# NEW YORK STATE BAR ASSOCIATION



NYSBA

Report of the Executive Committee on the Impact of Recent Budget Cuts in New York State Court Funding

January 2012



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### **FOREWORD**

The majestic courthouses of the United States Supreme Court and the New York State Court of Appeals serve as visual symbols of the court system. Massive stone structures prominently featuring stepped and columned entrances, the buildings embody ideals of authority, stability, and accessibility. They were designed to inspire in the public a deep sense of confidence.

Architects are not alone in recognizing the importance of confidence in our court system. Judges and lawyers recognize it as well. For example, Warren Burger, former Chief Justice of the United States, stated:

A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law – in the larger sense – cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets.\*

This cautionary message carries particular relevance in these difficult economic times for New York State government. All levels and branches of government struggle to continue to operate under increasing budgetary constraints. For the courts, continuing to operate is not sufficient. As expressed by Chief Justice Burger, the health of our ordered society depends on the public's continued confidence in the courts. The courts only earn and retain that confidence as long as they demonstrate their ability to do the following: be efficient and expedient; do justice to all, including the disadvantaged; and protect and serve the public.

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<sup>\*</sup> Warren E. Burger, "What's Wrong With the Courts: The Chief Justice Speaks Out," *U.S. News & World Report* (Vol. 69, No. 8, Aug. 24, 1970) 68, 71 (address to American Bar Association meeting, Aug. 10, 1970) (*available at* http://en.wikipedia.org/wiki/Justice\_delayed\_is\_justice\_denied (last visited Jan. 10, 2012)).

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### I. EXECUTIVE SUMMARY

Although courthouse architecture historically has inspired confidence in our court system, adequate funding is essential at the present time to rebuild an eroded sense of public confidence.

The impact of reductions in funding for New York State courts during the 2011-2012 year has been substantially harmful and far-reaching.

First, the courts are less efficient, and judicial decisionmaking is less expedient. Limited courthouse hours have slowed down the administration of justice for both routine and urgent matters. Moreover, reductions in staff have overwhelmed remaining staff members and contributed to delays and reduced responsiveness to the public.

Second, the need to provide justice to all, particularly to the disadvantaged – though greater than ever in this economic downturn – is not being met. Self-represented litigants have less access to administrative support and library resources, reducing their chances of success and slowing down the litigation process for all parties. Similarly, litigants who could benefit from pro bono assistance have less of a chance to obtain it, due to the loss of funding for pro bono coordinators.

Third, the courts' ability to protect and serve the public has been negatively impacted. Reductions in jury system resources have resulted in reduced jury pools and strains on jurors, limitations on attorneys' ability to pick juries, and further delays. In the meantime, litigants' costs have risen due to increased delays, both in terms of attorneys' fees and expert witness fees.

In all of these ways, recent reductions in state court funding have been quite costly. Although state fiscal constraints are very real in this economy, additional and imminent investment in the state court system is necessary. It is necessary to restore a sense of confidence in the judicial system, which ultimately is priceless.

### II. BACKGROUND

The past year has been challenging with respect to funding for the New York State Judiciary. In light of these challenges, the New York State Bar Association ("NYSBA") has stepped forward to evaluate the effect of reductions in the Judiciary's budget on court operations and assist with related advocacy.

## A. Reduction in Court Funding for 2011-2012

In early 2011, New York's executive and legislative branches adopted a budget for 2011-2012 that included a \$170 million reduction in the Judiciary's proposed budget. The Judiciary's proposed budget of \$2.4 billion<sup>2</sup> for 2011-2012 followed relatively flat requests in prior years.<sup>3</sup>

## 1. Initial Reactions by Judiciary and NYSBA Leaders

Chief Judge Jonathan Lippman reacted to the \$170 million reduction by stating, "It will have a tremendous impact on the system. At a minimum, [we are] going to see delays in the administration of justice, without question." Characterizing the effect of the cuts as "painful," he predicted program reductions and hundreds of layoffs, on top of a planned hiring freeze. Chief Judge Lippman stated, however, that the Judiciary would endeavor to keep courthouses open.

Stephen P. Younger, former NYSBA President, expressed disappointment in the reductions and hope that the cuts would not result in courtroom closings.<sup>10</sup> President Younger stated, "We hope this [budget agreement] does not deprive any New Yorkers of access to our justice system."<sup>11</sup>

<sup>&</sup>lt;sup>1</sup> Legislature and Judiciary Budget, Laws of New York, 2011, ch. 51 § 2801-A (2011); *N.Y. Judiciary Faces Another* \$70 *Million Budget Cut*, WALL St. J., Mar. 28, 2011.

<sup>&</sup>lt;sup>2</sup> Judiciary 2011-2012 Budget Request Executive Summary at xii, xxii (http://www.nycourts.gov/admin/financialops/BGT11-12/BudSection1.pdf, last visited Sept. 13, 2011). The Judiciary requested \$2.4 billion from the state's "general fund." The general fund number is comprised of the following: (1) operations and aid to localities funding; and (2) general state charges. The Judiciary requested \$2.7 billion from "all funds." The \$2.7 billion amount includes the \$2.4 billion general fund amount and funding from other sources, such as the federal government. *Id.* 

<sup>&</sup>lt;sup>3</sup> The Judiciary requested amounts from the General Fund State Operations and Aid to Localities for the following: (1) 2008-2009 fiscal year -- \$2.27 billion; (2) 2009-2010 fiscal year -- \$2.27 billion; and (3) 2010-2011 fiscal year -- \$2.44 billion. Joel Stashenko, *Budget Request Would Fund Salary Boost*, N.Y.L.J., Dec. 3, 2007; Joel Stashenko, *Paterson Praises Courts' Budget, Passes on Judges' Raise*, N.Y.L.J., Dec. 17, 2008; Joel Stashenko, *Judiciary Budget Projects Rise in Spending*, N.Y.L.J., Dec. 3, 2009.

<sup>&</sup>lt;sup>4</sup> Thomas Kaplan, *Chief Judge Says Deal Will Require Hundreds of Layoffs in Court System*, N.Y. TIMES, Mar. 28, 2011, at A28.

<sup>&</sup>lt;sup>5</sup>N.Y. Judiciary Faces Another \$70 Million Budget Cut, WALL St. J., Mar. 28, 2011.

<sup>&</sup>lt;sup>6</sup> *Id*.

<sup>&</sup>lt;sup>7</sup> Joel Stashenko, OCA Contacts Unions on Feasibility of Furloughs, N.Y.L.J., Mar. 30, 2011.

<sup>&</sup>lt;sup>8</sup> N.Y. Judiciary Faces Another \$70 Million Budget Cut, WALL St. J., Mar. 28, 2011.

<sup>&</sup>lt;sup>9</sup> *Id*.

<sup>&</sup>lt;sup>10</sup> *Id*.

<sup>&</sup>lt;sup>11</sup> N.Y.S. Bar Assoc., News Release, *Statement on Budget Agreement* (Mar. 28, 2011).

## 2. Statewide Budgetary Negotiations

The cuts to the Judiciary budget were part of a broader agreement between the executive and legislative branches to reduce spending, close a budget deficit, and avoid raising taxes. <sup>12</sup> The leaders announced their \$132.5 billion spending plan after a weeklong series of meetings leading up to a state budgetary deadline.<sup>13</sup> The Judiciary did not have a seat at the bargaining table.<sup>14</sup>

The \$170 million reduction was necessary, according to a gubernatorial spokesman, so that the Judiciary would "shoulder 'a more proportionate share of the state's reductions." <sup>15</sup>

The final deal "restored about \$480 million that the governor proposed two months [earlier] to cut from areas like education and human services. But the budget's total spending increased by only \$250 million, thanks in large part to [the \$170 million cut]."<sup>16</sup>

## 3. NYSBA's Support for the Proposed 2011-2012 Budget

During the budgetary process, NYSBA advocated for the Judiciary's proposed budget. In February 2011, NYSBA President Stephen Younger testified at a legislative budget hearing on behalf of NYSBA and in support of the Judiciary. President Younger stated as follows:

Year in and year out, New York's courts adjudicate millions of disputes, both great and small, and guarantee a "day in court" to all people, including the weak, the poor, and the unpopular. New York's courts are crucial to maintaining an orderly society.

The Judiciary is the third, co-equal branch of our state's government. And, the Judiciary is comprised of relatively few judges, given the caseloads that confront them. Yet, on a daily basis, New York's judges resolve a substantial number of cases equitably and efficiently. Similarly, our court administrators face significant challenges, given the size of the court system and the number of courts they oversee. They are able to address the issues facing our court system, and do so admirably, utilizing the limited resources available to them.

New York's Unified Court System is recognized as one of the largest and busiest court systems, not only in the United States, but in the world.

<sup>&</sup>lt;sup>12</sup> At \$132.5 Billion, It's a Deal: Budget Plan Closes Deficit With No Tax Increase, TIMES UNION, Mar. 28, 2011, at

<sup>&</sup>lt;sup>13</sup> Joel Stashenko & Daniel Wise, "Hundreds" of Layoffs Loom as Judiciary Prepares to Slash Another \$70 Million, N.Y.L.J., Mar. 29, 2011.

<sup>&</sup>lt;sup>14</sup> Thomas Kaplan, Chief Judge Says Deal Will Require Hundreds of Layoffs in Court System, N.Y. TIMES, Mar. 28, 2011, at A28.

<sup>&</sup>lt;sup>15</sup> *Id.* (quoting Josh Vlasto).

<sup>&</sup>lt;sup>16</sup> *Id*.

We agree with the assessment that "in the current economic recession, as never before, the New York State courts have become an emergency room for New Yorkers in crisis." The Judiciary's budget request reflects a balancing between the constitutional duty to ensure access to justice for all New Yorkers and the obligation to reduce costs wherever possible.<sup>17</sup>

During his testimony, President Younger pointed to statistics in the Judiciary's budget proposal that illustrated the need for appropriate funding:

- The total caseload of the courts statewide has risen sharply, growing by 12 percent since 2001;
- Foreclosure filings continue to increase, with 50,000 filings in 2010, more than double the number in 2005. . . . [T]he courts have held more than 90,000 settlement conferences in foreclosure cases in 2010;
- Family offense cases are up 32 percent over 2006 levels;
- The caseload in the New York City Civil Court has increased 92 percent since 2001, and the civil caseload of city courts outside New York City has increased by 99 percent during the same period. Much of this growth is due to consumer debt cases; and,
- New York City arrest cases are up, with filings up 19 percent over 2005 levels. 18

Ultimately, President Younger asked the Legislature to provide "adequate funding to sustain the essential functions of the courts."19

## 4. Judicial Reaction in the Aftermath

One year later, Chief Administrative Judge Ann Pfau made some observations about the impact of the cuts in the Judiciary's budget. She stated, "We know [the cuts are] having an impact. If you have a case that was going to take three days to try, now it will probably take four days. A case that would have gone a week is probably a week and a half. Trials are taking longer. People are waiting longer to get to trial, and there are fewer trials."<sup>20</sup> Chief Administrative Judge Pfau acknowledged that a daily courthouse shutdown at 4:30 (to avoid personnel overtime charges) and other reactive measures have changed the practice of law in New York state courts. She stated.

Lawyers tell me often that [these measures are] making them re-think how they present their cases and what they do with their cases. It used to be if you were on trial and you had your witness and they were ready to go at 4 o'clock, you went at

<sup>18</sup> *Id*. <sup>19</sup> *Id*.

<sup>&</sup>lt;sup>17</sup> 2011-2012 Joint Budget Hearing: Public Protection Before the N.Y. St. Assembly Joint Fiscal Comm., Feb. 9, 2011 (testimony of Stephen P. Younger, President, N.Y. St. Bar Assoc.).

<sup>&</sup>lt;sup>20</sup> John Caher & Andrew Keshner, Deep Overtime Cuts Bring Delay, Rethinking of Case Presentation, N.Y.L.J., Nov. 28, 2011.

4 o'clock. Now they have to plan out the trial. It is having an impact on how many trials there are and how long trials are taking.<sup>21</sup>

## B. Proposed Court Budget for 2012-2013

In December 2011, the Judiciary submitted a proposed 2012-2013 budget for \$2.3 billion.<sup>22</sup> Chief Judge Lippman characterized the proposed budget as an effort to "round out the edges and ease the impact on the public of the budget cuts" of 2011-2012.<sup>23</sup>

Chief Administrative Judge Pfau stated,

The Judiciary is able to present this negative-growth budget, despite increased costs, as a result of an ongoing reassessment of court operations and a rigorous cost-cutting program, including the continued reduction of the non-judicial workforce, which has already been downsized by more than eight percent.

The proposed budget reflects a careful balancing of the Judiciary's obligation to work with the other branches in addressing the State's continuing fiscal crisis, while also ensuring that the courts can meet their constitutional duty to provide fair and timely justice for every New Yorker.<sup>24</sup>

The proposed budget is "austere" 25 according to the accompanying executive summary. "The budget provides the *minimum funds* the Judiciary needs; any further reduction would seriously jeopardize the ability of the courts to fulfill their core mission."<sup>26</sup>

## C. NYSBA's Support for the Proposed 2012-2013 Budget

NYSBA President Vincent E. Doyle III issued a statement in support of the 2012-2013 judicial budget. He stated as follows:

<sup>&</sup>lt;sup>22</sup> Ann Pfau, Cover Letter to Executive and Legislative Branch Leaders, Nov. 30, 2011, included in The New York State Unified Court System Budget, Fiscal Year: April 1, 2012-March 31, 2013 (Nov. 30, 2011) (http://www.nycourts.gov/admin/financialops/Budgets.shtml, last visited Dec. 20, 2011). The Judiciary requested \$2.3 billion from the state's "general fund." The general fund number is comprised of the following: (1) operations and aid to localities funding; and (2) general state charges. The Judiciary requested \$2.5 billion from "all funds." The \$2.5 billion amount includes the \$2.3 billion general fund amount and funding from other sources, such as the federal government. The New York State Unified Court System Budget, Fiscal Year: April 1, 2012-March 31, 2013 at Bill Copy 1, Bill Copy 10 (Nov. 30, 2011) (http://www.nycourts.gov/admin/financialops/Budgets.shtml, last visited Dec. 20, 2011).

<sup>&</sup>lt;sup>23</sup> John Caher, Judiciary Submits Negative-Growth Budget, N.Y.L.J., Dec. 1, 2011.

<sup>&</sup>lt;sup>24</sup> Ann Pfau, Cover Letter to Executive and Legislative Branch Leaders, Nov. 30, 2011 (emphasis added), included in The New York State Unified Court System Budget, Fiscal Year: April 1, 2012 – March 31, 2013 (Nov. 30, 2011) (http://www.nycourts.gov/admin/financialops/Budgets.shtml, last visited Dec. 20, 2011). <sup>25</sup> Judiciary 2012-2013 Budget Request Executive Summary at ii, *included in* The New York State Unified Court

System Budget, Fiscal Year: April 1, 2012 – March 31, 2013 (Nov. 30, 2011) (http://www.nycourts.gov/admin/financialops/Budgets.shtml, last visited Dec. 20, 2011). <sup>26</sup> *Id.* (emphasis added).

The court system has struggled during the past year. It has incurred significant budget cuts, employee layoffs[,] and reductions in court operations. Despite the fiscal constraints, its doors must remain open to everyone seeking its services.

The court system has submitted a *bare-bones request*, recognizing that, in hard economic times, the Judiciary, like the other two branches of government, is called upon to strike a balance between its needs and fiscal reality.

While a case might be made for additional funding, we urge the Legislature to approve this request in its entirety so that the Judiciary can maintain its basic operations.

We are pleased that the budget seeks \$25 million for civil legal services and \$15 million to rescue the Interest on Lawyer Account Fund, two programs that are vitally needed in the current economic climate.

Every day, New York courts resolve criminal cases, business disputes, family matters[,] and other pressing legal concerns. In doing so, they perform an essential function to a free and stable society. The New York State Bar Association has long advocated for adequate funding for the Judiciary.<sup>27</sup>

NYSBA will continue to advocate for adequate court funding during the current budget cycle, and in future budget cycles as well.

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<sup>&</sup>lt;sup>27</sup> N.Y.S. Bar Assoc., News Release, *Proposed 2012-13 Budget for the Judiciary Statement: Statement by State Bar President Vincent E. Doyle III*, (Dec. 1, 2011) (emphasis added).

## III. METHODOLOGY

The NYSBA Executive Committee conducted a study of how the courts in each area of the state are coping with the \$170 million in decreased funding. The goal was to create a "snapshot" of the impact of the budgetary cuts.

Toward that end, the committee prepared a detailed questionnaire with suggested topics for respondents' consideration. The questionnaire covered topics including the following:

- Changes in the experiences of litigants and other members of the public
- Changes in the experiences of judges, courthouse staff, and attorneys
- Particular needs of respondents that currently are unfunded

NYSBA vice presidents reached out with the questionnaire to stakeholders in their judicial districts, including administrative judges, trial judges, local bar associations, and practitioners.

President Vincent Doyle also asked leaders of NYSBA's twenty-five substantive law sections to reach out to their thousands of members for information. Section leaders forwarded the questionnaire to their executive committees and/or entire memberships.

NYSBA additionally issued the questionnaire to the 297 members of the House of Delegates. House members include representatives from all judicial districts throughout the state and from many local bar associations.

During the survey process, the committee collected numerous written responses and conducted numerous interviews. NYSBA vice presidents analyzed the information in their judicial districts and prepared summary reports.

The following analysis is based on the vice presidents' reports, which are attached as appendices to this report.

## IV. STATEWIDE IMPACT ON COURT FUNCTION

When the New York Court of Appeals building was dedicated almost a century ago, former Governor Charles Whitman stated:

From now on and judging from the splendid character of the building itself, we trust for centuries it is to be devoted to a purpose, the noblest purpose to which a building or a life can be devoted, the administration of justice.<sup>28</sup>

Today, the administration of justice continues in the New York Court of Appeals building and in courthouses across the state. Judges, lawyers, and courthouse staff are devoted to upholding our laws and serving the public. They share the "noblest purpose" of ensuring that justice is done.

The dispensation of that justice – like the construction of a courthouse -- is hardly free. There are substantial costs to operating the judicial system – from running courtrooms to preserving precedents. These costs are borne by the public, which wants in return a sense of confidence in our court system. However, adequate funding is necessary to ensure that "essential" sense of confidence.

Last year's budget allocation to the Judiciary was \$170 million *less* than what was requested by the Office of Court Administration for 2011-2012.

What has been the resulting impact? The NYSBA Executive Committee focused on this important question over several months, gathering information throughout the state. The following is an overview of the committee's findings, based on vice-presidential reports about the state's thirteen judicial districts.

