

## Voice of the Judiciary

# A Crisis in the Delivery of Justice: Do Citizens Deserve Better?

By Judge Elaine M. Moriarty

Over 250,000 people appear in the Probate and Family Court every year. It is often the only involvement many residents of Massachusetts will have with the court system, with decisions having an immediate and direct impact on people's daily lives. It is the court where people come in order to divorce, to protect disabled or incapacitated loved ones, to probate the estate of loved ones who have died, and to adopt children. It is also the court where the most vulnerable come to receive protection from domestic violence, to obtain access to their children, and to obtain financial support to meet basic living expenses. Most come without the benefit of an attorney and often with limited or no English language proficiency.

I have been a Probate and Family Court Judge for twenty-two years. I began my career with the court as an Assistant Register in 1976, before entering private law practice. The judges of yesteryear never would recognize our system as it exists today, and in fact I have witnessed dramatic changes in it during my own tenure as a judge. While Probate and Family Court jurisdiction has expanded, the most significant change is the number of people who now represent themselves.



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The variety and complexity of the issues that face our society can readily be seen first-hand in my courtroom. During the course of a week, I have a contempt and motion day which has upwards of sixty cases scheduled on a given day; a Department of Revenue child support enforcement day which has more than one hundred cases assigned; a pre trial conference day; and two trial days.

Sadly, budget cuts over the past several years threaten our ability to meet our most fundamental obligation, as well as the most fundamental entitlement of citizens of the Commonwealth: timely justice.

Today I have to delay the start of my motion session because my clerk is needed to start another judge's session. (That judge will operate without any clerk during the remainder of the day). It is shortly after 9:00 a.m. when my clerk is available and I am able to take the bench. I have a packed courtroom with standing room only. A line of people still waits to check in with my clerk; as they do so, I send some to the probation department for dispute intervention to see if the case can be resolved by agreement, while others remain to await a hearing. My court officer is covering two other sessions, in addition to mine. However, when an altercation breaks out in the hallway, he must respond and is not available to help in any session until the altercation is resolved. This is of great concern to me. If there is a problem in my session during the court officer's absence, I am able to leave the bench into a secure corridor, but I worry about the safety of the staff, attorneys and litigants (who sometimes bring children) who remain in the courtroom.

The matters before me today involve allegations of domestic violence, establishment of paternity, development of a parenting plan for young children, establishing child support orders, and an emergency hearing on a guardianship for an elderly woman who had suffered a fall.

Of the sixty cases, more than 70% involve litigants who are self represented and who do not understand the system or what is expected of them. Their pleadings often are not in order, and they frequently seek relief that has not been raised in the pleadings. Despite the fact that we mail financial statement forms and other necessary paperwork to litigants to prepare, they very often come without

the paperwork completed. Often proper notice under court rules has not been given. This requires that the case be continued and rescheduled, which is upsetting to a litigant who anticipated a resolution today.

Many cases involve one or more parties who do not speak English. We often need interpreters for several different languages in one day. As I call a case that needs an interpreter, I learn that the interpreter has been called to another courtroom. The parties sit down, frustrated, as I tell them the case must wait. The demand for interpreters, like most other resources in the Trial Court, far exceeds the supply. When the interpreter arrives the hearing proceeds, but even then takes more time than a hearing conducted in English.

The constable brings in a case on a capias surrender, which is not on today's scheduled list. I sentence the defendant to jail for having willfully failed to pay child support when he had the ability to do so. Unfortunately, I must ask the defendant to wait for my court officer to return, before he can be removed to lock-up.

After hearing cases for almost four hours without a break, I look up and the courtroom seems nearly as full as it was when I began the morning. I have barely made a dent in the number of cases or people who remain.

The lunch recess comes well past one o'clock on this day (as on many others). My afternoon is much the same as the morning. I learn of several cases that have walked in as emergencies. One involves an emergency request to change custody and the police and Department of Children and Families are involved. The requesting party has little information about what happened. This requires a referral to the Probation Department to try to obtain some immediate information. This is made more complicated by the fact that there currently are five full time probation officers to handle the busy case loads for all sessions, down from fifteen probation officers just a few years ago.

At 4:00 p.m., many cases still remain. Many people have been waiting all day and have not yet been heard. I do not want to send them home without a hearing after waiting all this time. Some have taken a day off work. Many of those are in a relatively new job, earning less than in a previous position, and the occasion of their appearance in court is to seek modification of support obligations; they fear the prospect of reporting to their new employer that they will soon need to take another day off to return to court. Patience is now wearing thin and emotions remain high. They are frustrated, as am I, that the volume of cases to be heard is such that they must continue to wait. Thankfully, two of my colleagues offer to help me, so we finish the list at 5:30 p.m. However, such assistance generally is not available, given the demands on each of the other judges.

As I finish the session, I am drained. But the workday is not done. I still must decide and write decisions and orders on the ten cases I took under advisement today. This is in addition to deciding seven trials under advisement, four of which I have heard in the last two weeks alone, where a judgment and findings are due. I cannot be as timely as I would like in issuing decisions due to the demands of the burgeoning workload and the need to respond first to ever-present emergency matters.

Some of these cases present novel legal issues that require extensive research for which there is little or no time in the ordinary course of the day, given the press of ongoing matters. A few years ago, the Probate and Family Court had twenty-four law clerks to assist judges in researching decisions. We now have 4 ½ clerks to support the fifty-one judges authorized for the Probate and Family Court.

The work I do is demanding, challenging and rewarding, and I firmly believe that I make a difference in the lives of those who come before me. But the citizens of the Commonwealth deserve more timely justice. Sadly, this is simply not possible without the resources necessary to do the work. ■