

## Don't Blame the Budget for Family Court's Overburdened System

By Fred Silberberg

Those of us who are family law litigators know the drill. You file your case and you propound discovery. You hit a few bumps in the road when the other side does not comply with discovery or engages in stalling tactics. You do what you can to move it along. You meet and confer, you file a motion. You bring an order to show cause because there are issues that need to be addressed before you can get to trial. You file the order to show cause and it gets set for eight weeks later. You try to explain this to your client as best as you can, but that doesn't solve the problem. The declarations opposing the order to show cause are not filed. When you get to the hearing date, the other side requests a continuance, and it gets it. Eventually, the order to show cause is heard. You continue with

discovery so that you can get a trial date. The court sets a trial setting conference, which requires that you appear in court for all of 10 minutes

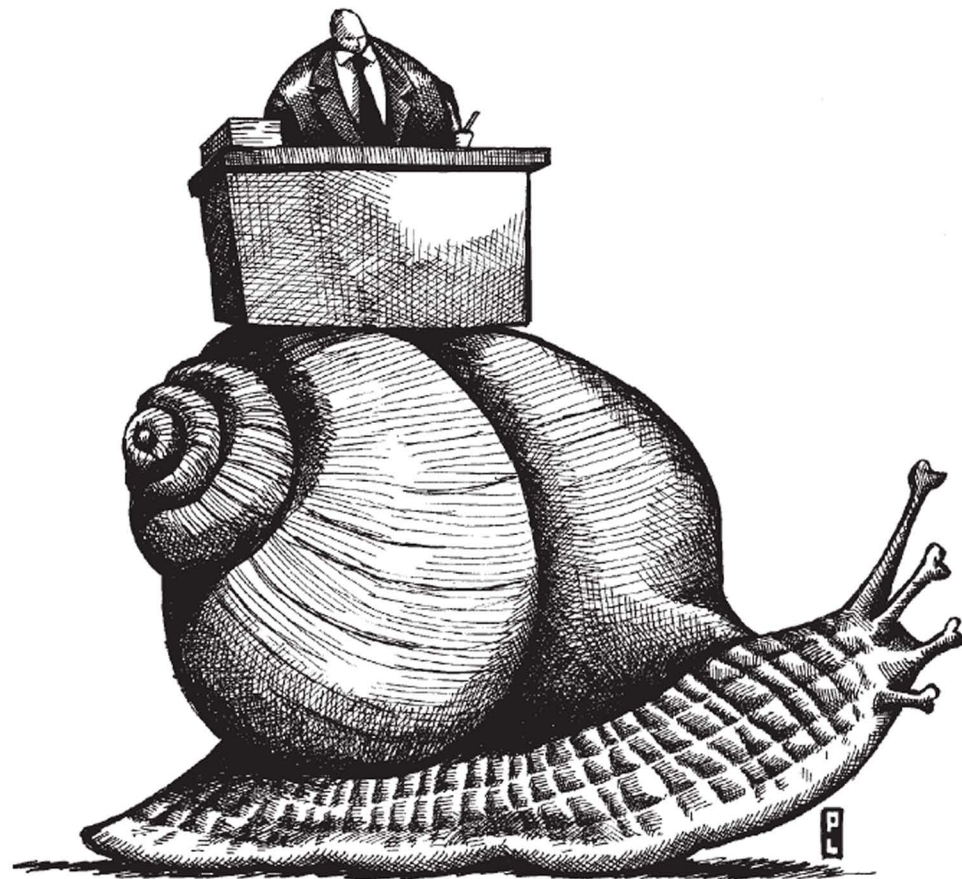
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(while the litigants in trial sit and wait) during which time, the judge inquires as to the status of discovery. The other side states it is not complete, so there is another trial setting conference scheduled. You make another 10-minute appearance, and if you are lucky, you get

a trial date that is five or six months down the road. You tell your client that you are now on track. You show up for the first day of trial on time. But you don't start the trial at some point in the mid-morning. Other matters were taken first. The court takes its mid-morning break, and then its 90-minute lunch recess. In the afternoon you return for a few more hours of trial, another break, and you get to the end of the court day. The judge now tells you that the trial will start later than 8:30 the next morning, because there are other matters that have to be handled and ex parte applications. You are told to be in court at 9:30, but the trial does not resume until 11. At 11:30, you are asked to step back because the court now has to take a case requiring the court interpreter. At 11:55, you are told to come back at 1:30. At 1:30, you are told that the judge has to leave early and you will end the trial at 3:45 today. At 3:45, you have not completed the trial (in part because you haven't gotten two full court days in) and the court tells you that the trial will resume on a date that is three months down the road because there are no dates available until then.

If you are tired from reading this, just imagine how your client, who has lived through this, must feel. Imagine as well how stressed your client is for having had to pay all of those fees to get this far, which includes lots of money spent waiting around for the court to try the case. If you think that this situation is a rare occurrence, you are sadly mistaken. This scenario takes place in family courtrooms all over California on a regular basis, and it has been happening for years.

The family courts are overcrowded, there is no doubt. And the current budget crisis, which has resulted in court furlough days and other cutbacks in staffing, certainly doesn't help. But there is a more fundamental problem going on here. That is the lack of any procedures being implemented in the family courts to streamline the process of administering justice. While the court's supervising judges continue to insist on following the basic direct department calendaring system that was implemented almost 20 years ago under the ruse of making things more efficient (something that has never happened, a fact the court system refuses to acknowledge), this system



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puts judges in a role that they were never intended to fulfill. Judges are appointed or elected in order to hear cases. They are there to listen to the evidence and to make decisions for the parties and their children. They are not there to be courtroom administrators. The direct calendaring system, however, forces them to handle both roles, and the fact is that most people, in any profession, are not able to handle both of these completely different types of functions.

In any large law firm, you have a managing partner as well as professional administrative staff. In any large corporation, you have administrators and employees. In our family court system, that division of labor doesn't exist. The direct calendaring system puts each judge in the position of being the administrator of his or her own courtroom. As a result, you have a panel of judges who are scrambling each day to try and juggle ex parte applications, motions, orders to show cause and trials while at the same time having to accommodate litigants who do not all speak the

same language and interpreters who are not readily available

As a result, the system has for all intents and purposes become completely chaotic. It takes two minutes to get married, but in a contested proceeding, our so-called system of justice can make it take multiple years to get divorced.

Undoubtedly, many people will say that this is due to the budget crises, and that if we had more resources, the problem would be solved. But we had more resources 10 years ago, and the problem was not solved then. It isn't a budgetary issue at this point; it is a management issue. If the court system was managed properly, our courtrooms would have specific functions.

The various matters brought to court would be handled in a way that did not require each courtroom to tackle each function, and would therefore not require judges to perform administrative duties. In an ideal world, the clerk's office would handle calendaring, and time constraints for matters would be followed. One department could hear ex parte applications, which

would stop a major source of unending interruptions in the other courtrooms.

One department would then be free to handle only orders to show cause, which could be scheduled in incremental start times throughout the day. Another courtroom would only hear trials.

If this were our system, cases could move more quickly and efficiently. Judges would not be as stressed, and would be less likely to grant continuances just to put something off of their overcrowded docket for that day. Parties could have their cases heard more expeditiously, and judges could make decisions based on the evidence presented without having to go back to consult notes that were taken three months earlier when the trial actually began.

If the people running our court system would actually listen, maybe the litigants would actually get their cases resolved.

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