

Appellate Judges News

CHAIR'S COLUMN



By Judge Denise Johnson
Montpelier, VT

Bridging the Gap

I hope you will forgive me if I begin this article with a lawyer joke. "How many lawyers does it take to screw in a light bulb?" Answer: "How many can you afford?" The current crisis in access to justice is that most people, even those who are otherwise economically secure, cannot afford even one lawyer. The poor have been the most vulnerable in this crisis due to the demise of funding for publicly funded legal services programs. When I graduated from law school, "back in the day," I went to work for New Haven Legal Assistance Association as a civil legal services lawyer. I represented clients in every civil matter one could think of—bankruptcy, debt collection, secured transactions, consumer fraud, welfare benefits, evictions, social security, probate and even civil rights. Even in 1974, however, money to support legal services programs was beginning to recede, and we were not able to meet every claim for service.

Today, the gap between need and delivery of services continues to grow. The explosion in pro se litigants is largely, although not entirely, the product of diminished support for civil legal services. As judges, we know better than anyone else that the judicial system's salient feature is that it is built for experts, and that the successful use of the adversary system to determine the facts depends on the equality of the contestants. In this kind of system, it is an understatement to say that the pro se party is at an extreme disadvantage from almost every standpoint—understanding the rules, accessing legal precedent and reasoning, and articulating a point of view in an unfamiliar setting. The judge, as an

active, but neutral referee, is forced into a role that the judge was not meant to play—trying to explain without advising the person before him or her as to what arguments to make. Although many judges do their best to be helpful and encouraging to pro se litigants, the results are not optimal, and may be entirely unjust.

How do we bridge the gap? First, as judges, we must recognize that some cases should not proceed without legal counsel. The ABA's Task Force on Access to Civil Justice, chaired by the Hon. Howard H. Dana, Jr. of the Maine Supreme Court, is recommending a resolution to the Board of Governors that urges the creation of a civil right to counsel in defined categories of cases. It calls on each jurisdiction to provide counsel as a matter of right at public expense to low income persons when basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody. This is an important normative step and one that the judiciary should endorse.

The second part is harder—finding the money to support a civil "Gideon" when many states are having enough difficulty supporting the right to counsel on the criminal side. Again, bridging the financial gap is another area that demands judicial leadership. If you are looking for ways to make a contribution to the resolution of this issue, here are some suggestions. Get involved with the statewide planning effort and equal access to justice coalition in your state to understand the local need and what it will take to meet it; help organize and support private bar campaigns for equal justice; speak to bar associations, law schools, and the public about the importance of equal access to justice; promote and reward the pro bono services of the private bar; and support the legal services programs in your state by informing the state legislature of the impact of fewer lawyers on the judicial system. But let's not stand on the sidelines. Policymakers need our expertise on this important issue affecting our primary business—the administration of justice. Let's give it willingly.

Save the date for Spencer-Grimes Seminar

by Chief Judge Rosemary Sackett
Okoboji, IA

Exciting plans have been formalized for the Appellate Judges Education Institute's Spencer-Grimes Appellate Judges Seminar to be held in Dallas, Texas from November 9 to 11, 2006. The 'Save the Date' card has been out for some time and registration and program material will be mailed mid-summer. The Institute will provide at the same location separate programs for the Spencer Grimes Seminar for Appellate Judges, the Council of Appellate Staff Attorneys and the Council of Appellate lawyers and programs for the combined groups.

The Spencer-Grimes portion of the program will include among other things a review of ethical concerns in judicial chambers, lectures on cutting edge intellectual property issues and Internet law, a review of recent United States Supreme Court cases and a panel discussion on challenges to judicial independence and ethical issues interacting with the legislative and executive branches.

We are excited about this program which will include among others such well known presenters as Justice Sandra Day O'Connor, United States Supreme Court; Chief Judge Danny J. Boggs, United States Court of Appeals, Fifth Circuit; Judge Pauline Newman, United States Court of Appeals for the Federal Circuit; Chief Justice Randall Shepard, Indiana Supreme Court; Justice Mary Rhodes Russell, Missouri Supreme Court; Justice Cornelia Clark, Tennessee Supreme Court; Chief Judge Edward Toussaint, Minnesota Court of Appeals;

(continued on page 12)