonders if civil cases will ever make it to court in the next year or two.

"You can't tell someone they can't go to court to seek a remedy," Williams said. "I don't think the public understands how bad it is."

Attorney Paul Monzione of Wolfeboro said civil clients are being doubly disadvantaged by the elimination of civil jury trials because they have to wait for their day in court, and defendants on the other side are less inclined to settle with no trial scheduled.

Court officials announced in July that jury trials would be scaled back to meet budget reductions. Each county had to cut one-third of their trials. The order didn't specify civil jury trials, but the jury trials are first to go because they do not have mandatory deadlines.

Insurance companies and the businesses fighting civil claims benefit most, Monzione said.

"(Delayed jury trials) deprive the average citizen of something they desperately need," Monzione said. "And they're a windfall for these insurance companies and big corporations. Many of these companies wait for the day of reckoning to take care of these claims, and the day of reckoning is the jury trial."

If that day isn't on the horizon, a decent settlement offer isn't either, Monzione said. And if there is a settlement, it may not be for the better, lawyers said.

Rather than rack up costs waiting for a trial, the parties may strike a settlement with "terms they otherwise wouldn't have" accepted, said attorney Peter Callaghan, who handles employment law cases for the Preti Flaherty law firm in Concord.

Attorney Maureen Manning of Manning & Smith PLLC in Manchester said she's already seen that happen with some of her civil cases.

"My clients have questioned whether they should take an unreasonably low offer from an insurance carrier," Manning said. "I've had clients accept extremely low offers and they say, 'I know it's not enough. But I need the money. I've been unemployed for a year.' "

Manning is still awaiting a trial on a wrongful death case she brought four years ago. She had a trial date last summer, but it was moved because there was no judge available to hear it. The man has been dead five years.

"My clients are shocked," she said. "I think it's a deterrent (to bringing civil cases), which I think means justice is not being done."

But even those cases getting the superior court's time- the criminal cases - are not getting enough of it, lawyers said. A defendant being held in jail pending trial must have that trial within four months, according to state law. If he's free on bail, the court has nine months to schedule a trial.

Defense lawyers are watching those deadlines closely knowing how backed up the courts are.

"It appears to me that we are on the verge of significant problems occurring at the superior court level, without question," said longtime defense attorney Mark Sisti of Chichester. "This issue will become ripe fairly soon in some of these cases, and I think you'll see a reaction from the defense bar."

Concord defense lawyer Ted Barnes foresees the backlog dictating plea negotiations.

"Prosecutors are going to have to start offering pretty sweet deals or face the prospect of the person walking out with nothing," he said. "No sanction whatsoever."

But while prosecutors might not be willing to accept that prospect, judges may not be willing to accept too lenient a deal.

"It may come to the point where a willing prosecutor comes up against an unwilling judge, and the case gets kicked," Barnes said. "There's certainly the possibility in that kind of situation I'd say to my client, 'To hell with it, we're not going to take any deals.' "

Concord District Court

In Concord District Court, new cases are growing steadily, and they include speeding violations and claims for unpaid bills as well as charges for theft, selling drugs and sexual assault.

In 2008, 15,500 cases were filed. That number climbed to 18,000 in 2009 and will likely be 19,000 this year, said Judge Gerard Boyle.

But filed doesn't necessarily mean heard. During the same period, the number of the court's daylong sessions has been cut from 487 to 414, Boyle said.

Once he prioritizes the must-hear criminal matters and involuntary admissions to the state hospital, there's almost no time to take up civil lawsuits, he said.

"We try to do as many as we can, but there's only so many judge days," he said. "We are going to have long delays."

What's getting bumped are the small claims cases - and the follow-up hearings people need when the loser in a case doesn't pay his debt.

The court recently canceled 150 payment hearings for people who have won a small claims case but still aren't being paid, said the court's clerk, Shari Shurtleff. Although 60 of those were rescheduled for mediation, Shurtleff said the court has 400 payment hearings in all that need scheduling.

The court also has 152 civil and small claims cases without dates scheduled for merit hearings, though 49 of those cases have been slated for mediation, Shurtleff said. And 250 motor vehicle cases for offenses like speeding and traffic light violations still have to be scheduled.

Small claims cases recently filed at the Concord court include an electrical contractor who says he's owed \$1,035 for a garage addition job, a woman who says she's owed \$1,616.62 for medical care after a car accident, and a woman who says she was never paid the \$200 she was promised for a weekend of babysitting more than two years ago.

Shurtleff said it's hard to predict when those cases will be heard.

Several factors have led to long waits and insufficient court time, Boyle said.

Boyle is the only full-time judge in a court that used to have three. The clerk's office has also been pared, with two vacant positions in the criminal department "that have not and cannot be filled," Shurtleff said.

Boyle gets help from a part-time judge on Mondays, Tuesdays and certain Wednesdays, which allows the court to schedule both criminal and civil sessions.

