

2012

Foreword

Eric J. Magnuson

Follow this and additional works at: <http://open.mitchellhamline.edu/wmlr>

Recommended Citation

Magnuson, Eric J. (2012) "Foreword," *William Mitchell Law Review*: Vol. 39: Iss. 1, Article 1.
Available at: <http://open.mitchellhamline.edu/wmlr/vol39/iss1/1>

This Prefatory Matter is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.

© Mitchell Hamline School of Law

FOREWORD

Eric J. Magnuson[†]

“Do more with less.” Nearly everyone has heard this phrase in recent years. Increasingly, as a result of economic pressures affecting all aspects of society, each of us is being asked to get along with fewer resources, but still produce as much or more as we have in the past.

It is tempting to see the current economic situation as a temporary dislocation. We’ve had recessions, and even depressions, in the past, but the economy has rebounded and grown stronger each time. This time, however, things may be different.

The former Minnesota State Demographer, Tom Gillaspay, frequently uses the phrase “the New Normal” to describe the confluence of social and economic factors that have led to our current economic woes. Mr. Gillaspay points out that it isn’t just a loss of confidence in the financial markets or a downturn in industry that has caused the problem. The genesis of the financial straits is much deeper.

Fundamentally, our population is aging. People are living longer, and birthrates are down. Based on census counts and state demographic analysis, Gillaspay projects that by the year 2020, the number of people living in Minnesota over age sixty-five will be greater than the number of people under eighteen.¹ That’s a sobering thought. Fewer people entering the most productive stage of their lives, where building a family, buying a house, and increasing earnings to pay for all that entails are the driving forces for most young men and women. Instead, we face the very real prospect of more senior citizens retiring, cutting back on their

[†] Shareholder at Minneapolis law firm Briggs and Morgan, 21st Chief Justice of the Minnesota Supreme Court, 1976 graduate of William Mitchell College of Law.

1. TOM GILLASPY, MINNESOTA AND THE NEW NORMAL 19 (Sept. 2010), *available at* http://www.briggs.com/files/upload/Magnuson_Roundtable_23.pdf.

productivity, but at the same time, consuming social services at an increasing rate. On top of that, they will pay increasingly fewer tax dollars to support the system that they worked so hard to build over their working lives. Those developments will have far-ranging effects.

In 2012, the RAND Corporation published a study examining the impact of the 2008 financial collapse on the U.S. civil justice system, based on a review of literature and data available through early 2011.² Although noting that the data was far from complete, the report observed that “the financial crisis, although itself a transient event, may also be a marker for a more fundamental transition in the posture of government and in the broad availability of public-sector resources in the United States.”³

So what does all of this have to do with legal costs in Minnesota? A great deal.

As the Minnesota justice system has experienced over the past decade, shortfalls in state revenues have a direct impact on funding of the justice system. Not only is there less money for judges, court staff, and support services, but other key components of the justice system—the prosecutors, the defenders, and the civil legal service lawyers—are being squeezed. Even if one segment of the system is able to find adequate (or nearly adequate) funding, the system itself doesn’t work if another part of the system is underfunded. The judge can be sitting on the bench, waiting for cases to be called, but if there’s no public defender to be found because he or she is handling too great a caseload and is tied up in another courtroom, nothing happens.

Not only is the system strained by a lack of resources, but the people who work in the system suffer as well. “Doing more with less” is good in theory, but when dedicated court staff members try to do more than their share of work, any number of consequences may occur, most all of them negative. They can range from mistakes in case processing as a result of haste to reduced service to the judges and to the public because of a simple inability to handle the workload. And job satisfaction suffers as well.

2. MICHAEL D. GREENBERG & GEOFFREY MCGOVERN, RAND INST. FOR CIVIL JUSTICE, AN EARLY ASSESSMENT OF THE CIVIL JUSTICE SYSTEM AFTER THE FINANCIAL CRISIS: SOMETHING WICKED THIS WAY COMES?, at iii (2012), *available at* http://www.rand.org/content/dam/rand/pubs/occasional_papers/2012/RAND_OP353.pdf.

3. *Id.* at ix.

