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The wisdom to know the difference

Probate and Family Court maps strategy to improve delivery of justice

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The Massachusetts Probate and Family Court has been persistently cross-cut in recent years by an increase in *pro se* litigants and a decrease in legal representation, piled on top of staff and budget cuts. It's the worst possible combination for a court in which litigants are more likely to come into the court process already highly stressed, inexperienced in the legal process, and short on funds to hire an attorney.

While the increase in *pro se* litigants is out of the court's control, one of the underlying causes of this rise is rooted in skyrocketing costs of court litigation. Costs are rising to due to the structural inefficiencies in court processes themselves which lead to excessive waiting time for attorneys and litigants — which in turn run the legal clock.

These root causes are what Probate and Family Court Chief Justice Paula M. Carey has set out to address. She is concerned about the quality of information judges receive due to the dearth of legal representation in the court, and also about the rising costs of litigation stemming in part from the court system's structural inefficiencies.

Dr. Robert A. Zibbell, forensic and clinical psychologist

Budget cuts have prevented Carey from hiring a consultant to address these problems. Then, last year, a combination of connections made it possible for the court to get the needed outside help. On suggestion of Glenn Mangurian, a member of the Court Management Advisory Board, Carey drew on the resources of Boston College's free MBA student consulting services. The BC program brought in first-year grad-

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uate students to evaluate the court systems and structures to see what internal functions could be made more efficient. The MBA students, whom Carey commends for their professionalism, evaluated the Middlesex, Suffolk and Norfolk registries to recommend certain efficiency-improvement processes.

"The court told us what they faced," student Alison Hamilton said. "There were significant staff reductions across all counties, and processes that didn't match the staff reductions." Additionally, back-end processes were not effective in bringing cases timely to court. The students recommended that the court redesign the customer-facing areas from end-to-end in order to start and end with the same court employee. Student Tomas Uribe called for making the connection between the front and back office shorter. "We should have people answering questions and talking to clients," he said. Student Jason Shulman says, "We saw on our first day, a lot of the people coming into court were having the worst day of their lives. If we could improve that, we were proud," student Jason Shulman said.

The Franklin N. Flaschner Judicial Institute provided funding for bench-to-bar conferences to address access to justice issues, and hired Laura Freebairn-Smith, principal of Organizational Design & Development Associates (ODDA), to design and facilitate an all-day conference on November 2 of last year, which drew about 100 representatives from a variety of court constituencies.

A critical component was the initiative to concentrate on things that the court could control, rather than issues outside of its control — and, in essence, the wisdom to know the difference. "The court can do nothing about the influx of *pro se* litigants," says Robert Brink, the Flaschner Institute's executive vice president and also director of the Social Law Library, "The first exercise was what's in and out of the court's control."

The internal issues within the court's control are: timeliness, scheduling, training, and customer service.

Before the conference, ODDA conducted a survey of 350 stakeholders and assembled focus groups to review solutions and plans to achieve the improvements, and create an understanding of the external factors influencing the court's effectiveness.

The Flaschner Institute's Brink says the scientific polling methodology differs from the old style bench-bar conference which consists mostly of impressionistic views of court activities. "What you don't need is a structured polite carping section," he said. "This was a real poll with real criteria."

"It was great to have judges and lawyers in the room at same time," Carey said of the November conference. "Judges said they would be willing to stagger-schedule a motion [to reduce waiting time], but other parties would need to have spoken to one another before coming in front of the court." Norfolk County is currently serving as a pilot project for the staggering of cases on motion days.

Brinks says the survey contained an 80 percent positive response rate as to whether the court treats people fairly. Improvements would include the needs for better case processing, and also the determination of which improvements are dependent on money and which are not.

The Probate and Family Court recently completed Rule 412 which is headed to the Supreme Judicial Court Rules Committee. This rule allows administrative approval of uncontested joint petitions to modify a child support judgment instead of a judicial hearing. "That doesn't mean that a judge can't schedule a hearing if, on review of the paperwork, something seems amiss," Carey said.

"Our vision for the future empowered everyone to believe they are part of our vision," Carey said. "It was a collective effort by a lot of people to bring this forward … for just really being committed to this process and committed to working together to improve the way we operate our court to make it better for the litigants."

Christina P. O'Neill is editor of custom publications for The Warren Group, publisher of *Massachusetts Lawyers Journal*. ■