The findings are organized in terms of the three concepts identified by Chief Justice Warren Burger as essential for a sense of confidence in the courts: (1) efficiency and expediency; (2) equity, particularly to the disadvantaged; and (3) protection of and service to the public.<sup>31</sup>

## A. Efficiency and Expediency

First, the committee looked at the impact of recent cutbacks in funding on the efficiency and expediency of the courts. Efficiency and expediency are necessary to maximize judicial resources and the effect of judicial decisionmaking. They are necessary to avoid "drain[ing] even a just judgment of its value."

<sup>&</sup>lt;sup>28</sup> Court of Appeals of the State of New York, "Restoration and Renovation: 1842-2004," 4 (Jan. 2004) (*available at* http://www.courts.state.ny.us/ctapps/news/1230LB.pdf (last visited Jan. 8, 2011)).
<sup>29</sup> *Id.* 

<sup>&</sup>lt;sup>30</sup> Warren E. Burger, "What's Wrong With the Courts: The Chief Justice Speaks Out," *U.S. News & World Report* (Vol. 69, No. 8, Aug. 24, 1970) 68, 71 (address to American Bar Association meeting, Aug. 10, 1970) (*available at* http://en.wikipedia.org/wiki/Justice\_delayed\_is\_justice\_denied (last visited Jan. 10, 2012)).

<sup>&</sup>lt;sup>32</sup> *Id*.

The value of these concepts to our survey respondents is clear. The general consensus is that efficiency and expediency are adversely affected by limited courthouse access and reductions in staff.

### 1. Limited Courthouse Access

Limiting courthouse access as a cost-saving measure has had some unintended consequences. Courthouse hours have been shortened to reduce operating costs, including overtime and security expense.<sup>33</sup> The doors open later in the morning, close for a designated hour at lunchtime, and close earlier in the afternoon.<sup>34</sup> All court business typically must conclude by 4:30 p.m. in courthouses around the state.<sup>35</sup> Consequently, less judicial business and other courthouse business can be conducted each day -- as much as one month less per year.<sup>36</sup> This has led to delays in the administration of justice,<sup>37</sup> increased costs to litigants,<sup>38</sup> and the crowding of court dockets.<sup>39</sup>

## a. Judicial Business

Shorter daily business hours have led to delays in the resolution of disputes because extra court days are needed. 40 Cases can take longer to resolve, 41 court calendars have become more clogged, 42 and trials are taking longer to complete. 43 Judges no longer have time during luncheon recesses and at the end of court days to meet with attorneys about litigation issues and settlements because the courthouses must be vacated.<sup>44</sup> These delays are a "hardship" to attorneys, litigants, jurors, and witnesses.<sup>45</sup> Moreover, the increased time to handle matters has a negative impact upon the public's perception of the courts. It results in less accessibility, loss of respect, and diminished power.<sup>46</sup>

Due to delays, some emergencies must wait (in addition to more routine matters).<sup>47</sup> For example, family court and domestic violence disputes that occur outside of a court's "budgeted

<sup>36</sup> 6<sup>th</sup> J.D. App. F1.

not start until thirty minutes after the official start time due to the need to prevent overtime charges (e.g., allowing for travel of shared stenographers from "home court" jurisdictions, and building in time for security officers to arrive at the courthouses and be ready to enter the courtrooms at official start times). 4<sup>th</sup> J.D. App. D1.

<sup>&</sup>lt;sup>35</sup> 1<sup>st</sup> J.D. App. A2; 2<sup>nd</sup> J.D. App. B1; 3<sup>rd</sup> J.D. App. C1; 4<sup>th</sup> J.D. App. D1; 7<sup>th</sup> J.D. App. G1; 8<sup>th</sup> J.D. App. H1; 9<sup>th</sup> J.D. App. I1; 10<sup>th</sup> J.D. App. J1; 11<sup>th</sup> J.D. App. K1; 12<sup>th</sup> J.D. App. L1; 13<sup>th</sup> J.D. App. M1.

<sup>&</sup>lt;sup>37</sup> 11<sup>th</sup> J.D. App. K1, K3.

<sup>&</sup>lt;sup>38</sup> 2<sup>nd</sup> J.D. App. B2; 9<sup>th</sup> J.D. App. I1.

<sup>&</sup>lt;sup>39</sup> 1<sup>st</sup> J.D. App. A1.

<sup>&</sup>lt;sup>40</sup> 5<sup>th</sup> J.D. App E2; 6<sup>th</sup> J.D. App. F; 10<sup>th</sup> J.D. App. J1.

<sup>&</sup>lt;sup>41</sup> 8<sup>th</sup> J.D. App. H2; 10<sup>th</sup> J.D. App. J1.

<sup>&</sup>lt;sup>42</sup> 8<sup>th</sup> J.D. App. H2.

<sup>&</sup>lt;sup>43</sup> 2<sup>nd</sup> J.D. App B1; 11<sup>th</sup> J.D. App. K1; 13<sup>th</sup> J.D. App. M1, M2.

<sup>&</sup>lt;sup>44</sup> 11<sup>th</sup> J.D. App. K1.

<sup>&</sup>lt;sup>45</sup> 3<sup>rd</sup> J.D. App. C1.

<sup>&</sup>lt;sup>46</sup> 4<sup>th</sup> J.D. App. D3.

<sup>&</sup>lt;sup>47</sup> 9<sup>th</sup> J.D. App. I4, I5.

hours" may have to wait until the next business day. 48 Some must wait even longer. In one divorce case involving a woman who was facing possible eviction from her home, oral arguments in an emergency application for support were adjourned twice because of the shortened court day. 49 As one vice-president stated, "Family issues do not lend themselves to waiting, and the frustration and anger that develop can be insurmountable by the time the first appearance arrives." 50

In criminal matters, the impact on defendants is significant because the delays can lead to longer incarcerations pending disposition. The defendants consequently are away from their families and jobs longer. They are less able to care for their dependents, both in terms of time and money. There also has been an increase in some areas of the state in the arrest-to-arraignment time, resulting in longer incarceration periods before defendants' first appearances in court. Same

Civil litigants may find themselves in "holding pattern[s]"<sup>54</sup> or "limbo"<sup>55</sup> due to the delays. For example, it is taking months for divorce judgments to be signed, even in uncontested matters where no children are involved. Many litigants believe that their cases are not timely reached, and this causes their experience with the court system to be negative. Business people, in particular, believe that judges are insensitive to the prompt timing and efficiency which is part of the daily business world. Moreover, the impact on personal injury litigants can be substantial, as some can be reduced to poverty awaiting adjudications relating to lost wages and damages. In addition, lower-income litigants in small claims court (sometimes referred to as the "people's court") are "virtually exclude[d]" from the judicial process in situations where cases are being adjourned for a year at a time. In one small claims case involving a \$1,000 claim, the matter was converted after nineteen months to a civil case with attorneys on both sides. Another effect of the delays is that increased litigation may result as parties press harder for relief, which can further clog court calendars and perpetuate delays.

## **b.** Other Courthouse Business

In addition to the effect of delays on judicial decisionmaking, reduced courthouse hours have adversely impacted other courthouse business as well. For example, jury deliberations can be halted for the day when it is time for the doors to close, even if the jurors are near a decision.<sup>63</sup>

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<sup>48</sup> 8<sup>th</sup> J.D. App. H2.
<sup>49</sup> 11<sup>th</sup> J.D. App. K2.
<sup>50</sup> 4<sup>th</sup> J.D. App. D3.
<sup>51</sup> 4<sup>th</sup> J.D. App. D3; 6<sup>th</sup> J.D. App. F1.
<sup>52</sup> 4<sup>th</sup> J.D. App. D3; 11<sup>th</sup> J.D. App. K2.
<sup>53</sup> 11<sup>th</sup> J.D. App. K1; 13<sup>th</sup> J.D. App. M2.
<sup>54</sup> 4<sup>th</sup> J.D. App. D3.
<sup>55</sup> 8<sup>th</sup> J.D. App. H2, H5; 9<sup>th</sup> J.D. App. I4.
<sup>56</sup> 11<sup>th</sup> J.D. App. K2.
<sup>57</sup> 3<sup>rd</sup> J.D. App. C2.
<sup>58</sup> 3rd J.D. App. C2.
<sup>59</sup> 3rd J.D. App. C2.
<sup>60</sup> 2<sup>nd</sup> J.D. App. B1.
<sup>61</sup> 11<sup>th</sup> J.D. App. K2.
62 10<sup>th</sup> J.D. App. J2.
<sup>63</sup> 3<sup>rd</sup> J.D. App. C1-C2; 9<sup>th</sup> J.D. App. I3.
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Similarly, settlement discussions may be cut short, even if the negotiators are near a resolution.<sup>64</sup> During lunch and after court sessions have ended, lawyers on trial are unable to stay in the courthouse to work.<sup>65</sup> Limited hours also disrupt depositions taking place at the courthouse.<sup>66</sup> Access to courtroom libraries has been reduced.<sup>67</sup> Finally, educational and trial practice programs that traditionally have taken place in courthouses as a public service are now limited.<sup>68</sup>

## 2. Reductions in Staff

The confluence of a loss of experienced staff due to an early retirement incentive program and the budget cuts that followed shortly thereafter has led to significant reductions in staff.<sup>69</sup> These reductions have been detrimental to the staff who remain in service, the operation of the courts, and service to the public.

Now, fewer staff are doing the same amount of work. <sup>70</sup> In courts where there have been increased filings, fewer staff are doing *more* work. <sup>71</sup> The departure of experienced, knowledgeable staff has placed a strain on those who must now grapple with new responsibilities. <sup>72</sup> As a result, some staff have experienced increased stress <sup>73</sup> and decreased morale. <sup>74</sup>

Reductions in staff have caused delays in courthouse operations.<sup>75</sup> Something as simple as getting into the courthouse takes much longer than in the past due to fewer security personnel,<sup>76</sup> and long lines form that can make a litigant miss a calendar call.<sup>77</sup> The filing and processing of petitions, motions, and other court filings have been slowed.<sup>78</sup> For example, in one clerk's office, there is a data-entry backlog involving approximately ten thousand replies to juror eligibility questionnaires.<sup>79</sup> More than one judicial district has experienced weeks of delay in the entry of judgments, even in cases that are filed electronically.<sup>80</sup>

These changes have not gone unnoticed by the public; they have negatively impacted the public's perception of the courts. For example, some now perceive that the court system is less responsive to the public, to witnesses, and to crime victims due to the lack of available staff who

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64 1st J.D. App. A3; 3<sup>rd</sup> J.D. App. C1; 8<sup>th</sup> J.D. App. H1.
65 1st J.D. App. A3; 3<sup>rd</sup> J.D. App. C1; 6<sup>th</sup> J.D. App. F1; 9<sup>th</sup> J.D. App. I3.
66 3<sup>rd</sup> J.D. App. C1.
67 6<sup>th</sup> J.D. App. F1.
68 1st J.D. App. A1; 3<sup>rd</sup> J.D. App. C2.
69 1st J.D. App. A1, A2.
70 6<sup>th</sup> J.D. App. F1; 7<sup>th</sup> J.D. App. G1; 11<sup>th</sup> J.D. App. K2.
71 1st J.D. App. A2; 4<sup>th</sup> J.D. App. D2; 8<sup>th</sup> J.D. App. H5; 9<sup>th</sup> J.D. App. I4.
72 1st J.D. App. A1; 2<sup>nd</sup> J.D. App. B1; 8<sup>th</sup> J.D. App. H5; 9<sup>th</sup> J.D. App. I1, I2; 11<sup>th</sup> J.D. App. K2.
73 2<sup>nd</sup> J.D. App. B1; 7<sup>th</sup> J.D. App. G1.
74 2<sup>nd</sup> J.D. App. B1; 6<sup>th</sup> J.D. App. F1; 7<sup>th</sup> J.D. App. G1; 8<sup>th</sup> J.D. App. H5; 9<sup>th</sup> J.D. App. I1.
75 8<sup>th</sup> J.D. App. H2; 10<sup>th</sup> J.D. App. J1.
76 1st J.D. App. A1; 9<sup>th</sup> J.D. App. I1, I2, I3; 11<sup>th</sup> J.D. App. K3.
78 1st J.D. App. A1; 11<sup>th</sup> J.D. App. K3.
80 1st J.D. App. K3.
81 1st J.D. App. K3.
81 1st J.D. App. A1; 11<sup>th</sup> J.D. App. K3.
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can interact with them.<sup>81</sup> As one NYSBA vice-president put it, "[t]he public . . . must be confident that justice is being served in a dignified, professional, and competent manner."<sup>82</sup> That perception is harmed when staff resources are limited.<sup>83</sup>

## a. Judicial Hearing Officers and Other Personnel

A reduction in the number of judicial hearing officers<sup>84</sup> and other personnel has added to others' busy caseloads and caused delays in the administration of justice.

Judicial hearing officers (many or most of whom are retired judges)<sup>85</sup> assist sitting judges in a variety of ways. For example, they settle cases and preside over hearings and trials.<sup>86</sup> They are helpful in moving calendars along and reducing the volume of cases being determined by one judge.<sup>87</sup> The "devastating",<sup>88</sup> loss of many of them has required sitting judges, attorney referees, and law clerks to shoulder added workloads.<sup>89</sup> Although the remaining decisionmakers are endeavoring to fill the void, delays have been unavoidable. For example, there are delays between the times of filing and initial appearances,<sup>90</sup> "clogged" calendars,<sup>91</sup> and the resolution time for matters is longer.<sup>92</sup>

In addition, court attorney referees, support magistrates, and court staff attorneys have been lost. 93 This has resulted in delays as well. 94

### **b.** Administrative Staff

Fewer administrative staff are now available. This has contributed to delays in the handling of court business; frustration for judges, attorneys, and litigants; and a public perception of inefficiency.

"[R]unning . . . a court calendar requires support staff, not just the . . . judge. . . . [T]he elimination of . . . support staff [causes] a backlog . . ." For example, some courtroom clerks have been assigned to multiple courtrooms, which has made it difficult to conduct business

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<sup>81</sup> 6<sup>th</sup> J.D. App. F1.
82 10<sup>th</sup> J.D. App. J2.
<sup>83</sup> 10<sup>th</sup> J.D. App. J2.
84 1st J.D. App. A3; 3rd J.D. App. C1; 4th J.D. App. D2; 5th J.D. App. E1; 7th J.D. App. G1; 8th J.D. App. H2; 12th J.D.
App. L1; 13<sup>th</sup> J.D. App. M1.
<sup>85</sup> 5<sup>th</sup> J.D. App. E1.
<sup>86</sup> 3<sup>rd</sup> J.D. App. C1; 11<sup>th</sup> J.D. App. K2; 12<sup>th</sup> J.D. App. L1.
<sup>87</sup> 4<sup>th</sup> J.D. App. D2.
<sup>88</sup> 10<sup>th</sup> J.D. App. J2.
<sup>89</sup> 1<sup>st</sup> J.D. App. A3; 5<sup>th</sup> J.D. App. E1; 11<sup>th</sup> J.D. App. K2.
<sup>90</sup> 4<sup>th</sup> J.D. App. D3.
<sup>91</sup> 4<sup>th</sup> J.D. App. D3.
<sup>92</sup> 11<sup>th</sup> J.D. App. K2.
93 5<sup>th</sup> J.D. App. E2; 8<sup>th</sup> J.D. App. H1, H4.
94 5<sup>th</sup> J.D. App. E1-E2; 8<sup>th</sup> J.D. App. H4.
95 3<sup>rd</sup> J.D. App. C2; 5<sup>th</sup> J.D. App. E1; 6<sup>th</sup> J.D. App. F1; 8<sup>th</sup> J.D. App. H5; 13<sup>th</sup> J.D. App. M1.
<sup>96</sup> 4<sup>th</sup> J.D. App. D3.
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continuously and efficiently in each courtroom. In addition, there are now fewer stenographers. Undges sometimes share stenographers between *counties* – not just between courtrooms. These sharing situations have resulted in delays, complicated calendars, and reductions in judges' flexibility. Items to be tween courtrooms in judges' flexibility.

Because of this loss of flexibility, the reductions in administrative staff have been "frustrating", to judges, attorneys, and litigants. As more and more court matters are conducted around the availability of stenographers and other staff <sup>102</sup> and the court day has been shortened, judges have been forced to cede control of their calendars.

The reductions in staff also have created a perception of inefficiency to the public. For example, there are fewer court attendants. As a result, some trial attorneys have to shepherd their own witnesses in and out of court. This has led to a "loss of some . . . formality" in the courtroom. Moreover, members of the public are now more likely to roam freely in the hallways without necessary guidance. Finally, members of the public must wait in longer lines at the clerk's office to obtain official documents and guidance about the court system.

## B. Equity, Particularly to the Disadvantaged

Second, the committee examined the impact of reduced funding on the courts' ability to do justice to all, particularly to the disadvantaged. As caretakers of a just society, the courts help all people, including those "who have long been exploited in the smaller transactions of daily life." For example, lower-income and working-class litigants (among others) seek to have their grievances resolved in small claims courts, usually without legal representation. Unfortunately, budget cuts have limited access to small claims courts to such an extent that litigants must wait in long lines just to enter the courthouses, which now are open as infrequently as one evening a month. Such delays diminish the people's confidence in the judicial system. The disadvantaged need *increased* assistance – not increasing obstacles -- to maneuver within the court system.

98 4<sup>th</sup> J.D. App. D1.

<sup>107</sup> 9<sup>th</sup> J.D. App. I5; 11<sup>th</sup> J.D. App. K2, K3; 12<sup>th</sup> J.D. App. L1.

<sup>&</sup>lt;sup>97</sup> 8<sup>th</sup> J.D. App. H5.

<sup>&</sup>lt;sup>99</sup> 4<sup>th</sup> J.D. App. D3.

 $<sup>^{100}</sup>_{101}\,4^{th}\,J.D.\,\,App.\,\,D1.\\ ^{101}\,4^{th}\,J.D.\,\,App.\,\,D3.$ 

<sup>&</sup>lt;sup>102</sup> 4<sup>th</sup> J.D. App. D3.

<sup>&</sup>lt;sup>103</sup> 6<sup>th</sup> J.D. App. F1.

<sup>104 6&</sup>lt;sup>th</sup> J.D. App. F1.

<sup>&</sup>lt;sup>105</sup> 6<sup>th</sup> J.D. App. F1.

<sup>&</sup>lt;sup>106</sup> 6<sup>th</sup> J.D. App. F1.

Warren E. Burger, "What's Wrong With the Courts: The Chief Justice Speaks Out," *U.S. News & World Report* (Vol. 69, No. 8, Aug. 24, 1970) 68, 71 (address to American Bar Association meeting, Aug. 10, 1970) (*available at* http://en.wikipedia.org/wiki/Justice\_delayed\_is\_justice\_denied (last visited Jan. 10, 2012)). 109 2nd J.D. App. B1.

<sup>110 13&</sup>lt;sup>th</sup> J.D. App. M2; see 2<sup>nd</sup> J.D. App. B1; 12<sup>th</sup> J.D. App. K2.