This edition of the *William Mitchell Law Review* examines legal costs in Minnesota from a variety of perspectives. Minnesota Supreme Court Chief Justice Lorie Gildea and her former clerk, Matt Tews, explore the topic of legal costs as it relates to funding for the court system. The authors examine Minnesota's historical commitment to the first principle of access to justice and the consequences of not adhering to this principle due to inadequate funding. Chief Justice Gildea and Tews conclude with recommendations to ensure that timely access to justice continues to be a reality in Minnesota.

Former legislator Pat Mazorol reflects on his time as a freshman member of the Minnesota House of Representatives, with a position on the House Judiciary Policy and Finance Committee. Mazorol shares how his legislative experience changed his perspective on his role: from "public servant" to "steward" of public affairs. Mazorol also discusses how his legislative experience caused him to view civil legal services differently: as a valuable element to judiciary effectiveness.

Practitioner Dan Gustafson, former president of the Federal Bar Association, Minnesota Chapter, and fellow practitioners Karla Gluek and Joe Bourne, contribute a piece on *pro se* litigation. The authors examine the effectiveness of the Minnesota Federal *Pro Se* Project, which was designed to address the difficulties *pro se* litigants face in our adversarial system and the strain on the District of Minnesota, one of the busiest districts in the country. The authors suggest that guaranteed public funding of the Project and reimbursement of volunteer attorneys' costs would further incent attorney participation and would be an important next step toward the goal of having counsel available for all litigants regardless of their financial status.

From the civil legal services perspective, Ron Elwood and Galen Robinson examine the history of civil legal services in Minnesota and the need to continue serving Minnesotans with low incomes and disabilities. The authors explore how, despite diminishing financial support, legal services attorneys continue to address the challenges of serving Minnesotans by offering a variety of services, leveraging resources such as partnering with the private bar, and maximizing the use of technology.

From a legal education perspective, Heather Rastorfer Vlieger, Daniel Brown, and Thomas Pryor discuss Minnesota's Loan

Repayment Assistance Program (LRAP), including recent changes to its guideline for determining eligibility and size of education loans. The authors describe how the guideline changes incorporate and complement Congress's College Cost Reduction and Access Act, and in turn, how LRAP is able to achieve its goal of enabling law school graduates to pursue, and keep, jobs representing low-income clients.

In the private practice arena, Professor Ann Juergens explores how the legal market has failed to distribute lawyer services to a majority of Americans with legal needs, specifically the needs of middle-income Americans. Based on her qualitative study of Minnesota practitioners who are serving middle-income clients, Professor Juergens asserts that solo and small-firm practitioners are an overlooked yet key group when it comes to solving the justice gap for middle-income Americans.

Practitioner Greg Myers contributes a piece on litigation for small-business owners. Myers examines the scenarios of a new small business and a small business that is overmatched by virtue of its lesser resources or its financial dependence on its opponent. The article concludes by discussing potential approaches for lawyers representing small businesses to contain costs, and for courts to promote alternative, less costly methods for resolving lawsuits.

Based on her experiences as both a buyer and seller of legal services, practitioner Peggy Kubicz Hall offers a "both-sides perspective" on market valued pricing. Kubicz Hall examines the drivers that are causing an evolution in law firm business models and the non-legal skills necessary to capture the opportunities generated by the evolution. The author posits that these drivers and skills will enable—even demand—a sharp shift to a profit model and away from an hourly, cost-based billing approach. Kubicz Hall concludes by offering steps for both in-house and law firm counsels to be successful in this new model.

Finally, practitioner Nick Nierengarten examines the exceptions to the familiar "American Rule" that each side bears its own attorneys' fees and costs, specifically the appropriateness for the recovery of in-house legal fees. The author analyzes the standard for recovering in-house legal fees under Minnesota law and offers practical steps and best practices for successfully recovering such fees.

Article I, section 1 of the Minnesota Constitution says that government is instituted for the security, benefit, and protection of the people. A fully funded and adequately functioning justice system is key to fulfillment of that constitutional obligation. Without an effective and capable justice system, none of the efforts of the other branches of government will amount to much.

Hopefully these articles will help focus the issues facing our state and its courts, lawyers, and litigants. There is no more pressing issue facing our state than adequate funding of the justice system so that it is accessible and effective for all citizens.