

Meaningful Access to Justice

"Any society, any nation, is judged on the basis of how it treats its weakest members -- the last, the least, the littlest."

~Cardinal Roger Mahony.

In my previous column I summarized several initiatives that the Young Lawyers Section manages that have at least an indirect goal of increasing access to justice to all West Virginians. As mentioned in that column, if there is one issue that more attorneys have approached our Committee about, it is the various issues and problems facing the system of how court-appointed attorneys are compensated through Public Defender Services in West Virginia. Members of our group receive comments and get encouragement to speak out regarding this subject for several reasons. One, many attorneys, particularly younger attorneys that our Committee represents and attorneys practicing in solo and small practices, depend on such appointments to help keep their practices open. Second, failure to adequately fund and manage this process really does represent an impediment to providing access to the Court System in West Virginia by some of the people who need it the most.

Previously I touched on several problems with the current system, including potentially lack of full-time public defender offices in certain counties around the state, lack of adequate compensation for full-time public defenders, and inadequate reimbursement rates for private attorneys who handle such court-appointed cases. It is plain to see, though, that most of these problems are created or at minimum magnified by lack of adequate funding for the program.

When the question of funding is brought up and members of our group ask why this is a problem, various reasons are given, and most are given to us in an attempt to change the subject or downplay the importance of the issue due to the unpopularity of the program in state government. Many people are quick to place the blame of this inadequate funding on the shoulders of Public Defender Services directly. Those who articulate this reason argue that, in preparing its budget each year, Public Defender Services does not reasonably predict what its budgetary needs are for the upcoming fiscal year. As a result, it quickly runs out of money each year (which it does in most years), requiring it to approach the legislature for supplemental appropriations mid-year or delay payment of existing claims until the budget for the next fiscal year becomes available.

Others assert that the problem lies in the funding of the program by the Legislature. Those ascribing this reason as blame for the current problems assert that because Public Defender Services has as its primary mission providing for representation of indigent criminal defendants, the program by its very nature is politically unpopular because no one wants to fund something that benefits "criminals." Indeed, members of our Committee have been told directly by actual elected representatives that adequately funding this program will never be done because it is not "sexy" enough to garner legitimate legislative support. If this reason is true, there are obviously several flaws with this argument. First, and foremost, since one is entitled to

competent and effective legal representation when accused of a crime involving potential incarceration pursuant to the Bill of Rights, it is simply amazing that this fact alone should not make the issue “important” in the eyes of the legislature. Second, it is also worth noting to those espousing the theory that funding such services are not “sexy” enough that not only does this system provide counsel for criminal defendants, but it also provides funding so that children involved potential abuse and neglect matters have representation in the form of guardians ad litem. While representation of adult criminal defendants is one thing, if funding to provide competent representation “to the littlest” of our state’s citizens in some of the most unhealthy and even dangerous situations imaginable is not deemed “sexy” enough to warrant serious attention, perhaps the Legislature as a whole could use a wholesale re-examination of their judgment of which programs are important and which are not.

Regardless of the “reason” (or reasons) behind the current problem, our Committee is not interested in ascribing blame but rather continuing to speak and act out on the subject so that solutions can be developed. If Public Defender Services is not requesting adequate funds so the claims that are reasonably expected in a given year are able to be paid, its methodology for developing its budget each year should be re-examined to find a better way to predict what its funding needs are. If it is a legislative problem, the executive and legislative branch should work together on solutions to provide more adequate funding of the program. If some other problem or problems exist that represent impediments to the adequate provision of legal services for those who cannot privately afford them, all the groups involved in this process should come together to work towards a solution. Only when such funding and systemic issues are corrected can we as a state say we are providing access to justice and mean it. Indeed, real access to justice, not just to those who have popular causes or have independent means, but providing it to “the last, the least and the littlest” should be something that we lawyers as officers of the Court continue to advocate for in discharging our duty to seek justice.