The specialized needs of the disadvantaged are among those identified as important by survey respondents. Specifically, respondents identified the loss of pro se resources, the loss of pro bono coordinators, and the loss of child care resources as negative impacts of recent budget cuts.

### 1. Loss of Pro Se Resources

Pro se litigants often need help from the courts to handle their cases since they are not represented by counsel. Unfortunately, fewer court resources are now available for this group, due to the recent budgetary cutbacks in court funding. "Very little assistance" is available for pro se litigants, 112 with respect to both administrative support with filings and library resources.

## a. Administrative Support with Filings

Less administrative support for pro se litigants' filings is now available. Fewer administrative staff are available in some courts, and many have more responsibilities. Consequently, they can provide less assistance in a timely manner. 114

This loss of administrative support with filings can have an impact on pro se litigants' chances of success, and on the progress of the litigation generally. Without help, some pro se litigants have been unable to obtain emergency relief, such as orders of protection and custody orders. Moreover, to the extent that pro se litigants have filed papers containing errors, the litigation process has been slowed. For example, if a pro se litigant's papers are rejected, the court and other litigants have to wait while amended papers are prepared and filed. 117

## **b.** Library Resources

Another disadvantage for pro se litigants is that library services have been limited<sup>118</sup> in terms of number of staff, open hours, and research materials. First, there are fewer librarians to help pro se litigants (as well as lawyers) with their research.<sup>119</sup> Many of those who remain have insufficient time to complete their workloads, and morale is low amid concern that the libraries will close down completely.<sup>120</sup> Second, the libraries in courthouses are open for fewer hours each day due to limited courthouse access.<sup>121</sup> Third, fewer research materials are available. For example, there is no budget for supplementing some collections of written legal reference materials, and access to some online reference materials has been restricted.<sup>122</sup>

<sup>111 1</sup>st J.D. App. A1; 11th J.D. App. K3.
112 8th J.D. App. H3.
113 8th J.D. App. H4.
114 8th J.D. App. H4.
115 9th J.D. App. H2.
115 9th J.D. App. I5.
116 6th J.D. App. F1.
117 6th J.D. App. F1.
118 3rd J.D. App. C1, C2.
119 3rd J.D. App. C2; 6th J.D. App. F2.
120 6th J.D. App. F2.
121 6th J.D. App. F2; 13th J.D. App. M2.
122 6th J.D. App. F2.

### 2. Loss of Pro Bono Coordinators

Many litigants who cannot afford counsel reach out to pro bono coordinators to request free legal representation. Pro bono coordinators leverage relationships with legal service providers and volunteer attorneys to "match" the needy with counsel. The loss of funding for pro bono coordinators in some courthouses has limited the ability of poor litigants to obtain pro bono assistance 123

### 3. Loss of Child Care Resources

Child care resources have been limited due to the recent budget cuts. <sup>124</sup> For example, some attended waiting areas for children are now open for fewer regular hours. 125 This limitation impacts the indigent, as well as others who have courthouse business. Poor people may be the most likely to use court-provided child care, to the extent that they cannot afford other daycare alternatives. When attended waiting areas are closed, for example, the parents may have to keep the children with them in the courtroom and in courthouse hallways. 126 This can create a "disrupt[ive]" and "chaotic environment" that is "not conducive to either child welfare or court efficiency." For example, one respondent reported that a lawyer had to hold her twoyear-old client while litigating a family court proceeding. 130 As a result, the lawyer missed much of the dialogue between the judge and other participants and had to ask them to repeat themselves; she also had to return to the courthouse at a later date to review a record of the proceedings to ensure that she was drafting an order correctly. 131

## C. Protection of and Service to the Public

Third, the committee considered the impact of budgetary cuts on the courts' ability to protect and serve the public. The courts – as arbiters of the law – must "protect [individuals] and their families in their homes, at their work, and on the public streets." This function is of particular importance to jurors and litigants.

Accordingly, survey respondents identified reductions in jury system resources and increased costs to litigants as detrimental impacts of recent reductions in funding.

 $<sup>^{123}</sup>$  5<sup>th</sup> J.D. App. E3; see 9<sup>th</sup> J.D. App. I5.  $^{124}$  6<sup>th</sup> J.D. App. F2; 7<sup>th</sup> J.D. App. G1; 8<sup>th</sup> J.D. App. H4; 9<sup>th</sup> J.D. App. I3, I5.  $^{125}$  7<sup>th</sup> J.D. App. G1; 8<sup>th</sup> J.D. App. H4.

<sup>&</sup>lt;sup>126</sup> 7<sup>th</sup> J.D. App. G1; 8<sup>th</sup> J.D. App. H4.

<sup>&</sup>lt;sup>127</sup> 8<sup>th</sup> J.D. App. H4.

<sup>&</sup>lt;sup>128</sup> 6<sup>th</sup> J.D. App. F2.

<sup>&</sup>lt;sup>129</sup> 6<sup>th</sup> J.D. App. F2.

<sup>&</sup>lt;sup>130</sup> 7<sup>th</sup> J.D. App. G1.

<sup>&</sup>lt;sup>131</sup> 7<sup>th</sup> J.D. App. G1-G2.

Warren E. Burger, "What's Wrong With the Courts: The Chief Justice Speaks Out," U.S. News & World Report (Vol. 69, No. 8, Aug. 24, 1970) 68, 71 (address to American Bar Association meeting, Aug. 10, 1970) (available at http://en.wikipedia.org/wiki/Justice delayed is justice denied (last visited Jan. 10, 2012)).

## 1. Reductions in Jury System Resources

Recent reductions in jury system resources have negatively impacted the justice system for litigants, attorneys, and jurors.

The most pressing concern for litigants and attorneys is that jurors are cutting short deliberations<sup>133</sup> and rendering "unjust" verdicts.<sup>134</sup> Litigants and attorneys are concerned that jurors want to minimize the number of days spent away from work and other pursuits. Due to limited courtroom hours, jurors now have shorter days for their deliberations.<sup>135</sup> In addition, the court system no longer provides free lunches to jurors, <sup>136</sup> so they must stop deliberating to get lunches on their own.<sup>137</sup>

The pools of potential jurors that are called to courthouses for jury selection have been reduced as well. There also is some concern that attorneys' challenges for cause are not receiving adequate consideration due to concerns that there are not enough potential jurors to allow for dismissals. In some instances, the court actually has run out of potential jurors, which has led to delays.

## 2. Increased Costs to Litigants

Litigants have incurred increased costs as a result of the recent budget cuts. Specifically, many litigants have incurred additional attorney's fees and additional expert witness fees. Since trials take longer, litigants also have to miss more time from their jobs<sup>141</sup> – sometimes without pay – and incur additional expenses, such as child care.

## a. Attorneys' Fees

Attorneys' fees have risen for litigants, due primarily to increased delays. Attorneys must now take into account that court appearances and trials will be longer, and this has a direct impact on their fees. For example, some attorneys believe they are wasting time at court waiting for their cases to be called and waiting on trial delays. Particularly on cases in which attorneys bill by the hour, costs for waiting can add up quickly. Attorneys bill by

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133 4<sup>th</sup> J.D. App. D2; 9<sup>th</sup> J.D. App. I3, I5.
134 3<sup>rd</sup> J.D. App. C1; see 4<sup>th</sup> J.D. App. D2.
135 1<sup>st</sup> J.S. App. A1; 3<sup>rd</sup> J.D. App. C1; 4<sup>th</sup> J.D. App. D2; 8<sup>th</sup> J.D. App. H5.
136 1<sup>st</sup> J.D. App. A3; 3<sup>rd</sup> J.D. App. C2; 4<sup>th</sup> J.D. App. D1-D2; 5<sup>th</sup> J.D. App. E3; 11<sup>th</sup> J.D. App. K3.
137 2<sup>nd</sup> J.D. App. B1.
138 1<sup>st</sup> J.D. App. A1, A2; 4<sup>th</sup> J.D. App. D1; 5<sup>th</sup> J.D. App. E2.
139 4<sup>th</sup> J.D. App. D1.
140 8<sup>th</sup> J.D. App. H5.
141 9<sup>th</sup> J.D. App. H5.
142 8<sup>th</sup> J.D. App. H5; 9<sup>th</sup> J.D. App. I5; 13<sup>th</sup> J.D. App. M2.
143 13<sup>th</sup> J.D. App. M1.
144 7<sup>th</sup> J.D. App. G1; 9<sup>th</sup> J.D. App. I3.
145 8<sup>th</sup> J.D. App. H5.
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## **b.** Expert Witness Fees

Expert witness fees have increased for some litigants, 146 due to fewer available trial hours per day. 147 If an expert's testimony is not completed at the end of a particular day, the expert may need to return for an additional day – at additional expense. An alternative is to truncate the expert's testimony, which could alter the outcome. In the past, a judge often would extend the court day to avoid having an expert witness return for an additional day of testimony. This is no longer possible.

<sup>146 3&</sup>lt;sup>rd</sup> J.D. App. C2; 4<sup>th</sup> J.D. App. D2; 5<sup>th</sup> J.D. App. E2; 8<sup>th</sup> J.D. App. H5.
147 4<sup>th</sup> J.D. App. D2; 5<sup>th</sup> J.D. App. E2; 6<sup>th</sup> J.D. App. F1; 8<sup>th</sup> J.D. App. H5.
148 2<sup>nd</sup> J.D. App. B2; 4<sup>th</sup> J.D. App. D2; 12<sup>th</sup> J.D. App. L1; 13<sup>th</sup> J.D. App. M2.
149 5<sup>th</sup> J.D. App. E2.

#### V. **CONCLUSION**

Based on this glimpse inside the courthouse walls, New York State courts have struggled to adapt to recent budget cuts in their efforts to serve the public fairly, efficiently, and effectively. Some innovations that have resulted from the budget cuts -- like cross-training, 150 on-line research and forms, <sup>151</sup> and the increased use of e-filing <sup>152</sup> and teleconferencing <sup>153</sup> -- have been helpful. Others – like shorter hours and smaller jury pools – must not continue. While it is clear that judicial leaders are working hard to keep courthouse doors open, it is equally clear that the executive and legislative branches are holding the fiscal key. Hopefully, as the impact of recent budget cuts increasingly is understood by governmental leaders and by the public, the need for additional funding increasingly will be understood as well.

<sup>150 1</sup>st J.D. App. A3; 2nd J.D. App. B2; 6th J.D. App. F2. "Cross-training" refers to training employees for multiple positions to facilitate interchangeability and "back-up" support. 1<sup>st</sup> J.D. App. A3; 6<sup>th</sup> J.D. App. F2. 1<sup>51</sup> 1<sup>st</sup> J.D. App. A3; 13<sup>th</sup> J.D. App. M2. 1<sup>52</sup> 2<sup>nd</sup> J.D. App. B2; 4<sup>th</sup> J.D. App. D4; 6<sup>th</sup> J.D. App. F3; 9<sup>th</sup> J.D. App. I6; 10<sup>th</sup> J.D. App. J2. 1<sup>53</sup> 3<sup>rd</sup> J.D. App. C2; 7<sup>th</sup> J.D. App. G2; 9<sup>th</sup> J.D. App. I6.

V. APPENDICES

## First Judicial District Report By Vice-President Jay G. Safer and Vice-President Ann B. Lesk

## Introduction

This is a court funding initiative report for the First Judicial District. The First Judicial District consists of New York County. The Supreme Court, Civil Branch, New York County is one of the largest, busiest courts of superior civil jurisdiction in New York State and, indeed, in the United States. All of the courts in New York County -- from supreme court to small claims court, civil and criminal -- have been negatively affected by the reduction in court funding. Despite valiant efforts by administrators, court personnel, and judges, significant problems have resulted that affect the public, litigants, judges, court personnel, and attorneys in their use of the courts.

## **Summary of Most Significant Impacts**

Some significant problems in the First Judicial District have included the following:

- (1) The loss of many experienced employees, including court staff, court officers, and other court personnel;
- (2) The inability to fill vacant positions because of hiring freezes;
- (3) The courts are forced to take longer to perform their responsibilities and meet demand;
- (4) The processing of papers is prolonged;
- (5) The entry of e-filed documents, decisions, and judgments has slowed;
- (6) Output and morale have been affected;
- (7) Litigants and attorneys have a more difficult time obtaining prompt resolution and adjudication of their disputes;
- (8) Delays are encountered by litigants and the public in entering facilities, which creates long lines and frustration;
- (9) Delays by litigants and attorneys are encountered in interacting with court personnel and at court counters:
- (10) Courts and courtrooms have shorter hours and early closings, with many consequences;
- (11) "Trial-ready" cases are backlogged for trials;
- (12) Proceedings and trials are extended and can take additional days;
- (13) Witness testimony takes longer, and it is more difficult to schedule;
- (14) Fewer jurors are being summoned to jury duty;
- (15) Fewer jurors are available each day for trial assignments;
- (16) Fewer services are being provided to sitting juries;
- (17) The ability of juries to deliberate during lunchtime and after hours has been curtailed;
- (18) After-hours court receptions and continuing legal education programs have been halted;
- (19) The judicial hearing officer ("JHO") program has been eliminated;
- (20) Larger case dockets have been placed on judges;
- (21) Assistance to pro se litigants has been reduced;
- (22) Litigation costs have increased; and
- (23) Judges and court personnel have less assistance with decisionmaking and service to the public.

## **Impact on Court System Operations**

The services provided by the court system are labor-intensive. As a result of the early retirement incentive program and the work force reduction program necessitated by cutbacks in funding of the state courts, the court system has lost many experienced employees throughout the entire workforce, including court clerks, court officers, court reporters, court attorneys, referees, technology personnel, staff, and managers. A well-publicized loss was the elimination of JHOs, which has affected civil and criminal cases. Because of fiscal circumstances, the vast preponderance of the vacancies never was filled. For

example, in the Supreme Court, Civil Branch, New York County in 2010, seventy-two employees availed themselves of early retirement -- representing 2,718 years of combined experience. As a result of the workforce reduction on June 1, 2011, twenty employees either were terminated or transferred to other courts, with only seven employees transferred to the New York Supreme Court. There are seventy-nine vacant staff positions, and the inability to fill these vacant positions negatively has impacted court operations, despite the strong efforts of existing court personnel to meet the needs of the public.

Court hours have been limited, and overtime now is unavailable. The elimination of overtime has had a major impact on daily court operations. In some cases, most security overtime has been eliminated during pre- and post-workday hours. Thus access to the courthouses has been affected. The New York Supreme Court now opens to the public at 8:30 a.m., rather than 8:00 a.m. A mandatory one-hour lunch recess is taken in all courtrooms. Courts generally close at 12:30 p.m., rather than 1:00 p.m., for lunch. Courtrooms must conclude all proceedings by 4:30 p.m. unless there are emergencies. Continued sessions require approval from an administrative judge. Employees generally must conclude their workdays by 5:00 p.m. Not only are there fewer staff available to serve the public, attorneys, and judges, but also the experience and training of these former judicial and staff employees have been lost. It is clear, however, that courts are working hard and making every effort to serve the needs of the public. Workloads for existing employees have increased. There is more work, and there are fewer personnel. Processing of documents takes longer. Delays in e-filing in the clerk's office have been another consequence. Employees, especially court officers, have been shifted to other assignments.

The impact of budget cutbacks on court operations has affected juries and trials, as described above. Fewer jurors are summoned. Jurors report at 9:00, rather than 8:30. This further results in overcrowding at entrance lines. Fewer services are provided to jurors. Trials take longer to complete. The duration of jury time for sworn jurors has increased. The scheduling of trials and juries has become more difficult with longer delays.

In criminal cases, the elimination of JHO parts has resulted in the return of more than five hundred cases to referring judges. Criminal court judges at 111 Centre Street cannot come to work on weekends (unlike those at 100 Centre Street) because the courthouse at 111 Centre Street is closed on weekends. In criminal matters, the reduction of personnel has been significant, at more than seven percent. No funding is in place to replace items like worn furniture, broken file cabinets, and outdated technological equipment. Emergency replacements require the reallocation of funds from the courts' budget. Court interpreters have been affected. It was reported that the failure to have Mandarin interpreters readily available has been a problem since a full-time Mandarin interpreter retired, requiring per-diem costs and resulting in trial delays.

Family court matters have been significantly impacted in similar fashion by budget cutbacks. Personnel assigned to specialty courts have been reassigned. The mediation program for custody and visitation matters has been reduced, and the mediation program for child protective matters has been eliminated. Security staff need to be added, especially in referee parts. More court staff and judges are needed. The ability to file new petitions and to be heard the same day also has been affected. The family court's budget for equipment and supplies has been reduced. For example, much-needed furniture cannot be purchased. The purchase of legal reference materials has been restricted. It was reported that only supplies essential to court operations may be procured. The number of security staff is insufficient.

Surrogate's court likewise is affected by the reduction in court funding. Many of the most experienced personnel reportedly chose early retirement incentives. The productivity and effectiveness of the surrogate's court have been affected by recent layoffs. Uncontested proceedings have been affected. Accounting proceedings and miscellaneous proceedings have been slowed. This has affected staff morale.

In matrimonial actions, the loss of JHOs and a reduced number of referees have slowed and delayed proceedings. It is more difficult to obtain trial dates. Delays in resolving disputes and increases in costs to the parties have been reported. Clerks and other court personnel are trying to keep up with the demand, but only so many hours are available.

Regarding civil court and housing court cases, it was reported that small claims and commercial cases have been impacted to the greatest extent. It was noted that what used to be a terrific venue to move cases along and settle disputes now involves a tedious and onerous procedure.

### **Impact on Attorneys**

In addition to the problems cited above, attorneys now find longer waiting times at counters. Fewer judges and judicial personnel (such as JHOs) are available to hear their cases. Attorneys are unable to use the courtrooms during lunch hours and after hours. Because of mandatory closing times and a lack of overtime, both court personnel and court officers, for example, are no longer able to stay in courtrooms. It was reported that settlement negotiations in civil cases have been disrupted. Attorneys have had greater difficulty in planning for trials because of the availability of fewer jurors. In addition, attorneys have had to deal with the fact that trials go into additional days because of the required closing time. As noted, an example is the difficulty in scheduling witnesses who may be forced to interrupt their testimony and return for the next day. It is harder to get a trial date or adjourned dates when numerous cases are waiting for trial.

## **Impact on Litigants and the Public**

Despite the best efforts of existing court personnel and judges, the impact and problems described above have taken their toll on litigants and the public. It is harder for the public to have their disputes adjudicated as quickly as in the past. The public has encountered delays, as mentioned above. Service by jurors, as noted, is harder. They do not receive meals, even though they are sitting jurors and are in deliberations. Juries have to serve longer on cases due to the lack of staff overtime and reduced court hours. The public also no longer has the opportunity to attend free programs at the courthouse.

