

Rationing Justice

It is a rare occurrence when the President of Consumer Attorneys of California and the President of the California Chamber of Commerce share a unified voice in support of a common goal. The common goal, which has brought these two groups together, is the restoration of court funding. As Chief Justice Tani Cantil-Sakauye has commented, the funding crisis is no longer simply a fiscal problem but a denial of the protections of an American democracy. Indeed, because the role of the judiciary is to serve as a co-equal branch of government, insufficient court funding necessarily leads to a weakening of that branch and a potential power imbalance among the branches of government.

The now chronic underfunding of our court system has led to 51 courthouses closing, which translates to about 205 fewer courtrooms throughout the state. There are 50 new judgeships remaining on hold since 2007, and court construction projects to address potentially unsafe buildings have been placed on indefinite hold. The effect of impacted courtrooms, many of which have upwards of 1,500 cases, continues to delay trials and discovery hearings, as well as increase costs for litigants who must litigate longer and whose discovery disputes must now be resolved by discovery referees. The court staff layoffs and the consolidation of court staff functions appear to be long term. Many of the special court programs intended for those in crisis situations, including those that focus on juvenile dependency and domestic violence, remain closed. We have grown accustomed to the reduced court hours and courts, which no longer provide court reporters.

Business owners involved in disputes lament that they must wait longer to have dispositive motions resolved, which then results in greater expense litigating the case, in addition to uncertainty as to the economic impact on the business. Individuals continue to experience challenges in accessing the courts due to cutbacks in special programs and less court staff to assist in the legal system. It is no wonder that court underfunding has brought both business and consumer advocates to the same side of an issue.

A Three-Year Blueprint

Earlier this year, Chief Justice Cantil-Sakauye released a three-year blueprint to restore and improve access to justice. The blueprint has four core elements. The four core elements are better accessibility to the courts, closing the trial court funding gap, providing critically needed judgeships and modernizing court technology.

Beginning with the last element, which is modernizing court technology, the blueprint supports moving away from the paper-based court system to one which makes full use of technological innovations such as e-filing and the offering of online, rather than in-person services. The benefits of e-filing are abundantly clear based on the several years now that federal courts have been using e-filing and the relatively recent use of e-filing in state courts. Allowing court users to obtain information and services online necessarily ensure greater access to justice.

Next, the blueprint promotes filling the 50 new judgeships, which have been on hold since 2007, but notes that a more accurate number of the additional judgeships needed based on more recent studies is actually 314. The blueprint further notes that trial court judges continue to be overloaded with cases and are expected to do more with fewer resources.

by Raul Cadena, CASD President



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The impact of this has been greatest on courts that have historically had less than adequate resources. The blueprint further notes that state appellate court justices are also feeling the impact of the budget cuts. Division Two of the Fourth Appellate District is in need of two additional appellate court justices due to an increase in the District's workload. The current state of affairs requires many litigants to now travel outside of their districts to have their disputes determined. The goal is to have issues decided locally.

The blueprint addresses closing the trial court funding gap by relying on the Workload Allocation Funding Methodology. This methodology looks at a county's workload and then calculates the county's share of state funds based on the number of case filings. Although this appears to be an equitable method for arriving at appropriate funding levels, the impact on counties such as San Diego remains to be seen, as under this approach

more money would be shifted to Los Angeles County and away from San Diego County.

The blueprint also includes as a priority access to justice. This means keeping all the courts open and operating at locations when and where they are needed by individuals. It also means increasing the ability of court users to conduct branch business online. The blueprint further sets forth the need to provide services to a diverse community of Californians who speak different languages, have different abilities and needs and come from various socio-economic levels.

A Civil Rights Problem


Implementing access to justice is enumerated as the first of the four core elements in the blueprint and is understandably a top priority. The blueprint's vision for implementing access includes a reinvestment in physical, remote and equal access to the court system.

Physical access entails keeping courts open and available to the public when and where needed. The closure of 51 courthouses has resulted in many people having to travel great distances to get to the nearest courthouse. Remote access allows court users greater access to online access. Equal access means providing services that reflect the diversity in our state.

The current barriers to equal access led Chief Justice Cantil-Sakauye to describe the court funding situation as a civil rights problem. There is no doubt that the court underfunding crisis has had a disparate impact on many of the California residents who come from the diverse communities referenced in the blueprint. Those who have limited means, are disabled or come from immigrant communities with limited English proficiency have more greatly felt the impact of the funding crisis.

However, it is noteworthy that many of the diverse Californians ref-

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erenced in the blueprint have had challenges with access long before the court underfunding crisis. In particular, the approximate twenty (20) percent of our state residents who are limited English proficient speakers have historically struggled to vindicate their rights in our court system due to language barriers. With the exception of criminal cases, these residents of our state have had to struggle in navigating the court system without the benefit of language services. For many, if not most, the lack of language services has proved a barrier to entry.

Last year, the US Department of Justice (DOJ) issued its summary regarding an investigation of a complaint alleging that the Superior Court of Los Angeles failed to provide limited English proficient individuals with meaningful access to its court services, which includes civil proceedings and court operations. In the summary, the DOJ noted that these

litigants received interpreting services from family, friends or waiting litigants in other cases. Court judicial officials and staff reported that they allowed family and friends to interpret in order to avoid delays and cost to these litigants. The DOJ found that these and other policies and practices were in violation of the federal civil rights laws.

Notably, California Assemblyman Ed Chau introduced in February of last year Assembly Bill 1127 that would create a task force of language experts to develop a plan for providing language interpreter services. However, Governor Brown vetoed the bill on the ground that the Judicial Council already has authority to establish a pilot project to develop a language access plan for the courts.

The blueprint's implementation of greater access is a recognition of the right to full and fair access for all. It is particularly encouraging that as the state's economic condi-

tion improves, the blueprint prioritizes providing services to a diverse community of Californians. Although the court underfunding has focused our attention on simply maintaining the basic court services and restoring those services which were taken away, it is incumbent upon us to ensure that all Californians have full and fair access to justice at all times. Anything less results in the denial of the protections of an American democracy. **TBN**

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