

Business Pays for Court Delays

By Robert M. Heller

It's no secret that the California budget crisis has had, and will have, far-reaching implications for communities and businesses around the state. As legislators continue to struggle to close budget gaps, their actions are resulting in significant consequences for the legal community.

Serving 9.5 million people, the Los Angeles Superior Court is the largest trial system in the nation. But because of California's economic crisis, it faces a \$79.3 million budget shortfall for fiscal 2009-10. In an attempt to balance its budget, the court has laid off more than 5 percent of its staff and closed 16 courtrooms. By September, an additional 500 court employees will lose their jobs and 50 courtrooms will be closed. Court officials further predict that, barring a significant economic recovery, over the next two and a half years, the LA court system will see a 34 percent reduction in work force, and the closure of more than 180 courtrooms and about 9 courthouses.

As the court's presiding judge aptly stated, "The rainy day we planned for turned into a tsunami."

These drastic cuts; are increasing the likelihood that California will violate its own "fast-track" rules.

Ten years ago, the average time for a civil lawsuit to be called to trial was as much as five years! Obviously, the longer it takes for a case to be heard, the more costly it becomes. In response, more efficient fast-track rules were created and the wait for trial reduced to about 16 months. These reforms were welcomed by the LA business community since they reduced litigation costs and helped enhance the city's business environment.

But with the current budget crisis, we're already seeing lengthened time to trials, and court personnel are predicting that the time from filing to final decisions in civil cases may stretch to more than four and a half years!

Although there is little the legal community can do to solve the budget crisis, there are levels of professionalism and degrees of integrity to which lawyers must adhere during these uncertain times; as fallout from the budget crisis continues to negatively impact these fast-track rules, the opportunities for litigants and their attorneys to exploit the system for their personal advantage are growing.

Fast-Track Rules

For example, fast-track rules require a one-year disposition of most cases. Whereas this important role has yet to be officially suspended, some judges are bending it in light of their much heavier case loads, while other judges continue to set earlier trial dates to conform to the fast-track case disposition deadlines.

However, increasingly, the courts lack the staff needed to timely schedule and hear all necessary prelitigation matters before the trial date. These can include discovery and summary judgment motions, key steps in the litigation process. Many courts are now experiencing as much as a four-month delay in setting such pretrial hearings. Indeed, some litigants are reporting they must forego discovery and other proceedings as a result, thus further compromising the integrity of the system.

Judges bending these fast-track rules allow both parties time needed to prepare for trial. However, if lawyers in a court that still pushes a fast-track time line choose to refuse to comply with discovery – choose to withhold discovery unfairly – thus benefiting their client, they likely face little or no recourse.

This may temporarily serve their clients, but it does not serve justice.

While criminal courts have strict *due-process concerns*, civil courts must also comply with minimum right to due process as well. At some point, the cutbacks combined with fast-track requirements will impinge on civil due-process rights.

Equally unacceptable are those lawyers facing increasingly significant delays in court who attempt to file unnecessary motions to further push out the time frame of a judgment where their client is likely to lose.

The effect of the economic crisis on the judicial system is just beginning to be realized. But the results will be felt for years to come. According to a recent economics study by Micronomics Inc., the present budget allocation reduction for the judicial system will, over the next four years, cumulatively damage the state and local economies by nearly \$30 billion, lead to more than 155,000 lost jobs, and reduce state and local tax revenues by approximately \$1.6 billion, further braking the much needed economic recovery both locally and statewide.

Officers of the court have a rather simple choice in these unsteady times; work within the system fairly and with integrity for everyone, or manipulate it to their and their clients' advantage. At some point, I hope my fellow attorneys recognize that manipulating our system, particularly when it is already stressed, may ultimately defeat our collective efforts to revitalize L.A.'s economy as a thriving and productive business center.

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