## **Resulting Innovations and Proposed Solutions**

Courts have attempted to utilize existing court personnel and staff in the most efficient manner. Court officers, for example, are shifted to courtrooms and other duties, as needed. As noted, in emergency situations, courtrooms are allowed to stay open with notifications to administrative judges. Efforts are being made to consider the best use of the remaining court personnel. Cases and duties that used to be handled by JHOs have been distributed as efficiently as possible. For example, cases in the commercial division in New York County that were handled by JHOs were distributed to commercial division judges. Administrative procedures have been formulated to deal with special and emergency situations. In criminal cases, the courts have been diligent in cross-training clerical personnel in efforts to have an efficient and interchangeable workforce. Some personnel have been performing multiple duties in order to maintain efficient and necessary court operations. Present court personnel throughout the courts have made exemplary efforts to serve the public.

Some of the innovative initiatives mentioned above have been implemented in family court. In family court, there has been a creative use of shift changes for key personnel. Substantial savings also have been realized with a reduction of printed legal reference materials, in favor of on-line access. Family court leaders have expanded health centers and taken measures to increase the number of "do it yourself" petitions that are filed by the petitioners themselves. This has reduced the number of petitions that family court personnel have to type, thus saving hours of labor. For newly-assigned employees who are inexperienced, the family court has established a comprehensive training program which is overseen by the court clerk training specialist. Family court administrators also are currently creating a

comprehensive desk reference guide which will be useful to new employees. The family court has made an effort to ensure that any late arriving emergency domestic violence cases are addressed. Family offense petitions filed in the late afternoon are carefully evaluated. The family courts and criminal court have collaborated on a protocol to deal with applications for orders of protection and emergency temporary orders of protection to ensure that petitioners have access to the courts after 5:00 p.m.

The availability of documents in civil cases that have been filed online has been applauded.

It has been suggested that the aggressive use of mediators would be an especially good resource to mitigate cutbacks in court funding.

Existing court personnel have been praised for working extra hard during fewer hours and with more limited resources.

## Second Judicial District Report By Vice-President Manuel A. Romero

## Introduction

The Second Judicial District, which encompasses Kings County (Brooklyn), carries the biggest caseload of any county in the State of New York. More trials are conducted in Kings County in a year than in any other county in the state. As I will discuss, cuts in court funding have deeply and dangerously affected the way the Second Judicial District courts manage their huge caseload.

## **Summary of Most Significant Impacts**

The most significant problem in the Second Judicial District has been a loss in the hours of operation of the entire court system. Courthouses now open later and close earlier. The loss of court time has resulted in longer trials and fewer trials. Judges in the Second Judicial District are required to break for lunch at 12:30 p.m. and to conclude proceedings at 4:30 p.m. Deliberating juries have been required to break for lunch and resume deliberations after lunch. These measures significantly have extended the length of trials.

## **Impact on Court System Operations**

The Second Judicial District has seen a huge reduction in court staff. The early retirement incentive of 2010, coupled with the workforce reduction of 2011, has created a staffing shortage. Backlogs have resulted in every department of the court.

One court in the Second Judicial District which has been hit hard by the cuts in court funding – and a court which often is overlooked -- is the small claims court. The small claims court often is considered the "people's court," since many members of our society, especially lower-income litigants, attempt to handle grievances in this court.

Small claims court hours have been reduced from four nights a week to one night a week for non-commercial matters and one day a week for commercial cases. This effectively has shut down the people's court to the people. Cases are now being adjourned by the court to dates that are a year away. Lawsuits that are brought by companies in small claims court are being heard during the daytime, but many of the people that these companies are suing work during the day and do not want to forego a day's pay. Consequently, fifty percent of them are not appearing, and inquests are being taken against them.

Additionally, there used to be one night a week in Brooklyn that was set aside for cases in which interpreters are needed, and a different night that was set aside for cases against the City of New York. Now, all types of cases are heard in one night so that interpreters are needed in all of the courtrooms and by all of the judges. This leads to the adjournment of many interpreter cases to a different night approximately nine months later. Such long delays virtually exclude these litigants from small claims court.

Reductions in staff in the Second Judicial District that were caused by mandatory cuts in court funding have resulted in additional responsibilities for the remaining employees. Staff have been forced to learn new job functions, which has resulted in severe backlogs. Staff are under severe stress, and morale is very low.

## Impact on Attorneys, Litigants, and the Public

Trials are taking substantially longer to complete. Longer trials are causing proceedings to be backed up. Attorneys have to wait multiple days to select jury panels. Once selected, jury panels are passed for as long as two weeks. When juries return, they have to wait days to be assigned to judges, with the result that some juries are disbanded. Once a jury is disbanded, a new panel must be selected by the attorneys,

causing lost time and income for the attorneys and litigants. Additionally, even when a judge is available, a court officer sometimes is not available. This causes further delays because a judge is not allowed to commence a trial without a court officer in the courtroom.

Litigants are waiting longer to have their cases heard -- at a substantial increase in costs -- since the shortening of the trial work day has resulted in expert witnesses having to return on subsequent days to complete their testimonies. This has resulted in "double" payments and additional costs for experts' trial testimony. It has become impossible for more than two -- or in some cases, more than one -- expert witnesses to testify per day. This has resulted in trials taking twice as long, if not three times as long.

Litigants have to wait longer for their cases to be heard and resolved. Attorneys have less productive days, resulting in lost income.

### **Resulting Innovations and Proposed Solutions**

Court administrators in the Second Judicial District have begun to cross-train employees and staff. It is not uncommon to have court officers assist as court clerks and even to call calendars.

On-line research has been implemented to reduce library costs.

The Second Judicial District is moving towards a requirement of mandatory e-filing in the commercial division, with the intention of expanding it to other courts in the near future.

### Conclusion

Challenges have been numerous for the judges and staff of the Second Judicial District court system. But they are dedicated to maintaining the highest standards of public service, despite the challenges created by recent budget cuts.

## Third Judicial District Report By Vice-President Lillian M. Moy

## **Introduction**

This is a court funding initiative report for the Third Judicial District. The Third Judicial District encompasses seven counties surrounding Albany, the state's capitol. They are Albany, Rensselaer, Columbia, Greene, Schoharie, Sullivan, and Ulster Counties.

## **Summary of Most Significant Impacts**

The most significant problems caused by court funding cutbacks are delays in resolving cases, a compromise of the jury system, the loss of discretion by individual judges, added time to schedule motions and trials, the loss of staff and judicial hearing officers ("JHOs"), poor morale, and the loss of confidence in New York courts as a means of resolving disputes in an efficient forum that respects all parties.

## **Impact on Court System Operations**

The combination of an early retirement incentive ("ERI") and funding cutbacks have had a detrimental impact on the court system throughout the Third Judicial District. All types of cases have been affected, but criminal and family court matters have been most significantly impacted by the curtailment of overtime and limited court hours. Commercial litigators indicated that business matters are now plagued by delays and added expense, due to these same factors. Due to funding cutbacks, access to court buildings (shorter business hours and availability after hours), courthouse security, specialty courts, alternative dispute resolution, and library services all have been limited.

In the New York State Court of Claims and in other courts, the limitation on court hours and lack of overtime has caused added delays in proceedings. ERI has resulted in a court workforce that is comprised of fewer and less experienced court staff. Judges must sometimes perform clerical tasks. There can be a long delay from when papers are filed in the clerk's office until they reach a judge's chambers. Inefficiencies have become inevitable.

For example, five years ago in Ulster County (when there were two supreme court judges and the surrogate also sat in the supreme court), the wait for a civil trial date was about five months. Currently the two resident justices also handle the entire Sullivan County Supreme Court calendar. To assist, several court of claims judges are being sent to Ulster County. This has resulted in the availability of seven judges — yet the wait time for a civil court trial date is now one year.

The loss of JHOs – who could settle cases and preside over trials – has been bemoaned by many litigators. The absence of these JHOs has caused delays in court calendars.

### **Impact on Attorneys**

Attorneys in the Third Judicial District complained that limited hours disrupt depositions taking place at the courthouse. Attorneys on trial are no longer allowed to remain in courthouses to work over the lunch hour. Closure of the courts for lunch and at 4:30 is reported to be a hardship for attorneys, litigants, jurors, and witnesses. These rigid time limits for all proceedings, including testimony and jury deliberation, are described in simple terms as a "pain"; more broadly, it appears that these limitations could lead to "compromising our entire jury system." Litigators reportedly suspect that jurors, who learn at the outset that they must leave at 4:30 each day, are cutting short deliberations to avoid returning the next day or the next week. One respondent stated, "This often results in an unjust verdict."

Attorneys complained that the mandatory lunch hour break has disrupted productive settlement discussions and delayed jury deliberations. Mandatory closure at 4:30 has resulted in jurors being

required to come in for a second day, sometimes for a very short period of deliberations. This delay causes a full day of juror and attorney's fees to be incurred, in addition to other expenses. The cost of litigation has increased with particular difficulties and added expense in arranging for expert testimony.

Layoffs of court attendants who traditionally checked in attorneys for conferences and trials mean that this function now is performed by higher-paid court officers. Attorneys also have noted that layoffs of law librarians mean that trial lawyers and pro se litigants who would rely on them have nowhere to turn.

## Impact on Litigants and the Public

Attorneys reported that delays and inefficiencies cause frustration with the courts by personal injury, commercial, criminal, and matrimonial litigants alike. Attorneys reported that litigants believe their cases are not timely reached – their experience in the court system generally is negative. It was reported that businesspeople in particular believe that the judiciary is insensitive to the prompt timing and efficiency which is part of the daily business world. The impact on personal injury litigants can be substantial as some can be "reduced into poverty awaiting an adjudication relative to lost wages and damages." And the substantial delays in adjudicating criminal cases "should be addressed."

A litigator noted that jurors are no longer provided with free lunches so that they can begin their deliberations promptly. She stated that "this sends a message to jurors who are giving up their daily lives, work, and personal income to serve that the court system does not feel their time is important enough to allow them to get right to work in a timely fashion or to continue their deliberations beyond 4:30 when needed. I believe the jury system is compromised by these procedures."

Finally, limitations on access to court buildings for educational and trial practice programs were noted as another source of frustration. Coupled with the substantial delays and frustration experienced by attorneys and litigants, these limitations caused a loss of confidence in the judicial system by the public in general.

### **Resulting Innovations and Proposed Solutions**

Court representatives reported that there is greater reliance on online research to make up for the loss of law librarians. Administrative staff have been reassigned to help court staff perform necessary functions. Although some administrative tasks have suffered, court representatives reported both a boost in productivity and morale. An increased reliance on the use of teleconferences and videoconferencing, the use of digital evidence, and piggybacking the delivery of files and supplies onto the necessary travel of information technology staff have all helped the courts to respond to the funding cutbacks.

Other proposed solutions from attorneys in the Third Judicial District include the following:

- (1) designating judges or mediators solely or primarily to settle cases;
- (2) creating a separate matrimonial part it was suggested that these cases do not mix well with the balance of the docket because they require unique skills;
- (3) creating separate commercial parts and supporting them with funding and perhaps the use of pool clerks;
- (4) making courthouse hours more flexible the courts should stay open beyond 4:30 when needed: and
- (5) considering asking retired judges/JHOs to serve pro bono at least one retired judge already is doing this in the Third Judicial District. Perhaps there could be a tie-in to the New York State Unified Court System's Attorney Emeritus Program or some other recognition of these pro bono services.

It should be mentioned that some practitioners believe that the Office of Court Administration budget is "bloated" and that more control of local courthouses and more discretion in court procedures should be returned to local judges.

## Fourth Judicial District Report By Vice-President Rebecca A. Slezak

## Introduction

The Fourth Judicial District consists of the following eleven counties: Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, St. Lawrence, Saratoga, Schenectady, Warren, and Washington. It is the largest district by land mass, but certainly not the most populous. The district is mainly rural, with a few large urban areas, such as the cities of Amsterdam, Plattsburgh, Gloversville, Johnstown, Saratoga Springs, Schenectady, and Watertown. There also is a diverse population base that includes Native American reservations in the North Country, an Army base at Fort Drum, a growing Amish community, more affluent areas in Saratoga, Schenectady, and Warren Counties, and very rural communities in Essex, Franklin, Fulton, Hamilton, and Montgomery Counties. It should be noted that Hamilton County does not even have a population large enough to warrant a supreme court. To bring a supreme court action in Hamilton County, one has to purchase an index number in the Hamilton County Clerk's Office and then purchase a request for judicial intervention in the Fulton County Supreme Court's office.

County-level judges in the Fourth Judicial District also may be what we call "triple hatters" or "double hatters." These terms mean that the county-level judge may be the surrogate, county and family court judge, or the judge may hold two of three existing county-level judgeships in New York State. Even judges who are elected as only a surrogate, county, or family court judge often are expected to assist in other geographical areas of the district, and to perform duties in any of the three types of judgeships. Most, if not all, of the county-level judges also are appointed to be acting supreme court judges, which requires them to handle matrimonial actions or general civil litigation matters. Elected judges in this district, therefore, are expected to be general-practice jurists, and not necessarily work only in the area in which they may have practiced prior to becoming a judge.

## **Summary of Most Significant Impacts**

The first issue identified by all respondents was the inability of any court to remain on the record after 4:30 p.m. This should be clarified to be defined more specifically as the half-hour period before the official closing time of the court. In other words, if summer hours are in effect and the court closes at 4:00 p.m. rather than 5:00 p.m., the courtroom is shut down at 3:30 p.m. (For simplification, I shall use "4:30 p.m." throughout this report.) This loss of a half hour, in addition to the requirement of a full one-hour lunch break at a designated time, certainly has had an impact upon trials and upon the litigants whose matters are being tried. There also are a few courts that do not commence until a half hour after the official start time for the court. This is due to the need to ensure that no overtime is expended at the start of the day due to a stenographer having to travel from his/her home court, or due to security officers having to be available and ready to enter the courtroom at the initial opening time.

A second concern that was identified was a lack of personnel in courthouses, which has slowed down the filing and processing of petitions, motions, and other court filings. The lack of stenographers also creates situations where judges are expected to "share" them. This has resulted in one court proceeding (and judge) waiting until the other proceeding (and judge) is completed, thereby freeing up the stenographer to change courtrooms for the second matter. This complicates calendars and reduces individual judges' flexibility. (Now imagine that lunchtime is approaching. Can the second judge begin, or does he/she have to wait until the afternoon session?)

A third concern related to the reduction of jury pools, and the curtailment of deliberations to fit into new hours of operation, without overtime. Summoning fewer numbers of jurors for jury selection has caused some concern over whether judges fully are considering challenges for cause, due to a concern that there are not enough potential jurors to let one be dismissed. There are further concerns resulting from both civil and criminal juries being allowed to leave the courthouse for lunch *during* deliberations. Lunch is

no longer provided. This means that a criminal juror could speak with a deli clerk during the midst of deliberations; hopefully, such a discussion simply would relate to the sandwich being ordered. Finally, advising jurors that they will be released at 4:30 p.m. to avoid overtime and that they will have to return the next day to begin at 9:30 a.m. has raised concerns about whether the time constraints curtail full discussions of matters. One survey respondent is convinced that his client would have been acquitted had the jury been allowed to stay past 4:00 p.m. on a Friday afternoon. Are constitutional issues being created by the curtailment of criminal jury deliberations?

A fourth concern that was raised was the shortened time available for testimony of expert witnesses, which creates further costs to litigants. If an expert must be completed by 4:30 p.m. and cannot complete his/her testimony or cross examination by that time, then he/she must return the next day at further expense to the party, not to mention the expert. (The perception that no overtime is available is significant, but it should be noted that permission for overtime may be granted. Unfortunately, to obtain overtime, one must call the administrative judge for the district, who in turn must call the administrative judge for the courts outside of New York City to obtain permission. Permission may be granted, but it is not a simple process, and it is not guaranteed.)

A fifth concern was a lack of judicial hearing officers ("JHOs") who are available to assist in family courts, foreclosure actions, and criminal courts. The loss of JHOs has resulted in longer delays between the time of filing and initial appearances in family court, as well as more clogged calendars for foreclosures and criminal proceedings. JHOs were useful in moving calendars along and reducing the volume of cases being determined by a single elected judge. It is not unusual now to have a six- to eightweek delay between the filing of a petition in family court and the first appearance.

Finally, court security was identified as a drain on the court system's funding. Security officers no longer are provided by the local sheriff's department; instead they are now classified as employees of the court system and included on the state's payroll. The lack of overtime for these officers was noted as a main reason for the previously-mentioned curtailment of court proceedings. The perception of security officers certainly is negative in this district. Although the need for security is recognized, questions remain as to what municipality should be funding the security needs of the courts and what impact security should have on the actual functioning of the courts.

## **Impact on Court System Operations**

The Fourth Judicial District lost a number of employees due to the early retirement incentive that was offered in 2010. The number of layoffs was minimal, and they occurred mainly in the district office, rather than in the courts. However, in January 2011, this district experienced a hiring freeze. A significant number of the positions vacated by retirements were not filled, including some chief clerk positions. The reduced staffing in courthouses has had a direct impact on the workload of each employee. The number of filings in each court has not been reduced. In fact, filings have increased. The reduction of time spent on the record in each court also has added to the time needed to resolve pending court matters. If the budget for this year again seeks to reduce the workforce, the courts will see even longer delays in resolutions for pending matters.

The elimination of JHOs has required sitting judges to handle all of the filings in their courts. It also means that if a judge takes a vacation or has a family emergency or funeral to attend, there is no coverage of his/her calendars. The criminal courts in this district used JHOs to conduct many of the preliminary hearings, and family court used JHOs to move the first appearance calendars. Foreclosure proceedings were also handled by JHOs. Now all of these matters are handled by one elected judge. Calendars are delayed, and the resolution time for each individual matter obviously is longer.

The retirement of stenographers and part clerks, coupled with the hiring freeze, also has created a

situation where court matters are conducted around the availability of stenographers and/or part clerks. Judges are often expected to share stenographers, and this is sometimes between counties -- not just between courtrooms. The elimination of part clerks also affects courts such as family court, where there is a need for both the support magistrate and the judge to have a clerk available. If vacations are scheduled, a calendar may need to be modified to reflect the available personnel in a given court. The running of a court calendar requires support staff, not just the elected judge. It is the elimination of these nameless support staff that will create a backlog as the number of filings remains the same or increases. Judges no longer can control their own calendars. This lack of discretion over scheduling is frustrating to judges, litigants, and attorneys.

### **Impact on Attorneys**

Attorneys must now prepare cases with the understanding that court appearances will be longer, and trials will be longer. This has a direct impact on the fees they charge to their clients. They also have the burden of explaining additional costs for expert witnesses.

Changes affecting juries are another area of concern for many attorneys. The lack of funding has created smaller jury pools, the elimination of free lunches for jurors, and a general disregard for resulting effects on prospective and chosen jurors. Jury duty simply has become more onerous, and this can only have a negative impact on the entire process.

