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Justice for the rich

By Fred Silberberg

Welcome to the new reality of family law in California. Justice is now available only for the rich. At least, that's the case if justice includes the speedy resolution of your case.

With courts dedicating the majority of their resources to criminal calendars so as to comply with the statutory and constitutional right to a speedy trial, it appears that litigants in other parts of the court are being left to wither. Nowhere is this more apparent than in the family courts which, even before the budget crisis, were behind the proverbial starting line.

In California, unlike in many other states, parties have the ability to hire retired judges to hear their cases. Retired judges charge between $500 to $600 per hour to provide this service. If you hire a retired judge, your case can be addressed in a relatively expeditious manner. You can start early in the day, and your day will not be peppered with the myriad of interruptions that are inevitable in a public courthouse. Those interruptions include ex parte applications, which lawyers and parties bring whether there is an emergency or not, and cases that are given priority because the parties do not speak English or they involve domestic violence. This is in addition to the 90-minute lunch break, and breaks during the morning and afternoon sessions.

When one considers the numerous interruptions that are likely to occur during the course of a court day, it is easy to understand why parties and lawyers may want to hire a retired judicial officer instead. That demand has given rise to businesses specifically offering retired judges and providing conference rooms to be used as courtrooms, for a fee.

The reality, however, is that the cases being heard by retired judges are those where the parties can afford to pay. If a case involves multiple days of court proceedings, the bill can add up. The truth is, this manner of having a case heard is probably more cost-effective in the long run.

The problem with this system is that it creates two completely different types of justice. Our supervising judges and court administrators have expressed their concerns about denying equal access to justice to certain classes of people. For example, suggestions that all cases involving interpreters be assigned to one or two courtrooms so that the rest of the population is not delayed and interrupted by these cases, has been challenged as a denial of equal protection. Suggestions that domestic violence cases be heard in specific departments (which was the state of affairs 10 or more years ago), has received the same response. So have suggestions that there be separate calendars for cases that involve parties without lawyers, and those that day.

Oddly, however, the ability to hire retired judges and try matters privately has created just that scenario: Justice happens expeditiously for the rich, and everyone else has to sit around, wait, and deal with delay after delay, interruption after interruption, continuance after continuance.

And the waiting gets longer as time goes on. Lawyers and parties can say that they are ready for trial today and hope that they will get a date for trial in 18 months or more. And, when that trial does start, it is likely to be broken up into multiple day or half-day sessions spread out over a period of several weeks. So, when you actually start trial and recess for the day on Friday, it may be a week or more before you return again.

If that is not enough, judges are now ordering people to jump through multiple hoops just to get a trial date. Take this recent example: A case was filed two years ago and the parties tried mediation for the bulk of that two-year period of time. It didn't work. The parties filed a memo asking for a trial date. Six months later, they had a trial setting conference. During the conference, trial was set 14 months ahead, with a requirement that they first show up and see a volunteer mediator; appear at a pre-trial conference eight weeks prior to the trial date; and attend a mandatory settlement conference a month beforehand. When you consider the cost of going through all of these hoops rather than giving a trial date and letting the case proceed, you can see what the cost of this trial will actually be and how much less it would be if the parties were able to proceed privately. In the private trial arena, the case would simply have been set for trial in the foreseeable future, and run from beginning to end without interruption.

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The truth is that not only do the rich get justice administered expediently; they also get it administered in a significantly more efficient manner than those who are using the taxpayer-supported public justice system.

This is not to suggest that retired judges be precluded from working privately. It is, however, to suggest, that if our court administrators and state legislators are at all concerned about providing equal access to justice under the law, they better get off the stick and come up with more efficient ways to operate the court system. They must provide additional funding so that people are not prejudiced in terms of speedy access when they appear in the public court system. Thus far, all the concerns about revamping court assignments so that certain classes of litigants are not limited to particular judicial officers is actually creating a greater chasm between the types of parties that appear in the public courthouse and those that do not.

The way it looks right now, there is no equal access to justice. The rich get their cases heard efficiently, and the rest of the population does not.

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Fred Silberberg *is a certified family law specialist and a partner at Silberberg & Ross in Santa Monica.*