The criminal cases take priority, but compounding the problem for hearing civil cases are involuntary admissions to the state hospital. The court must squeeze in hearings within 72 hours of a patient's admission, and those cases are increasing at a rate Boyle calls "incredible" - from 1,400 five years ago to what he predicts will be 2,000 this year.

The admissions hearings happen four afternoons a week at the hospital. In the past, a judge could finish those in time to get back to court and hear civil cases, but with more admissions to handle, Boyle usually doesn't get back until 3:45 p.m. Court closes at 4.

"We can't pay anyone overtime to stay," he said.

When civil cases are heard, emergencies such as stalking cases and eviction proceedings take precedence. That means those who have filed small claims in hopes of recouping a loss will have to wait longer for resolution.

"As a practical matter," Boyle said, "those are the cases that will not be heard."

Family court

A judge must review and sign off on every decision a marital master makes, whether it's a decision to continue a hearing in a divorce or a choice of which parent will have primary custody. Without a full-time family court judge in Concord, that second signature has become harder to find for pressing issues.

Sometimes it means a clerk in Concord must drive a case file to an available judge in the Henniker or Franklin family courts, said LoriAnne Dionne, clerk of the four family courts in the county. Some paperwork can be faxed, she said, but a file that's an inch-thick can't.

The family court hears not only divorces and custody disputes but also domestic violence petitions, guardianship cases and matters where children need emergency services. Many of those are emergency matters that must be heard with a short timeframe established by law. But those who work in the court have come to realize even "non-emergency" cases can be emergencies.

"We have to prioritize cases," said Judge Kelly, who oversees family courts as well as the district courts. "Some people may think that whether someone gets \$50 a week in child support or needs it increased to \$65 isn't a big deal. I have news for you: That's a big deal for a lot of people."

It can be even more difficult in Hooksett, Dionne said, which has a family court judge every other Thursday.

Rein is the only marital master in the Concord family court, which shares a building with the district court. She's on the bench hearing divorce, parenting and custody cases mornings and afternoons. As the marital master on a case, she is responsible for reviewing the case's history and determining the best course for each case, work that keeps her after court and busy one day a weekend.

It then takes the court's small transcription team two or three days to get a written version back to her. Add a few more days for family court Judge Edward Tenney to review and sign it because he's in Concord just three days a week. (He's in Manchester the other two days.)

When Tenney arrives on a Wednesday, for example, there can be 40 cases waiting for him. But even then the decisions aren't on their way to the families needing them.

It takes the clerk's office, which is working with vacancies, another two or three weeks to docket the orders in the case files and mail them out.

It went faster, Rein said, when there was a second family court judge, but budget cuts prevented the court from filling that position. The backlog is stressful for the staff but more so for the families depending on the court, she said.

"What we do is so different here," Rein said. "We are giving families rules to live by at the worst time in their lives. Rules for the kids and the adults. Healthy relationships are the goals, and the answers aren't so easy."

Attorney Honey Hastings of Wilton has been doing family cases for 28 years and encourages her clients to resolve divorces, child support and custody disputes through mediation, outside the courtroom. That way, when they go before a marital master, they are largely resolved.

"The real problem is that it takes so long to get a decision if you have to go to court," Hastings said. "I found it so miserable for the families."

Waiting two months or longer to learn where a child will spend weekends or how much a father will pay toward child support is too long, she said. And it's another long wait if the family has to come back to court because the father isn't paying the support or the child custody isn't being shared.

"I think it will have social implications to have these disputes simmering too long," Hastings said. "I worry about the kids in these cases."

Related content:

Lawyers: Adequately fund courts ^[3]

About 20 years ago, a group of school districts sued the state over what it felt was inadequate educational opportunities. Now a group of civil lawyers is at work on a similar lawsuit, only this one accuses the state of failing to adequately fund the court system. The effort is being led by Concord attorney and former state Supreme Court justice Chuck Douglas. The lawsuit basis, ... [3](#) ^[4]

August 9, 2010

[Politics](#) [Front page](#) [New Hampshire](#) [Publishable](#) [regional authority](#) [Resellable](#) [State](#) [Judiciary](#)
[\(system of justice\)](#) [News Articles](#) [Courts Broke And Behind](#) [Annmarie Timmins](#) [Maddie](#)
[Hanna](#) [Monitor staff](#)

Source URL: <http://www.concordmonitor.com/article/justice-delayed>

Links:

- [1] <http://www.concordmonitor.com/photo/cuts-in-the-court-system-0>
- [2] <http://www.concordmonitor.com/photo/merrimack-county-superior-court-furloughs>
- [3] <http://www.concordmonitor.com/article/lawyers-adequately-fund-courts>
- [4] http://www.concordmonitor.com/article/lawyers-adequately-fund-courts#comment_block