## **Impact on Litigants and the Public**

The increase in the time that it takes to handle matters can only have a negative impact upon the perception of the third, co-equal branch of government. As it becomes less accessible, the judicial branch will lose respect, and its power will be diminished in the eyes of the public.

The increased time that it takes to access family court certainly will have an impact on the public. Family courts currently are seeing an increase in the time between the filing of a petition and the first appearance. The six to eight weeks between a filing and the first appearance means that the family which is seeking assistance from the court simply must be in a holding pattern. Family issues do not lend themselves to waiting, and the frustration and anger that develop can be insurmountable by the time the first appearance arrives.

Criminal courts also have experienced delays. This can mean longer incarcerations pending trial due to delays in scheduling hearings, arraignments, pleas, trials, etc. These delays certainly will have an impact on the families of the accused, not only due to lack of income, but also due to potential increases in attorney's fees. The impact certainly will go beyond the litigant in these matters and affect the general public.

All litigation will be affected at some level as court calendars become more clogged. The increased time for conferencing and trials will have an impact on litigants. Most people do not understand the time it takes for litigation. If the time increases, they certainly will become more frustrated with the process.

## **Resulting Innovations and Proposed Solutions**

No creative innovations were noted, unless doing more with less is deemed innovative. The "solutions" to date consist of arranging for fewer workers to handle the same workload that existed prior to January 2011. In the Fourth Judicial District, the availability of office supplies also has been greatly reduced. Reserves of paper, toner, pens, and other supplies were accounted for and rationed out to courts that were in need. Now replacement office supplies are ordered when existing items are completely spent. This creates issues when paper is low and copies need to be made, or when printer cartridges are spent but another printer is available.

Respondents' proposed solutions run the gamut from the absurd to the realistic. One suggestion was to eliminate the Office of Court Administration and to reallocate the money to local courthouses. This solution ignores the need to have an administrative body to assist the courts in becoming more unified. Justice should not depend on whether one is in Erie, Allegany, or Albany County. There should be a consistent set of rules and regulations statewide.

Another proposal was to eliminate security officers. Again, this ignores the real danger that family, matrimonial, and criminal matters present to staff and members of the public who are present at courthouses. There is a real security need in our courthouses, especially in the more densely-populated areas of the state. The alternative of reverting back to the use of sheriff deputies supplied by local sheriff's departments also is not realistic. The use of sheriff deputies simply reallocates the funding from a controlled line item in the judicial branch's budget to a line item that is set aside to reimburse local departments for the manpower that they provide. There is no true cost savings in such a shift. The expense is simply initially borne by the local county government, only to be reimbursed by the state at a later date.

One suggestion with regard to security is to eliminate the concept of a specific work site for each officer. The current contract requires overtime to be paid, or an allowance for an officer to travel on "state time" if he/she has to be assigned to a courthouse which is not his/her designated work site. This means that if an officer generally travels twenty minutes to arrive at his/her designated work site, and now he/she is assigned to a courthouse more than twenty minutes away – say, thirty minutes -- the officer either receives overtime for the additional travel time incurred, or he/she is allowed to arrive at work ten minutes late, and leave ten minutes early to avoid overtime. This inability to reallocate security officers without a substantial overtime cost or loss of work time requires the hiring of a larger number of officers. If one could eliminate the contractual language and simply hire officers for an entire district (versus one courthouse), the number of officers could be reduced and assignments could be made according to the actual needs of the courthouse on a daily basis.

E-filing also was suggested as a means of reducing costs. The technology currently is available in some courthouses. The initial cost to install technology statewide should be allocated in the upcoming budget. The one-time cost could result in a long-term savings to the state. Storage space in courthouses also would be increased by the elimination of paper files, and the need to expand would be greatly reduced if e-filing is made a reality statewide.

Using more telephone conferencing also was suggested. This solution, however, is only available in matters where all litigants have counsel. Telephone conferences generally are not conducted on the record; without a running record, judges should not be expected to conduct court proceedings with pro se litigants.

Another suggestion which may result in savings is to supplement the Office of Court Administration with the addition of an outside professional public administrator, instead of prevailing upon sitting judges to run judicial districts in the court system. This solution has a two-fold benefit. It would leave more judges on the bench to handle larger caseloads, which would reduce backlogs. It also would provide the court system with a person who is more experienced in managing a multi-billion dollar budget. A professional public administrator also could streamline the rules promulgated by the Office of Court Administration, reducing the frustration of both attorneys and litigants.

Restoring funding for the use of JHOs also would assist courts in reducing backlogs and the time needed to resolve pending matters. This solution should be coupled with the creation of more positions for judges in the courts and counties where a substantial need has been identified. This proposal should be advanced with the New York State Bar Association's support of restructuring the court system in general.

Eliminating county-level judgeships and creating a supreme court with various parts would help in reallocating workloads and reducing backlogs. It further would provide a basis for increasing the number of judges in locations already identified as needy.

Finally, increasing access to the courthouses -- without the concern of overtime -- needs to be addressed. Courts should be allowed to be open for operation for the full day -- from 9:00 a.m. to 5:00 a.m. Shifts for part clerks and security officers should be mandatory to allow court proceedings to continue during the lunch hour. If shifts existed, one part clerk and/or security officer could go to lunch while a second person fills in for each position. This would eliminate the need for expert witnesses and other witnesses to have to return on subsequent days to complete testimony. Trials also should have exceptions allowed for overtime if a matter has to go past 5:00 p.m. The actual presiding judge should be allowed to resume control over his/her courtroom. Furthermore, funds need to be made available for jurors' lunches, to avoid any improprieties.

# Fifth Judicial District Report By Vice-President Thomas E. Myers

### Introduction

The Fifth Judicial District consists of six counties, with approximately forty-five percent of the district's population located in the greater Syracuse area (Onondaga County). Two counties -- Onondaga County containing the city of Syracuse, and Oneida County containing the cities of Rome and Utica -- have multiple, resident, supreme court, county court, family court, and city court judges. The county bar association in Onondaga County (1500 members) and in Oneida County (340 members) each have at least one employee. The other four counties -- Herkimer, Jefferson, Lewis and Oswego -- have smaller populations, and the county bar associations in these counties have no employees. There are multiple city court judges in Oswego County (144 bar association members), which includes the cities of Fulton and Oswego, and in Jefferson County (100 bar association members), which includes the city of Watertown. The other two counties -- Herkimer County and Lewis County -- have substantially smaller populations with only a limited number of resident attorneys and judges; there are two city court judges in the city of Little Falls in Herkimer County.

In general, effective management by the district administrative judge, his staff, and the coordinating commissioner of jurors over many years -- along with the cooperation of attorneys, bar associations, and court personnel -- have eliminated many inefficiencies in our district and helped to minimize adverse impacts from the 2011 judiciary budget cuts. In some respects, it is difficult to separate impacts from 2010 early retirement losses and from the 2011 judiciary budget cutbacks.

## **Summary of Most Significant Impacts**

In any event, the following are the most significant impacts from the 2011 judiciary budget cutbacks, in my opinion:

- (1) loss of funding to pay retired judges to serve as judicial hearing officers in various capacities;
- (2) increased delays in some family court proceedings due to lack of funds to replace lost clerical staff, lack of funds to fill support magistrate positions, and increasing caseloads in the family courts;
- changes and stress in trial scheduling due to shorter court days (*e.g.*, extra trial days needed because of shorter court days and added expenses to recall witnesses to testify a second or third day); and
- (4) loss of funding for the coordinator of the successful Fifth Judicial District Pro Bono Action Now initiative.

#### **Impact on Court System Operations**

First, the service of retired judges as judicial hearing officers was eliminated as a result of the 2011 budget cutbacks. These retired judges performed at least the following judicial functions: (1) handling uncontested divorce actions in Onondaga and Oswego Counties; (2) handling a residential foreclosure part in Onondaga County; (3) managing intake parts for various family court proceedings in Onondaga and Oswego Counties; (4) active involvement in resolving family court proceedings in Oneida County (including service as trial judges); (5) presiding over consent trials; and (6) serving as mediators. In brief, these workloads have been picked up by other judges, attorney referees, and law clerks.

Second, several attorneys and judges have reported increased and unacceptable delays from filing dates to initial return dates in various family court proceedings in multiple counties during 2011. These delays are attributed to the following: (1) lack of funding to replace lost clerical personnel in the family courts who have to complete state-mandated background checks for orders of protection, a sex offender registry,

child abuse histories, and criminal histories in child custody, child support, paternity, and possibly other proceedings; (2) lack of funding to replace departed support magistrates; and (3) increasing case volumes in the family courts generally. Increased delays in at least one family court are attributable to the fact that a single, very able judge has served for much of 2011 as the only supreme court justice, the surrogate, the county court judge, and the family court judge, which makes trial scheduling very difficult. As succinctly put by one bar association leader, "there is just not enough judicial time."

Third, the number of jurors provided in panels for jury selection generally has been reduced by about fifteen percent for both civil actions and most criminal proceedings, and jurors are no longer provided with free lunches.

Fourth, an increased use of recording devices in place of court stenographers in the city courts and family courts has resulted in the trial judge or deputy court clerk having to perform court stenographers' tasks of marking and handling trial exhibits.

Fifth, there are reports of an insufficient number of printers available for some judges and court staff.

Sixth, despite the above-referenced impacts, some respondents believe that adverse impacts have been minimized. For example, one judge stated that adverse impacts are "de minimis" because "we are working harder and doing more with less." Similarly, a bar association leader reported that adverse impacts to date have been minimized because judges and court staff are working extra hard to make up for personnel losses.

### **Impact on Attorneys**

First, as noted above, attorneys and their clients have been adversely impacted by increased delays in some family court proceedings.

Second, one attorney reported analogous, increasing delays in nonjudicial, administrative proceedings (*e.g.*, New York State Public Employment Relations Board proceedings).

Third, as noted above, attorneys have had to adjust to smaller pools for jury selection in civil actions and most criminal proceedings.

Fourth, several attorneys expressed concern about adverse impacts from shorter court hours each day (*i.e.*, extra trial days) and increased expenses to hold over and recall witnesses -- particularly expert and out-of-town witnesses -- for an extra day of testimony. One attorney reported that the shorter court day has resulted in substantial stress, including with respect to one case where a jury rushed to reach a verdict to meet an afternoon deadline. This attorney also noted that trial evidence has to be modified or reduced to fit into limited trial schedules (*e.g.*, shortened direct and cross-examinations of expert witnesses), which could alter trial outcomes. Other attorneys report that extra days of trial have been needed in some civil actions and in some criminal proceedings. In contrast, one attorney favored the shorter court day because it allowed him to work back in his office before the end of the business day.

Fifth, the increased use of machine recording devices in the city courts and family courts has adversely impacted attorneys and court operations. With these recording machines, attorneys and judges cannot obtain immediate read-backs of, or make immediate corrections to, testimonial evidence. In addition, the increased use of recording machines in the city courts and family courts requires attorneys to stay near microphones when speaking, rather than moving around courtrooms, as they did before.

Sixth, the loss of funding for the Fifth Judicial District Pro Bono Action Now coordinator undoubtedly will reduce the amount of pro bono services rendered and the number of attorneys rendering pro bono services in the district.

### Impact on Litigants and the Public

First, as noted above, there are multiple reports of increased delays in some family court proceedings.

Second, as noted above, fewer available trial hours per day reportedly have resulted in extra days of trial in some civil actions and criminal proceedings, which impacts the parties, the witnesses, and the jurors involved.

Third, as noted above, jurors are no longer provided with lunches, and jurors generally are probably well aware of the daily time pressures on the courts.

Fourth, as noted above, the loss of funding for the coordinator of the Fifth Judicial District Pro Bono Action Now group undoubtedly will reduce pro bono services rendered to poor persons in the district.

## **Resulting Innovations and Proposed Solutions**

The following are some recommendations and suggestions from various sources:

- (1) reduce and/or stop unfunded state mandates on attorneys, bar associations, and the courts; the mandates cause increased work and increased personnel costs but lack funding to pay for the increased costs;
- (2) provide funds to replace quasi-judicial personnel lost due to cutbacks, losses, and retirements in the family courts (*i.e.*, attorney referees and support magistrates);
- (3) provide funds to replace clerical staff lost due to cutbacks, losses, and retirements in the family courts, particularly to complete state-mandated background checks, which are reportedly a primary cause of increased delays between initial filing dates and initial return dates in family court proceedings;
- (4) create a procedure for attorneys representing parties in applicable family court proceedings to perform mandated background checks and to certify the results upon filing relevant petitions in the family court clerk's office; this would shift the burden of performing mandated background checks to the private sector and reduce time spent by family court clerical staff;
- (5) encourage attorneys in civil actions to limit and reduce triable issues of fact by means of stipulations, partial summary judgment motions, settlements, etc.;
- (6) encourage and educate trial lawyers in both the civil and criminal courts to be efficient, plan ahead, and promptly discuss with assigned judges and opposing counsel scheduling problems with witnesses -- especially expert witnesses and witnesses from out of town;
- (7) inform trial attorneys generally about the availability and circumstances in which an overtime exception will be granted so that attorneys know what to expect and trial judges know what are appropriate situations for exceptions and how to handle them;
- (8) consider a limitation on, or judicial supervision of, attorney "consent excuses" for jurors in jury selection, which opposing attorneys often agree to when jurors state that they cannot, or do not want to, sit for a particular case during jury selection:
- (9) encourage and educate trial attorneys to involve the assigned judge when a juror states that he or she does not want to sit on a particular case, before the opposing attorneys agree to a "consent excusal";

- (10) encourage all civil and criminal judges to refer back jurors who have been excused by consent of the attorneys in a particular case to the jury pool for prompt reassignment to another case;
- (11) reduce the number of peremptory challenges available in criminal jury trials by statutory amendment; and
- (12) manage and reduce overlapping security coverage by deputy county sheriffs and state court security personnel in holding and guarding criminal defendants in the combined criminal courts building in Syracuse to reduce redundant security personnel and related expenses.

# **Summary**

The most significant impact of the 2011 judiciary budget cuts in the Fifth Judicial District was the loss of the work of retired judges as judicial hearing officers. These losses have been managed, and the workloads have been reassigned to judges, attorney referees, and law clerks so that adverse impacts have been minimized. Attorneys, court staff, and judges are adapting and adjusting to other adverse impacts (*e.g.*, scheduling for shorter court days and the increased use of recording devices in city courts and family courts). With no improvement in the fiscal forecast for the state budget, cooperation, communication, and a "can do" attitude by all involved will reduce the risk of serious adverse impacts as we adapt to these changes, which are unlikely to go away anytime soon.

However, there have been and will continue to be more insidious, adverse impacts from ongoing reductions of financial resources and personnel in the court system (*e.g.*, increasing, unacceptable delays in family court proceedings; lack of funds to replace lost clerical employees and quasi-judicial personnel in the family courts; increasing workloads for judges and remaining court personnel; and lack of a second resident judge in Lewis County). Even with good cooperation and effective management of available resources in the Fifth Judicial District, the ongoing erosion of financial resources in these areas inevitably will lead to more severe adverse impacts.

# Sixth Judicial District Report By Vice-President Mark S. Gorgos

## **Introduction**

The Sixth Judicial District encompasses ten counties: Broome, Chemung, Chenango, Cortland, Delaware, Madison, Otsego, Schuyler, Tioga, and Tompkins. It includes the following cities: Binghamton, Cortland, Elmira, Ithaca, Norwich, Oneida, and Oneonta.

# **Summary of Most Significant Impacts**

The most common and significant problem is the reduced time that the court is now available to conduct business. Reduced hours amount to a loss of approximately one month (twenty-five to twenty-seven days) per year. This also is impacting the length of trials; a three-day trial has now stretched into a four-or five-day trial. This increases the cost of trial for all parties and creates problems with obtaining and retaining expert witnesses.

There is a perception that the court system is less responsive to the public, witnesses, and crime victims due to a lack of available staff to interact with the public.

Criminal matters have been affected. Restricted access to county court reduces the amount of time that judges are able to devote to conferences and bail applications. The inability to extend the day has resulted in a longer period of time that elapses after the request for a conference or bail application. This results in an accused individual remaining in jail too long.

### **Impact on Court System Operations**

The loss of court attendants is perceived as a major problem. It has placed trial attorneys in the position of splitting attention between trial and the shepherding of witnesses. This loss of staff also is not conducive to the public's presence because it gives rise to some levels of increased security risk with the general public roaming the hallways. The loss of court attendants also results in the loss of some of the formality of the court and a perception of inefficiency by the public.

Reduced staffing and hiring freezes have resulted in increased workloads. Morale is being affected as there is the perception that more work exists than can be accomplished in allotted work hours.

#### **Impact on Attorneys**

Attorneys are unable to utilize a standard eight-hour court day in any meaningful way. Each day is broken up by a late start, a required lunch hour, and an early end -- regardless of whether a stop time is reasonable or appropriate relative to the progress of the trial, witnesses on the stand, etc.

Access to the courthouse -- especially the law library -- has been limited, and hours drastically have been reduced. It would seem reasonable that attorneys would have access during lunch hours.

#### Impact on Litigants and the Public

The closing of the petitioner's position at family court intake has had a major impact. More time is being spent by court personnel to deal with insufficiently completed petitions, and more petitions are being rejected. This primarily impacts indigent litigants. Pro se litigants are then referred to legal aid providers for assistance. Time spent filing amended petitions slows the pace of litigation. Legal aid providers have insufficient staffing for the massively increased volume of need as a result of the loss of the petitioner's intake position. Pro se litigants sometimes are no longer able to arrange for timely orders of protection and emergency custody petitions to be heard.

Cutbacks in the availability of family court day care from five to three days per week have a significant impact on the indigent, who have little or no financial ability to pay for private day care while in court. This creates a chaotic environment when children are brought to the courthouse, and it is not conducive to either child welfare or court efficiency.

Courts are being viewed as less "user friendly" by non-legal community members. Some respondents commented that the negative effects are greater to litigants and the public than to judges.

The experience of civil litigants has changed to the extent that trials do not proceed as efficiently because of the restricted amount of time and personnel on a day-to-day basis. This also results in increased legal fees.

The experience of criminal defendants has changed due to overcrowding at the courts. Less time and energy is available to deal with specific situations that require individualized treatment. Defendants have experienced additional delays in the adjudication of their cases since the cutbacks.

# **Impact on Libraries**

In the Sixth Judicial District, reductions in library staff, hours of operation, and resources are having a large impact. With the large reduction in staff and less available time due to reduced courthouse hours, insufficient time is available for library staff to complete all of their work.

There is no longer a budget for written legal reference materials. Although reference materials are available online, budget constraints restrict access to the types of materials that are available. All reporters, except for the official reporter, are being cancelled. This amounts to a large loss of legal research materials that are available to both attorneys and the public, especially with an additional six percent cut of materials that is required by the end of the year.

While online legal research has many advantages, there are many people who prefer using books. In addition, not all publications are available online in their entireties.

Self-represented litigants now have even fewer opportunities to receive assistance or do research at supreme court law libraries.

