

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## MCBAPRESIDENT'S MESSAGE

### Justice under threat: How we can respond

At the ABA midyear meeting last week there was much discussion about threats to the justice system and our profession's obligation to respond. The 2012 Law Day theme will be: "No Courts, No Justice, No Freedom."

ABA President-Elect Bill Robinson III talked about how the lack of funding was significantly impairing the ability of the justice system to deliver its constitutionally mandated outcome — Justice for All.

The preamble to our Constitution says that establishing justice is second only behind forming a more perfect Union in why we established our government. It is several places ahead of providing for the common defense. But our funding priorities as the nation and as a state fail to reflect this priority.

In state after state, Robinson told us that budget cuts were significantly impairing the ability of the justice system to achieve its goals. An ABA Task Force on Preservation of the Justice System co-chaired by former Solicitor General Theodore Olson and David Boise held hearings around the country on the effects of inadequate funding on the legal system. It heard about long delays for trials, suspension of jury trials and having courts open only four days a week.

Here in New York, our court system took \$170 million in cuts in this year's state budget on a total funding base of \$2.7 billion. Positions were eliminated throughout the court system, as were important programs like training, funding for *pro bono* coordinators and the highly successful ACT program that provides important information for parents facing divorce on how to put the needs of their children first.

And our judges have gone over a decade without salary increases, with most of them now earning less than associates in Wall Street law firms.

The judiciary is unable to fully participate in the political process that leads to the creation of budgets. Therefore, it is easy for the legislative and executive branches to cut funding for the justice system in times of economic difficulty.

But in times of economic difficulty the number of cases rises in many of our courts. Family violence and neglect increase in economic hard times putting additional stress on our already overburdened family courts. Evictions, foreclosures, and collection matters as well as employment cases all rise in economic hard times. Criminal court dockets also increase.

Attorneys are able to participate in the political process and it is also our obligation as officers of the court to uphold the justice system. To effectively advocate for adequate funding we need to know how the cuts this year are affecting the ability of our system to deliver justice.

Please let me know what you are experiencing and how inadequate funding is affecting you and your clients so our association can be a more effective advocate as we enter next year's budget cycle. You can email me at the address below.

The judicial branch is only one part of the justice system. For it to function effectively we also need adequate funding to represent litigants before the courts who cannot afford counsel. Throughout the country we also have a crisis in providing criminal defense services to those unable to afford representation.

No one ever got elected by promising to increase funding for criminal defense services. Our own Court of Appeals has recently permitted a case alleging widespread systemic constitutional violations of the right to adequate representation in multiple New York counties to go to trial.

On the civil side, OCA reported our state courts are inundated with 2.3 million cases involving unrepresented individuals, who are far less likely to achieve a just result in their cases. And those cases will take far more judicial resources than if they had been represented.

Justice Joanne Winslow, in testimony last year, estimated that when one party was unrepresented, a case in her court took twice as long, and when both parties were unrepresented it took four times as long as a case in which both parties were represented.

She pointed out that most unrepresented individuals who come into her court don't even know where to sit, let alone what they can ask her for, what they need to show to obtain what they are asking for, and how to enforce her order if she happens to figure out what they are entitled to.

Budgets are how we as a society say what we value. As attorneys and as citizens, establishing and preserving justice must be among our highest values. Hard times test our values. As a profession we need to stand up for justice.

*Bryan D. Hetherington is president of the Monroe County Bar Association. He is chief counsel of the Empire Justice Center, located in the Telesca Center for Justice. He can be reached at [bhetherington@empirejustice.org](mailto:bhetherington@empirejustice.org)*



By **BRYAN D. HETHERINGTON**

Daily Record  
Columnist