Morale in libraries is very low, and there is a feeling that permanent closure is planned.

## **Resulting Innovations and Proposed Solutions**

The following are some resulting innovations and proposed solutions:

- (1) Cross training of administrative court staff personnel to "back up" each other in various administrative positions. (Broome County already is implementing this practice.)
- (2) Creation of a "pro bono task force coordinator position" from attorney volunteers within each county. A similar suggestion has been made for petition preparation assistance at family court intake.
- (3) Judges are scheduling pre-trial conferences at public buildings (district attorney's and public defender's offices) prior to open court times (*i.e.*, 8:00 or 8:30 a.m.). This helps make up for a loss of court time due to the unavailability of court facilities prior to 9:15.
- (4) A four-day, ten-hour work week has been suggested. This would eliminate security overtime concerns, thus increasing available court time.

- (5) Implement mandatory e-filing, and make use of other technological options (such as e-mailing court orders) to increase efficiency and decrease costs. It is noted, however, that there will have to be some related legislative changes to allow court personnel and litigants to take full advantage of available technology. In addition, appropriate parameters will need to be established to ensure protection of client rights, etc.
- (6) Some have suggested that "boutique courts" should be terminated and that matters handled by these courts should be referred to appropriate supreme, county and family courts. There is equal opposition to this suggestion. Those who support boutique courts believe that they facilitate better outcomes and increase the overall efficiency of the court system.
- (7) Some have suggested that a district court system be implemented in place of the current "local court" and town justice system. However, there is equal opposition to this suggestion.

# Seventh Judicial District Report By Vice-President June M. Castellano

## **Introduction**

This is the report from the Seventh Judicial District. The district consists of eight counties: Monroe, Livingston, Wayne, Ontario, Seneca, Yates, Cayuga, and Steuben. The district includes a mid-sized city and suburban area (Rochester) and surrounding rural counties.

### **Summary of Most Significant Impacts**

By far the most significant problem noted is the shortened court day. The 4:30 p.m. close time, along with closures for lunch breaks and start times of 9:00 a.m., mean that less can be accomplished in a single court day. Respondents also reported a reduction in the number of judicial hearing officers and a loss of supportive services, such as waiting areas for children.

## **Impact on Court System Operations**

The largest impact on court system operation involves a reduction in security. To reduce overtime expenses, judges must leave the bench by 4:30 p.m. Some individuals reported that chamber conferences which often were conducted prior to 9:00 a.m. must now start at 9:00 a.m. This means that trials start later, usually at 10:00 a.m.

Reductions in force coupled with limitations on hiring mean increased job duties for those who remain. Respondents cited a decrease in morale and an increase in stress levels for courthouse personnel. Some individuals emphasized how court staff worked hard to compensate for the vacancies. Many praised staff for their commitment to ensuring access to the courthouse.

Reductions due to budget cutbacks include the loss of specialized parts and judicial hearing officers.

#### **Impact on Attorneys**

Public and private sector attorneys must make good use of their time to provide quality service to their clients, who expect timely and efficient results. Some attorneys believe they are wasting much more time at court waiting for cases to be called and due to trial delays. They cited cramped dockets and a rise in unreported litigants as further problems. They noted higher stress levels, since more time spent in court prevented them from working on cases at their offices.

Other practitioners did not believe that their practices negatively were affected by longer wait times or delays.

### **Impact on Litigants and the Public**

The most-cited effect on litigants and the public may involve the jury system. Due to the abbreviated court day, jurors must spend longer hours at the courthouse, without any amenities.

In some instances, domestic violence victims must return to court the next day to process requests for orders of protection.

The decrease in funding for attended waiting areas for children mean more children in the courtrooms. In one instance, an attorney for the child (formerly called a "law guardian") had to hold her two-year-old client during a proceeding. While both parents were present in the courtroom, they were too busy participating in the proceeding to prevent the child from attempting to play with the stenographer's equipment, run around the room, etc. The attorney tried to watch the child and participate in the proceeding herself, but she was hampered by the child. She took notes and spoke to the court, but she often had to ask the judge and counsel to repeat themselves because she missed much of the dialogue. To

prepare a temporary visitation order requested by the court, the attorney had to return to the courthouse at a later date to review the record of proceedings to ensure she was drafting it correctly.

## **Resulting Innovations and Proposed Solutions**

Time-saving innovations were seen as the most likely way to address problems caused by the budget cuts. These included opportunities for the bench and the bar to communicate more by e-mail, file and review pleadings on-line, and conference cases by telephone. One local program that works extensively with family court reported that it now receives petitions electronically, rather than having to arrange for files to be copied and picked up.

In instances where a judge believes there is good cause to continue a trial or proceeding past 4:30 p.m., there is a procedure in place to reach the administrative judge to secure permission.

The Monroe County Children's Center (the attended waiting area for children in family court) is seeking funding to return to its full hours of operation. The center even held a raffle to raise funds.

A criminal practitioner suggested centralized court arraignments if courts go to twenty-four hour arraignments, and a reduction in the number of cases that require mandatory minimum sentences so that there can be more flexibility in resolving cases.

# Eighth Judicial District Report By Vice-President David L. Edmunds

## **About the Eighth Judicial District**

The Eighth Judicial District consists of supreme, county, family, city and surrogate's courts in the eight counties of western New York: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming. There also are eleven city courts in our district: Batavia, Buffalo, Dunkirk, Jamestown, Lackawanna, Lockport, Niagara Falls, North Tonawanda, Olean, Salamanca, and Tonawanda. In addition, there is a court of claims in Buffalo.

In 2010, there were 5,993 registered attorneys in the Eighth Judicial District. Specifically, the number of attorneys by county is as follows: (1) Erie -- 5,020; (2) Niagara -- 375; (3) Chautauqua -- 248; (4) Cattaraugus -- 121; (5) Wyoming -- 98; (6) Genesee - 55; (7) Allegany - 51; and (8) Orleans -- 25.

# **Matters Most Significantly Impacted**

# **Early Courtroom Closings**

Early courtroom closings are a concern of attorneys from all substantive practice areas because they affect the courts at all levels. Security personnel reportedly have been inflexible in implementing the requirement that attorneys and litigants vacate courthouses immediately after the beginning of the lunch break and at 4:30 p.m. each day.

## **Trials**

There is a consensus that early courtroom closing times result in a rushed afternoon schedule and rushed testimony. Early closings severely complicate the scheduling of witnesses. Strict time limits especially have made it difficult to obtain testimony from experts (mainly physicians) and out-of-town witnesses. Judges warn litigants to refrain from scheduling such witnesses in the afternoon, lest their testimony extend past the strict 4:30 closing time. In addition, the shortened court hours mean that some litigants must interrupt settlement negotiations or presentations at inopportune times, with carry-over dates that usually are weeks later. One attorney stated that it is "ridiculous" that a trial judge has to call the district administrative judge, who in turn has to call the state administrative judge, to get permission to finish up a case after 4:30.

## **Settlement Negotiations**

Several attorneys indicated that negotiations in civil cases have been disrupted by the need to leave courthouses during the lunch hour. Some settlements which could have been concluded in the morning with a few additional minutes of negotiation time were required to be resumed in the afternoon after long lunch breaks. This is disruptive, particularly for attorneys who have to travel long distances to the courthouse. Also, it was reported that there has been a decline in the willingness of some courts to get involved in settlement discussions to resolve matters.

#### **Family Court**

It is the district-wide consensus that funding cutbacks have been most severely felt in the already-overburdened family court system. It is agreed that judges and courthouse staff barely are managing to keep up with caseloads. The loss of court attorney referees and judicial hearing officers has impacted calendars. In addition, because of the highly emotional nature of many family court cases, the loss of court deputies is felt by some to pose a growing security risk to both litigants and court staff.

In Erie County and Chautauqua County, family court judges are asked to handle literally thousands of cases each year. The loss of the ability to assign town judges to be acting city court judges has impacted the ability to send Buffalo City Court judges to help in Erie County Family Court. Efforts to secure additional judges to help in Chautauqua Family Court have impacted the Erie County Family Court.

The Jamestown Child and Family Service Dispute Resolution Center is handling fewer cases, and staff cuts severely limit this family court's ability to perform needed services. In addition to dispute resolution services, important related functions such as parenting classes have been eliminated. The court has lost all but one of its mediators, which has resulted in increased custody and visitation caseloads for judges.

# **State Supreme Court**

# **Loss of Judicial Hearing Officers**

Judicial hearing officers ("JHOs") are needed to monitor jury selections. The loss of JHOs requires trial judges to be interrupted while conducting other business to hear and decide challenges. Often there are logistical problems because trial judges usually are in other locations.

# **Access to Judges and Courtrooms**

Courtrooms are locked during the lunch hour, making witness preparation much more difficult. Courtroom deputies occasionally have attempted to bar attorneys who are on trial from the courtroom during lunch. Lunch hours strictly are timed according to union rules, even if this means that an expert must be brought back for fifteen minutes after lunch. After-hours charge conferences during trial are impossible. Further access to buildings for law-related uses – such as moot court trials and trial technique sessions -- has been eliminated.

Moreover, particularly with respect to domestic violence matters and family court matters, there are many crisis and emergency situations that cannot and should not have to wait on the court's "budgeted hours." If the building is closed and/or if no one is available, an emergency may not be dealt with until the next business day.

#### **Calendars**

Court dockets increasingly are clogged. It takes longer to get a motion heard and resolved. Courtroom calendars are overbooked, and trial dates are being scheduled ten or twelve months in the future. Judges have fewer staff and more cases to handle, which results in delays in the issuance of decisions. This leaves litigants in limbo for longer periods of time. Law clerks have less time for pre-trial conferences. Thus, cases that could and should be settled end up going to trial. One respondent stated that an attorney was told that the court could not hear his motion for at least sixty days in a particular matter.

## **Delays**

There are not enough personnel to process papers and move matters quickly through the courts. Matters that could have been resolved in thirty days now take forty-five to sixty days or longer. The processing of prisoners' litigation matters -- including Article 78 petitions, petitions for writs of habeas corpus, other post-conviction motions, and divorce actions – is taking much longer to be completed. Arranging for matters to be scheduled and heard, getting orders signed, and getting judgments filed and returned do not occur in a timely fashion. Divorces, post-judgment relief, and orders to show cause all are affected by staff cutbacks.

#### **Court of Claims**

Regarding the Court of Claims, an attorney reported that funding cutbacks have impacted both attorneys and litigants due to the requirement that the court must be "finished with business" at 4:30 each day. Trials now end at 4:15 to ensure that court staff have sufficient time to complete required tasks before leaving at 4:30. An attorney reported that there is a consensus among attorneys that the early "finished with business" rule necessarily extends the length of trials, sometimes for several days. This rule often causes additional costs and inconvenience for both litigants and witnesses. Lastly, the court of claims reportedly now operates with insufficient staff, particularly with regard to court monitors. One impact of funding cutbacks is that these staff vacancies in the court of claims may never be filled.

## **Surrogate's Courts**

In surrogate's courts, the resolution and disposition of estate matters, guardianship matters, and adoptions significantly have been impacted. Staffing at this court is at an all-time low. The loss of court attorneys and clerks has increased the time from filing to the issuance of letters by weeks. All processing is taking longer, and the possibility of errors has increased due to stress on staff.

#### **City Courts**

There are eleven city courts in the Eighth Judicial District. There have been increases in civil filings across the board. In Buffalo City Court, landlord-tenant filings are up, yet staffing levels are down. The processing, filing, and docketing of cases has been impacted. There are delays in handling civil cases in city courts due to lack of staffing.

### **Other Significantly Impacted Areas**

## **Technology**

Budgeting reductions have impacted court technology programs. With the loss of staff at the Office of Court Administration Division of Technology, years of institutional knowledge has been lost. In some instances, court staff have had to wait longer for answers to questions and updates to state database programs. In addition, other technology programs are on a slower track due to budget cuts.

### **Pro Se Litigants**

Very little assistance now is available for pro se litigants. Advice from court clerks is limited. Frequent communications and interaction problems have confused members of the public. Self-represented persons significantly are impacted in surrogate's court in their ability to meet with the attorney of the day during business hours. Due to a limited number of attorneys and earlier court closing hours, some people are turned away after long waits. In addition, there are fewer pro se coordinators, and the state has failed to provide interim supervision of probation for non-resident defendants.

#### **Alternative Dispute Resolution**

The loss of mediation services has resulted in increased judicial caseloads and hearing delays. In some counties, there are now fewer part clerks than there are courts in service. Administrative judges sometimes have to schedule sessions so that two clerks can cover three courts. Alternative dispute resolution professionals are no longer available in courts in outlying areas of the district. This has resulted in busier trial calendars and delays for litigants who are seeking their day in court. Alternative dispute resolution should be encouraged and developed as a cost-saving measure.

# **Unfunded Needs**

## **Technology Development and Equipment**

The implementation of a state court system comparable to the federal courts' PACER system is an unfunded need. Such a system would allow attorneys to view court documents filed electronically by other parties in a dispute. A respondent noted that mandatory e-filing not only reduces costs to the state courts, but it also reduces costs to attorneys and law firms. However, installing scanners in courtrooms is vital to the success of the e-filing program.

# **Staffing/Elimination of Vacant Positions**

There are approximately eighty-five vacant positions in the Eighth Judicial District court system. As a result, the remaining staff are finding it difficult to process all necessary paperwork. The immediate reinstatement of JHOs is considered critical. In Erie County Surrogate's Court, the restoration of at least one court attorney and a chief clerk is necessary. It has been more than one year since the chief clerk's position became vacant. Erie County is second only to New York County in the number of new

proceedings filed each year. The chief attorney recently has served as the acting chief clerk, thereby performing the work of two full-time employees.

# **Resulting Innovations and Proposed Solutions**

# **Courtroom Operations**

Court staff have reduced postage costs by using fax machines, e-mail, and scanners. Judges and court staff have reduced the number of their requests for transcripts. Photocopying costs have been reduced by scanning documents. Drastic cuts have been made in library services.

## **Technology**

Use of email by judges and clerks to communicate with attorneys would be helpful.

### **Staffing**

In the Eighth Judicial District, at least one JHO is working as a volunteer. The early retirement incentive program of 2010 resulted in a thirty-percent reduction in staff at the Erie County Surrogate's Court -- including the chief clerk and two other attorneys. There are many ways to mitigate cuts in the court system. One way is to implement voluntary furloughs. One attorney stated that there are many people within the court system who would agree to work and get paid for a four-day week, rather than see further reductions in staff. This might allow many who were laid off last year to be rehired.

#### <u>Other</u>

Other suggestions include the need to promote a sharing of resources by mandated legal services providers in larger counties with agencies in smaller counties to enhance the provision of public defender services to the public. Specifically, there is a need to ensure that all mandated providers have consistent standards for the hiring and training of competent attorneys. It is felt that both the courts and the public would benefit from consistent statewide processes with respect to the structure, training, mentoring, and certification of public defenders. In addition, the New York State Bar Association should consider advocating for additional funding and assistance for the New York Office of Indigent Legal Services, alternative to incarceration programs, and the Indigent Parolee Representation Program.

## **Impact on the Public**

It was reported that, generally, with the loss of court staff attorneys at a court help center, the level of assistance to the public is, at best, adequate. Clerk's offices significantly have been impacted by self-represented litigants who are seeking procedural advice.

In family court, petitioners no longer are able to receive detailed assistance by the petition clerks when filing petitions, as there are fewer clerks with more responsibilities. In addition, processing times and adjudications -- including time spent waiting for hearing dates -- are taking much longer due to cuts in mediation service. Less help is available to litigants regarding the negotiation of settlements with input from trained mediators. This has resulted in more contested matters and longer wait times. The loss of court attorney referees and JHOs have led to much longer wait times for trials and case processing. This reduction in assistance to pro se litigants creates a definite adverse effect on these litigants' ability to handle their own cases, which is a failure of our justice system.

Reduction in children's center hours in family court and a complete loss of such services in city court has resulted in the presence of more children in the court environment (both in court parts and in waiting areas). This has disrupted court proceedings, impacting both litigants and judges.

## **Experiences of Civil Litigants**

Respondents indicated that calendars are overbooked and trial dates are being scheduled ten or twelve months in the future. Judges have fewer staff and more cases to handle, and this has resulted in delays in

the issuance of decisions. Consequently, litigants are in limbo for longer periods of time. Law clerks have less time for pre-trial conferences; thus cases that could and should be settled end up going to trial.

It was reported that when expert witnesses do not complete their testimony in a single day, they tend to charge an extra day's fees for returning to court the next morning. There also is increased pressure to videotape medical expert witnesses, which costs significantly more than live testimony. Clients who pay their attorneys on an hourly basis will pay more for trials which now take longer to complete. Witness scheduling now is particularly unwieldy. The increased expenses to litigants from additional time and fees only compound the stress that parties and their attorneys must deal with as part of the trial experience in our courts.

It also was reported that some supreme court justices will no longer conduct summary jury trials, which often allow litigants to forego the presentation of expensive expert witnesses. Instead, these judges are placing all matters on their regular trial calendars.

Furthermore, delayed adjudication is considered a direct result of the funding cutbacks. Many court parts do not take the time to engage in meaningful settlement discussions because their calendars are too congested. As a result, more cases are going to trial. One possible positive consequence of these situations is the increased use of alternative dispute resolution methods, such as arbitration and mediation. While these may be helpful ways of resolving cases, however, parties should not pragmatically be denied their right to a jury trial due to courts' financial difficulties.

## **Experiences of Jurors**

It was reported that jurors are serving more days due to limited courtroom hours for trials. Because jury deliberations are now ending at 4:30, jurors often are required to return for additional days of jury duty. Voir dire also is taking longer due to the budget-driven dismissal of JHOs, who previously supervised much of the voir dire in county and supreme court proceedings. On occasion, the commissioner of jurors has limited the size of the venire for cost reasons, and attorneys have run out of jurors during voir dire. This prolongs the process for both litigants and jurors. It is the consensus of those reporting that the quality of jurors' experiences adversely is impacted by funding cutbacks.

## Effect on the Courts, Judges, and Staff

Respondents agree that funding cutbacks have taken a significant toll on all court staff. Simply stated, fewer people are doing more work. In some counties, there are now fewer "courtroom/part" clerks than there are courts in service. It is reported that courtroom clerks have been assigned to multiple courtrooms, making it more difficult to conduct business efficiently and with continuity. Administrative judges sometimes have to schedule sessions so that two clerks can cover three courts.

The reduction of knowledgeable back-office and courtroom staff places a strain on remaining staff. Staff reductions in areas that process petitions, in city court civil parts, in family court, and in surrogate's court are stressful for the remaining staff as backlogs grow. Many staff are now working in areas with which they have little or no familiarity. Staff attorneys have to take on more responsibility and handle additional types of proceedings with little experience. Court staff are forced to hear complaints from attorneys on a daily basis about slower processing times. While courthouse staff have been very professional, one gets the sense that they are growing increasingly frustrated about having to do so much more with so much less.

It was reported that morale is very low among court employees. Specifically, employee morale reportedly is low because staff feel overworked. Many are reluctant to take vacations because they know that their work will not be handled by anyone during their absences and because they want to avoid backlogs upon their return. Others reported a reluctance to take time off because they did not want to

leave other coworkers short-staffed. Lastly, court staff reported that morale is low because budget reductions have resulted in significant staff layoffs while judges meanwhile are anticipating pay increases.

Family court and city court judges have received increased caseloads due to losses of JHOs and court attorneys. There is increased stress involved in trying to handle all matters within the designated operating hours of the court. It was reported that there are higher workloads for judges who handle matrimonial matters due to reduced resources for dealing with custody and visitation disputes.

Lastly, it was reported that cutbacks in state court funding and stagnant judicial salaries are a disincentive to attorneys who otherwise would consider careers in the state court system. However, one respondent stated that there is no impact on the judiciary as a result of the funding cuts because they may soon receive salary increases.

#### **Impact on Attorneys**

Respondents indicated that attorneys now have to explain to their clients that the litigation process will take longer due to court budget-related cutbacks. Specifically, respondents pointed to longer jury selection times and longer waits to resolve challenges raised during jury selection. It addition, there are longer wait times in crowded courtrooms and waiting areas, longer times between court dates, and longer times preceding the resolution of issues. The delays have resulted in higher attorney's fees. Although attorneys have little or no control over these situations, some clients blame their attorneys. These delays detract from the public's perception of the legal profession.

Overall, time requirements for every step in the judicial system are more extensive. It has become harder and harder for attorneys to meet client expectations. While the remainder of the business world is moving faster, courts seem to be moving more slowly and more inefficiently, despite the existence of well-intentioned programs.

## **Summary and Conclusion**

Respondents agreed that funding cutbacks have taken a significant toll on courthouse staff. Simply stated, fewer people are doing more work. It is evident to both attorneys and litigants that court sessions now end promptly at 4:30, rather than 5:00, and that judges' overtime requests no longer are routinely granted.

Respondents also indicated that access to judges and courtrooms has been severely cut back, that calendars are overbooked, and that trial dates are being scheduled ten or twelve months in the future. Judges have fewer staff and more cases to handle, resulting in delays in scheduling matters, hearing motions, and issuing decisions.

Respondents further indicated that witness scheduling now is much more difficult, and that increased expenses to litigants from additional time and fees only compounds the stresses that parties and their attorneys face as part of the trial experience in our courts.

Respondents maintained almost unanimously that one of the most striking impacts of the cutbacks was the elimination of JHOs, whose service was very valuable in the Eighth Judicial District. Their dismissal, and the concomitant shifting of their workload to remaining judges, has added to already onerous state court caseloads for the judiciary.

# Ninth Judicial District Report By Vice-President Arlene Gordon-Oliver

## **Introduction**

The 9<sup>th</sup> Judicial District encompasses the counties of Rockland, Dutchess, Orange, Putnam, and Westchester.

## **Summary of Most Significant Impacts**

A summary of the most significant problems identified by survey respondents is as follows:

- (1) A reduction in court personnel (including clerks, case managers, court officers, day care attendants, and drug court coordinators) and an increase in less experienced court personnel have occurred. There also is a steep learning curve for new personnel at all levels of the court system. These factors have resulted in delays in the adjudication of cases, overworked employees, low morale in general, and a severe decline in access to justice.
- (2) Both the "court day" and clerk's office hours have been shortened. Courts are now required to close courtrooms at 12:30 p.m. and then at 4:30 p.m. These changes have resulted in longer wait periods for the adjudication of cases, delays in obtaining trials, delays in the processing of paperwork, extended timeframes for trials, and an increase in fees for attorneys and expert witnesses (who often need to return to court to continue proceedings that could have been completed if trial days were not shortened).
- (3) A reduction in the number of security personnel has occurred. This has resulted in difficulty accessing court buildings and in longer waits to enter court buildings. In addition, judges and the public no longer feel as secure as they once did at court.
- (4) Increased dissatisfaction with a slow pace in the adjudication of cases and lack of services has placed additional pressure upon all participants in the justice system. This factor, combined with increased legal fees, has created low morale among many who are involved with the court system -- including judges, litigants, jurors, attorneys, expert witnesses, court staff, and the public.

## **Impact on Court System Operations**

In general, it is premature at this time in the Ninth Judicial District to draw a conclusion about the impact of funding reductions in the 2011-2012 budget. However, the following effects have been noted to date.

During this period of budget reductions, the Ninth Judicial District has focused on minimizing the impact on family, criminal, and matrimonial courts, while giving general civil litigation a lesser priority. Notwithstanding the foregoing, the reduction in clerical positions may be causing some delays in the processing of paperwork. However, judges and staff are working diligently – at some personal cost -- to try to mitigate personnel reductions.

Recent delays in family court adjudications relate to an increase in caseloads and a lack of accompanying increases in the number of family court judges and parts. Family court caseloads have been increasing for some time, and additional family court judgeships and parts have been requested. In Westchester County, the impact has been mitigated by the use of city court judges as acting family court judges (and the use of town and village judges in city courts). However, in other counties, that approach apparently is not possible. As time progresses, it is believed that delays in family court dispositions will increase because new cases are being filed faster than existing cases can be disposed of. Moreover, existing hiring restrictions prevent the replacement of any employee who leaves, with the result that staff numbers are ever-diminishing.

Assisting unrepresented persons has been impacted by reductions in both the number of persons and hours of operation at help centers. In fact, the principal legal services partner (Legal Services of the Hudson Valley) lost its pro bono coordinator position. This has prevented the Ninth Judicial District from moving forward with initiatives for providing assistance in foreclosure matters. In addition, hours of operation at our public law libraries also have been reduced.

Courthouse security has been significantly impacted, as there are now some fifty fewer court officers than in past years. Criminal, family, and matrimonial parts have received priority with respect to security, with the result that there are not enough officers for civil parts at times. As a result of reductions in the number of court officers, secondary public entrances to buildings have been closed. At times, this causes delays at the remaining entrances and difficulty in accessing court buildings.

Specialized courts also have seen reductions in staff. Local drug courts in the Ninth Judicial District have been consolidated into "hub courts" due to a reduction in the number of resource coordinators. However, it is too early to tell whether this will impact participants. In addition, the ability to implement further alternative dispute resolution programs has been impacted as a result of the lack of back-office personnel to support them.

The reduction in courthouse hours of operation has caused jury service to be slightly prolonged. Even when deliberating juries are close to a verdict at 4:00 or so, it is possible that they may need to come back another day. There has been an attempt to mitigate this type of situation in criminal matters by permitting overtime charges.

Courthouse staff who are subject to civil service rules and union contracts have not received increased or new responsibilities, due to statutory and contractual limitations. However, they have been called upon to do increased amounts of work. Although some employees voluntarily stay later and take work home, it is reported that others only are willing to work during regular business hours. In addition, senior managers who are not subject to civil service rules and union contracts have been required to take on additional responsibilities, or to do without previously-provided assistance. Staff reductions -- combined with an increase in the workload for these senior managers (who have long been without salary increases) -- have resulted in low morale. This has impacted both staff and judges.

Early retirement programs and hires of new and less experienced staff have created efficiency issues in the courts. In one court, a deputy chief clerk who retired has not been replaced. The chief clerk is now doing the work of two employees. In addition, there is a steep learning curve for new and less seasoned employees who have had to handle work that previously was performed by more seasoned staff.

Training for judges in the Ninth Judicial District also has suffered as a result of budget cuts. A robust continuing judicial education program is essential to support an informed, highly functioning judiciary. Accordingly, the New York State Judicial Institute has endeavored since 2003 to meet the educational needs of judges and court attorneys. Since that time, the institute traditionally has held several annual events that include the following: (1) a weeklong "new judge school"; (2) a summer seminar for all judges; (3) legal update programs for all court attorneys; and (4) periodic conferences on topics such as matrimonial law. Cutbacks to the institute's budget reportedly were significant in previous years -- and devastating in the current fiscal year. The institute's staff has been reduced to a skeletal level, so there is much less capacity to meet the minimal needs of judges and attorneys. The annual summer seminars were canceled in 2010 and 2011, and most programing now is offered in a web-based format. While the quality of the programs has been maintained, the pedagogical value to judges of attending meetings to exchange information with each other has been lost. Given that judges' work can be isolating, this lost opportunity is significant. Additionally, because of the loss of staff at the institute, the variety and

number of offerings has been reduced. There is no longer the capacity to tailor curricula to the individual needs of judges and attorneys.

### **Impact on Attorneys**

In general, attorneys believe that all matters are impacted as a result of the budget cuts. The court day is shortened, and funding reductions impact productivity and morale at the courts, with concomitant reductions in access to justice.

Attorneys have complained that they now find court personnel to be preoccupied by time constraints, rather than being completely focused on the dispensation of justice. Some have found judges to be hostile toward attorneys and litigants. In addition, jurors have been frustrated in both civil and criminal matters, and some believe they are now more likely to render verdicts based upon expediency than fairness.

Sentencing alternatives for criminal defendants have been reduced, and courts are reluctant to impose interim probation periods because of the shortage of personnel who are available for monitoring. Electronic home monitoring of defendants no longer is funded. Mental health and narcotics programs have been neglected, and this has increased the number of people with mental illnesses and addictions who are in jail.

Reductions in services have resulted in the closing of some onsite day care facilities. This has resulted in hardship to litigants, especially in family court matters. Reductions in the number of domestic violence program staff have impacted the resolution of family court and integrated domestic violence cases.

A lack of funding for the Legal Aid Society has resulted in fewer investigators, experts, and appeals. This has caused delays and inefficiencies in the adjudication of cases. In addition, there has been a substantial reduction in staffing and services for cases related to "persons in need of supervision" ("PINS"), juvenile delinquents, and other types of family matters. These reductions have had an adverse impact on such proceedings.

Courthouse hours that have been restricted to no later than 4:30 have resulted in the shortening of the court day. Daily court closings at 12:30 and 4:30 have made it difficult for attorneys to properly prepare for and prosecute their cases. They have been unable to stay in courtrooms to work on cases during the lunch hour. Attorneys feel that they are officers of the court and that being on trial is tedious enough without courtroom closings. Civil litigants also are adversely affected because court closings at such times do not allow for the orderly progression of trials. Jurors who are close to verdicts are required to return to court the next day to finish deliberations.

Time is money. Lengthier waiting times at court, lengthier waiting times for decisions, and lengthier waiting periods to enter courthouses (because of the number of reductions in court officers) has resulted in increased fees to clients. Another reason for higher legal fees is that attorneys are spending a great deal of time waiting for cases to be called.

Some attorneys believe that the poor and disenfranchised -- typically minorities -- have been impacted the most. People who do not have funds to retain private attorneys are having difficulties finding legal assistance. The Ninth Judicial District's pro bono committee works diligently to fill these gaps. Although the committee has successes, it cannot reach everyone who needs help.

Attorneys also have noted that access to courthouses has been reduced. Litigants must end testimony each day at 4:30, even if they are not finished. Abbreviated days effectively cause a loss of productive time, and this creates inefficiency in the courts.

Lighting also has been reduced in multiple courthouse locations, and this has been reported to have a depressing effect.

Some attorneys have noted a very serious morale problem among judges and staff as a result of the budget cuts. Individuals are concerned about their own futures in the event of cutbacks, and this detracts from their ability to focus on service to the public.

Attorneys also have noted that the lack of staff is a problem. They have made it clear, however, that staff members are not shirking their duties; there is just too much work. Experienced court personnel have taken and are taking severance packages, and they are being replaced by less experienced workers. Attorneys have reported that significant staffing needs in some courts (including the Dutchess County Family Court) have not been addressed.

The most obvious negative impact of recent cutbacks cited by several attorneys is the reduction in courtroom hours and clerk's office hours. In addition, long lines of people must wait to get back into courthouses after lunch each day. Many have young children with them (particularly in the family court), which makes access more difficult.

Some attorneys have noted that supreme and county courts are both staffed by the same chief clerk. It was reported that in the last several years, seven out of twenty-eight staff positions have become vacant. Of those seven positions, four have been eliminated. During that time period, the number of filings has increased -- comparable to the number of filings in Orange and Rockland Counties. One new county court judge who hails from the family court reportedly still presides over some family court cases. However, a new family court judge will be starting in January 2012, and hopefully the overflow of family court cases will end. It also was reported that trial delays are about eight or nine months in supreme court, depending upon the trial judge. However, the courts apparently are meeting "standards and goals" requirements.

Attorneys also have expressed frustration that they are forced to wait much longer for trial and hearings, even with regard to time-sensitive and urgent issues. This leaves litigants with many unresolved problems for extended periods of time. For example, support may not be paid in a timely manner in some family court cases. Too often, families are in limbo for too long without resolutions.

One attorney stated that he received a letter from a court recently about problems with an account that he filed. Some of the problems apparently were corrected during the interim period. However, because he was not notified by the court in a timely manner, he was forced to tell his client about the remaining problems at a much later date. The attorney and his client would have been spared the resulting frustration if the court had responded closer to the filing date.

Some attorneys also have shared their frustration that judges are pressuring staff because the judges are feeling overwhelmed. Staff members in turn put pressure on attorneys to move cases along. This results in unnecessary pressure on attorneys.

Another attorney noted that delays in surrogate's court cases can lead to unhappy clients and the possibility of greater conflicts. Problems can fester and become larger because of delays.

## Impact on Litigants and the Public

The impact of budget cuts on litigants and the public in the Ninth Judicial District has mirrored somewhat the impact on attorneys and the court system.

Litigants in some cases have found judges to be hostile towards them.

Litigants have found that jurors are frustrated in both civil and criminal matters, and some believe that they are more likely to render verdicts based upon expediency than fairness.

The public has been affected by the reduction in sentencing alternatives for criminal defendants (including the electronic home monitoring of defendants, which is no longer funded). Cuts in mental health and narcotics programs and the resulting increase in incarceration of people with mental illnesses and addictions also have impacted the public. Some defendants now are not able to maintain employment or remain in school, and the state is paying a much higher cost for incarceration.

Closings of onsite day care facilities at courts have resulted in hardship for litigants, especially in family court matters. Reductions in the number of domestic violence program staff also have impacted the resolution of family court and integrated domestic violence cases.

A lack of funding for the Legal Aid Society has caused delays and has created inefficiencies in the adjudication of cases. Coupled with reductions in staffing and services for cases relating to PINS, juvenile delinquents, and other types of family matters, litigants feel that the reduction in funding has had an adverse impact on proceedings.

Delayed adjudications and lengthier waiting times at court have increased attorney's fees. Litigants and other members of the public no longer feel that they have access to justice. Some are proceeding pro se. As a result, they sometimes make procedural errors and are penalized for not knowing how to proceed. Unfortunately, they are unable to get the help they need from court clerks because of staff reductions. Civil litigants also experience longer delays in adjudication.

Litigants and the public are beginning to feel that court operations are inefficient. Access to the courts has been limited, and litigants must stop the presentation of their cases earlier than ever before, even in the middle of testimony.

Members of the public who have young children now feel that there is less consideration for their needs (particularly in family court where onsite day care centers have been closed). Waits to enter the courthouse with children and to have matters adjudicated in a timely manner are sources of concern and frustration.

Litigants and the public also have been affected by reductions in clerk's office hours and the inability to have questions answered promptly. In addition, more litigants are proceeding pro se, and they sometimes make errors in procedure. They are penalized for not knowing how to proceed, but they are unable to retain counsel. There are increasing examples of defaults by pro se litigants (which are not necessarily their fault). Litigants believe that our court system should be more sensitive to their issues and needs, especially in these dire economic times.

Litigants are forced to wait much longer for trials and hearings, even with regard to time-sensitive and urgent issues. This leaves litigants with many unresolved issues, especially in family court cases where families too often are left in limbo.

Many litigants are unable to afford private counsel, and pro bono assistance is now more difficult to obtain. This leaves the public with the feeling that there is nowhere for them to turn for assistance in these hard economic times.

The shortening of the court day has caused litigants and jurors to be away longer from their jobs. This economically impacts both the public and employers.

### **Resulting Innovations and Proposed Solutions**

A suggestion was made that courts use thirty minutes at the end of the day for telephone conferences on cases, since court officers are not required for telephone conferences. These telephone conferences could be for the discussion of discovery issues, pre-motion conferences, and status conferences.

Courts also should permit matters to be adjourned on consent without routinely requiring appearances. In addition, calendar calls should not require appearances by counsel if judges are not on the bench to hear applications. Any necessary follow-ups could be by telephone.

The suggestion also was made that courts routinely should enforce their scheduling orders. This would mean fewer court appearances, which would help to shorten the length of cases.

Attorneys have suggested that e-filing, which has been a great benefit to many, should be expanded as quickly as possible in as many courts as possible.

There also was the suggestion that pro se litigants be provided with additional assistance. This would help their cases to proceed as quickly and as smoothly as possible.

Additional funding to the courts would provide significant benefits to the judiciary, attorneys, and the public.

Additional family court judgeships and parts -- particularly in Westchester and Dutchess Counties -- would provide a major improvement for the court system.

Improved family court facilities in lower Westchester County are vital. Supreme court facilities in Orange County -- which recently were rendered inadequate by weather damage -- must be replaced or restored.

Additional court security should be funded because it is important to keep our courthouses safe.

Additional funding should be provided to assist pro se litigants because it is critical for the public to have access to justice.

On-line research should be utilized more frequently. E-filing significantly has reduced costs for county clerks, and it eventually will produce savings for the courts (to the extent that it has not done so already).

The consolidation of resources should be encouraged. The conversion of local drug courts into hub courts is one way in which Westchester County has attempted to solve certain funding problems.

It was noted that the lack of a judicial pay increase in New York for the past twelve years, coupled with additional burdens on the judiciary, has led to a significant problem with morale. Many judges have indicated that their services are both undervalued and unappreciated by officials in the other branches of government and by the public at large. Some litigants -- particularly in such emotionally-fraught matters as family and matrimonial cases -- have expressed anger and hostility toward judges. For this reason, reductions in court security have given rise to judges' fears for their personal safety. Heavier caseloads, staff reductions, salary limitations, and security concerns all have contributed to atmospheres where judges may no longer be willing to work nights and weekends and where some judges may decide to leave the bench. If recommended salary increases are implemented, the situation may improve. If not, the impact on judicial morale could be devastating.

# Tenth Judicial District Report By Vice-President Emily F. Franchina

## **Introduction**

The Tenth Judicial District is composed of Nassau and Suffolk Counties on Long Island. Although Queens County and Kings County comprise the most western portion of Long Island, they generally are grouped with other New York City boroughs and are not included in the description of "the island." As of the 2010 census, the population in Nassau County was 1,339,532, and the population in Suffolk County was 1,493,350. The population only tells a part of the story of this district; its most distinctive quality is its varied density, ranging from urban to suburban to rural. Public transportation provides a unique challenge to these two counties; this affects members of the public who rely on public transportation to access the court system. Nassau County courts are located in three general areas: (1) centrally-located Mineola, which houses supreme, county and surrogate's courts; (2) Westbury (twenty or more minutes east of Mineola), which houses the district court. Suffolk County courts are located in two general areas: (1) Riverhead, which houses supreme, county, and surrogate's courts in a court complex and in a courthouse within the town of Riverhead; and (2) Central Islip (forty minutes southwest), where another court complex houses supreme, county, and family courts.

# **Summary of Most Significant Impacts**

There appear to be two significant issues in the Tenth Judicial District. One relates to dramatic cutbacks in the Nassau County Surrogate's Court. The other is the pattern of delays resulting from the modification of the court day to conclude at 4:30 p.m.

In particular, the Nassau County Surrogate's Court has lost roughly thirty percent of its staff as a result of 2010 early retirement program incentives. Several months later, in early 2011, two members of the department and a secretary were part of a layoff resulting from the court system budget crisis. In the words of one respondent, this became an "onerous burden, due to the court's volume of complex and substantial estate matters. Every phase of the court's operation has been damaged by these developments." Comparable views were expressed by other respondents. Currently, there is restricted access to attorneys and the public because court personnel are unavailable on both Mondays and Fridays. While no major delays have been reported at this time, it is believed that the cumulative workload will affect staff's effectiveness and cause the system to erode.

The majority of respondents focused on an increased volume of cases, slower decisions from judges, and an increase in the length of trials due to shortened court hours. While opinion was divided as to whether significant delays already are presenting a major disruption, there is a widespread perception that delays ultimately are inevitable down the road because of a backlog of unresolved matters caused by reductions of court hours and personnel.

#### **Impact on Court System Operations**

There are significant delays in receiving decisions, motions, and trials due to lack of staff and a court closing time of 4:30 p.m. Nassau County Surrogate's Court does not allow attorneys to file documents on Mondays and Fridays in an attempt to keep abreast of the workload.

All questionnaire respondents indicated that judicial and non-judicial personnel have done an exemplary job to mitigate delays for litigants and attorneys thus far. However, concerns have arisen regarding the long-term, cumulative impact of a reduction in services.

### **Impact on Attorneys**

Attorneys that do not regularly practice in the area may be unaware of closings and particular delays; this could result in wasted time and lost efforts. Delays impact an attorney's ability to manage a case, especially when on trial. The necessity to call witnesses based on the court's modified hours may impact an attorney's ability to examine and produce testimony in a timely manner. Waiting for matters to be called on hourly cases increases the costs to litigants who already may be suffering from the depressed economy.

# **Impact on Litigants and the Public**

The public, in general, must be confident that justice is being served in a dignified, professional, and competent manner. If court staff are suffering from lack of funds, materials, and support from the court system in general, the public perception of the court and the justice that is meted out shall be questioned. Lengthy delays in decisions can result in additional motion practice and other court proceedings as litigants continue to "fight" until a decision is made. This phenomenon is present in family and matrimonial proceedings, in particular. Many respondents pointed to the loss of judicial hearing officers as devastating for litigants and attorneys.

## **Resulting Innovations and Proposed Solutions**

Technological innovations such as e-filing are substantial benefits *only if* the systems are kept up-to-date and are accurate. Without proper staff and training, they could be a disaster, rather than a savings. A number of innovations have been initiated, including the following: (1) conversion of the Nassau court telephone system to reduce a reliance on costly county servicing and reimbursement to phone companies; (2) technological innovations; (3) the consolidation of departments; and (4) shared staff between court facilities within the same district. Suffolk County leaders are adjusting schedules and assignments of personnel based on court needs.

Court consolidation may be appropriate but, once again, proper funding and training would be critical to ensure a smooth transition.

# Eleventh Judicial District Report By Vice-President David Louis Cohen and Member-at-Large Margaret J. Finerty

## **Introduction**

The Eleventh Judicial District consists of the County of Queens in the City of New York. The courts that operate within the district are the New York State Supreme Court, Criminal Term and Civil Term; New York State Family Court; New York City Civil Court; New York City Housing Court; and New York City Criminal Court. There are four courthouses within the district. The population is the most diverse in the country. Most of the attorneys with offices in the country are small-firm and solo practitioners.

## **Summary of Most Significant Impacts**

From judges, lawyers, and court personnel, there is a consistent complaint about shortened hours of court operation. Courts must end the day at 4:30 or 4:45 p.m. at the latest because courthouses must be locked at 5:30 p.m. This impacts all aspects of the court system. Trials take longer; settlement conferences have in some cases been eliminated or truncated; jurors' service is longer due to trial delays; document processing has slowed; adjournments are longer in civil cases, especially matrimonial matters; and arrest-to-arraignment time has increased.

Lawyers and judges indicated that staff retirements and reductions have caused a drastic increase in the time it takes to process all aspects of cases -- not only trials but also the filing of decisions, judgments, and orders. In addition, the elimination of judicial hearing officers ("JHOs") has created backlogs in both criminal and civil cases.

A county clerk indicated that staff reductions have necessitated a shifting of personnel to new and different positions, resulting in a significant increase in the time it takes to process all paperwork, from juror questionnaires to court judgments. Fewer staff are available to assist unrepresented litigants, and courthouse security has been reduced.

Bar association representatives reported delays in cases going to trial, reduced funding for mental health and substance abuse programs, a significant cutback in the operation of small claims court, and delays in emergency applications in housing and domestic matters.

From the public, the main complaint was the reduction in hours of operation of the small claims court. Evening sessions drastically have been reduced. In addition, long lines form outside courthouses during the morning hours since there are fewer court personnel to perform the necessary security operations for public admittance.

### **Impact on Court System Operations**

The reduction in court hours of operation has had an impact on all aspects of the court system in the Eleventh Judicial District. Judges and lawyers reported that the shortened hours result in more trial days. Testimony of witnesses has to be stopped at 4:30 or 4:45 p.m., regardless of the inconvenience and expense of having to bring witnesses back for another day. Since the building has to be vacated by 5:30 p.m. and staff cannot remain, conferences after trial to resolve legal issues and other non-trial matters cannot take place. Judges and staff do not have time to complete paperwork after court hours, so in many instances, they have to start trials later to allow time to get the paperwork completed. Routine conferences have to be conducted during the trial day, so once again the resources of the court cannot efficiently be utilized to complete trials in as timely a manner as possible.

Lawyers have complained that settlement conferences were cut short because of the mandatory 12:45 p.m. luncheon recesses and mandatory 4:45 p.m. building closures. These closures caused cases to be adjourned unnecessarily as counsel were unable to return after lunch or the next morning to complete the

conferences.

The processing of matrimonial cases has been drastically impacted by the budget cuts. Adjournments are lengthy, and trial dates can be as far off as one year. The loss of JHOs, who presided over most matrimonial trials, has caused a significant delay in the resolution of contested matters. Uncontested matrimonial matters are taking much longer to process as well. It is taking months for judgments of divorce to be signed, even in uncontested matters where no children are involved. In one divorce case where an attorney made an emergency application for support for her client who was facing possible eviction from her home, oral arguments had to be adjourned twice because of the shortened court day.

In addition to the general increase in time to process cases, the public has been significantly impacted by the elimination of most night hours of small claims court. At most, the court operates one night a week, rather than four. This causes a monumental delay in having cases heard because pro se litigants are unable to go to court during the day due to work responsibilities. Currently, it takes almost six months to get a date for a small claims court night trial. One small claims case that commenced in January 2010 with a \$1,000 claim ultimately was converted in July 2011 to a civil court case with attorneys representing both sides. Even then, there was a six-month delay in getting a trial date. This situation arose, as acknowledged by a court clerk, due to the court funding cutbacks.

The elimination of JHOs has negatively impacted both civil and criminal cases. On the civil side, JHOs had many administrative functions, such as overseeing pre-trial conference parts and jury selection. JHOs also heard most non-jury trials. Obviously, judges now have to handle these matters, thus detracting from their ability to preside over trials. Litigants have to wait longer to get their matters heard.

On the criminal side, JHOs were utilized in both felony and misdemeanor matters. With respect to felonies, they conducted many of the pre-trial hearings. Now judges must conduct these hearings, utilizing time that could be spent presiding over trials and disposing of cases. JHOs also sat in trial assignment parts ("TAPs"), assigning cases to courtrooms for trial and preparing both sides. This is now done by a judge who consequently is not available to try cases due to the number of matters he has to handle each day in TAP.

On misdemeanors, JHOs conducted hearings and some non-jury trials on minor violations. The elimination of JHOs has caused these matters to take longer to resolve. Again, having the judges do this ministerial work takes away from the time that they can devote to trials.

Shortened court hours have an impact on the criminal side as well. Since jail cases have priority, the cases of defendants who are released on bond are adjourned more frequently and for longer periods of time as there is simply no time to handle them in the shortened court day. This results in more time away from jobs, school, and family obligations for defendants. There also are more frequent delays in arraignments, causing defendants to stay in jail longer prior to appearing before judges.

The number of court staff has been reduced as a result of the budget cuts. This means there are fewer people to do the required work, so it takes longer to get the work done. Lines at clerk's offices are longer, so both the public and lawyers spend more time getting necessary information and documents.

A large number of senior staff left as a result of a "buy-out." This has impacted every aspect of the system. Many of the remaining court staff are now in new positions and need more time to get up to speed about their newly-assigned jobs.

A county clerk indicated that she lost approximately twenty positions, or approximately twenty percent of her staff, as a result of the "buy-out." Obviously, these were some of the most experienced members of

her staff. The impact has been felt in many areas. In the jury section, there is a large backlog in the entry of data from juror eligibility questionnaires. She estimates that there may be as many as ten thousand replies that are awaiting data entry. This causes a smaller pool of potential jurors to be available and a general delay in getting jurors for civil and criminal trials.

Staff reductions have caused a delay in the entry and scanning of judgments, decisions, and orders. The entry process has been delayed at least two additional weeks.

Another consequence of cutbacks in administrative personnel is longer lines at public counters. Back-office staff are required to cover more than one court part, and security personnel must move from one location to another to ensure that courthouses remain orderly and safe.

## **Impact on Attorneys**

As discussed above, the impact on attorneys has resulted from a significant slowdown of the system. Bar association representatives all reported that the processing of matrimonial cases has slowed to a snail's pace. While not as drastic, all of the courts have experienced a significant backlog. Everything takes longer. Obtaining decisions and orders, obtaining information from the clerk's office, and obtaining hearing and trial dates are all taking more time. Lawyers have complained that delays make it more difficult to collect fees as clients pay when they see results.

## Impact on Litigants and the Public

Simply put, the cutback in court funding has negatively impacted the public's access to justice. It is harder and more time-consuming to get pro se help. Small claims court hours have been reduced. It takes longer to get hearing and trial dates. Reduced hours in clerk's offices can result in delays for members of the public to obtain important court documents and information. Justice delayed is, in many cases, justice denied. The budget cuts have significantly delayed justice in the Eleventh Judicial District.

It was reported that the budget cuts have made judges less likely to provide enhanced expert services to indigent defendants. Lawyers have complained that they have had difficulty securing experts due to the lack of adequate funding.

Pro se services have been reduced, and this directly impacts the public.

Budget cuts have increased the length of jury service. Longer trials result from shortened court hours. Jurors are no longer provided lunch during deliberations, and this has mandated increased lunchtime recesses. Although jury service is a duty, it has an economic impact on some jurors. Accordingly, steps should be taken to make jury duty as efficient as possible.

It takes longer for the public to gain access to courthouses. Due to reductions in court personnel, security procedures for admitting the public into courthouses take longer. As a result, long lines form outside the courthouse, especially during the busiest times of the day. These delays can result in people not being present when their cases are called in courtrooms, missing more time from work, and braving the elements in the inclement weather.

The taxpayer is affected because attorneys assigned to represent indigent defendants pursuant to the courts' Assigned Counsel Plan spend more time handling cases due to the shortened court day and resulting delays.

## **Resulting Innovations and Proposed Solutions**

Some attorneys have indicated that a four-day trial week, with the fifth day devoted to administrative matters, is a format that could "speed up" the process.

More public and attorney access to online court documents and records could save time and money for both the attorneys and the court system. Implementation of a faxing and scanning system for judges to use in transmitting orders would make the system more efficient.

Allowing judges some discretion in extending shortened court hours, especially during trials, would be useful. Some have suggested that these reduced hours cost more money than they save.

The expanded use of court referees is a way to free up judicial resources. Once again, the elimination of JHOs probably costs more as a result of system-wide delays than the savings realized.

# Twelfth Judicial District Report By Vice-President Steven E. Millon

## **Introduction**

This is a court funding initiative report for the Twelfth Judicial District. The entire district is made up of Bronx County.

## **Summary of Most Significant Impacts**

The most significant issues involve delays in the following: (1) the everyday processing of motions; (2) conferences; (3) jury selection; and (4) obtaining copies of "entered" decisions, orders and judgments.

## **Impact on Court System Operations**

Fewer people are doing more work in the clerk's offices. In many cases, supervisors are doing the work of their former reports. It is just as well, in one respect, that there are fewer workers because there are shortages of both equipment and supplies.

There are backlogs in almost every part of the system, including an overburdened law department, small claims court, a pro se self-help program, guardianships, foreclosures, and uncontested matrimonials.

## **Impact on Attorneys**

It is taking longer for cases to be reached for trial. The opportunity to have a judicial hearing officer ("JHO") handle a matter has been taken away. JHOs formerly conferenced cases and tried to settle them. This helped to reduce the number of cases in trial parts, and it helped to move cases forward more quickly.

Trials are taking longer, due to the shortened workday. Courtrooms must be cleared by 4:30 p.m. If an expert is testifying, he or she often will need to return for a second day, at significant expense.

The summary jury trial program, which is designed to have one-day trials that do not require expert witnesses, is now taking two days in many instances.

It is taking lawyers more time to process lawsuits from intake to trial in many instances.

# **Impact on Litigants and the Public**

Together with the factors noted above, the following have negatively impacted the delivery of legal services to the public: (1) the loss of the only full-time court examiner in the guardianship department; (2) a reduction in the operation of small claims court to only twenty-five percent; (3) the overburdened pro se self-help program; (4) the inability to hire a Spanish-speaking referee for foreclosures; (5) longer lines at clerk's offices; and (6) a backlog in uncontested matrimonials.

## **Resulting Innovations and Proposed Solutions**

A volunteer JHO program would greatly increase the courts' ability to move cases through the civil system more quickly. The foreclosure clinic and the uncontested matrimonial program are both running with private funding and donations. New York University Law School has provided volunteer mediators for small claims court. A judge-directed negotiation program for medical malpractice cases has been created to foster settlements. Settlement programs for automobile-related matters are being created. A new program designed to reduce the number of cases sent by individual judges to the law department is being implemented.

# Thirteenth Judicial District Report By Vice-President Grace V. Mattei

### Introduction

The Thirteenth Judicial District consists of Richmond County, which encompasses the borough of Staten Island in New York City. The population of Staten Island currently stands at approximately 470,000 people. The supreme court, surrogate's court, and family court are located in St. George on the northern shore of the island. The Staten Island ferry docks in St. George, and this provides access to the area from Manhattan. The Civil Court of the City of the New York is located in West Brighton, approximately 2.5 miles to the west of St. George in a predominantly residential neighborhood. The criminal court is located in Stapleton, approximately three miles to the east of St. George and also in a predominantly residential neighborhood. A new courthouse, which is expected to house the supreme court and criminal court in St. George, is under construction and due to open next year.

## **Summary of Most Significant Impacts**

The most significant problems appear to be the following: (1) lack of judicial hearing officers; (2) lack of matrimonial case analysts and social workers; (3) shortened hours of operation for all courts; (4) a shortage of court officers; and (5) a shortage of personnel in clerk's offices.

# **Impact on Court System Operations**

The operation of the court system in our district has been impacted directly by funding cutbacks. At times, our civil court judges have been unable to conduct any trials because no court officers are available. In addition, trials must be discontinued during lunch, even if a witness's testimony is almost complete. Furthermore, judges must leave the bench no later than 4:30 p.m., which thereby lengthens the trial process.

Courts have been delayed in starting and continuing hearings and trials due to the lack of availability of clerks, court officers, and/or court reporters. In fact, our supreme court, criminal term cannot conduct two criminal jury trials at one time because there are not enough court officers available.

The shortage of staff in clerk's offices has led to a six-month backlog in the review of orders and matrimonial judgments.

Specifically with regard to the matrimonial part, our judges, attorneys, and clients are experiencing delays due to the loss of matrimonial case analysts and social workers.

## **Impact on Attorneys**

Attorneys who responded agree that the shortage of court personnel and earlier courthouse closing times have required them to spend more time, cumulatively, in court on each matter. Trials are taking longer, and it now takes longer to procure signed orders. For example, in supreme court, civil term, it now takes approximately four months after submission to procure a signed order. Respondents stated that it is difficult to explain these delays to their clients.

Due to the mandatory earlier end of the work day for court officers and court clerks, judges routinely are holding "motion days." On these days, the daily calendar can consist of more than one hundred returnable motions. This has caused the average appearance time for an attorney on the motion calendar to increase to approximately two or three hours. Furthermore, judges are not able to refer cases to judicial hearing officers, which further slows down the process.

Attorneys are spending more time in court, and they have the added burden of explaining delays and additional expenses to their clients.

## Impact on Litigants and the Public

Litigants are experiencing delays in justice, and they are bearing higher litigation costs due to the mandatory reduction in operating hours for all of the courthouses. Trials now must end at 12:30 p.m. and at 4:30 p.m., and they consequently are taking longer. This results in increased costs for expert witnesses and attorney's fees when parties must return on additional days to continue trials.

Our small claims court has been severely impacted by the cutbacks. Currently, the small claims calendar is heard only one evening per month. Prior to the cutbacks, small claims cases were heard once a week. This has created significant delays for the public, particularly because the wait for inclusion on the small claims calendar is now approximately four months.

Longer trials also require jurors to be available for greater lengths of time. This increases the amount of time that jurors must be away from their employment. Jurors also must be available on telephone alert for longer periods of time.

Criminal defendants have been affected by the cutbacks because they must wait longer to be arraigned. In addition, defendants who are paying fines or posting bail must wait until a limited number of court personnel are finished with their courtroom duties and are available to return to the clerk's office to assist them.

Access to court buildings for the public has been reduced. The public cannot have access to the help centers or libraries unless officers are available to operate security equipment.

## **Resulting Innovations and Proposed Solutions**

On-line legal research provides sufficient resources so that funding for actual books no longer should be necessary.

All respondents appear to agree that restoring funding for judicial hearing officers would help the system run more efficiently.