

# THE RECORDER

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## Wilson/My Turn: Civil legal aid needs funding

By Geoffrey A. Wilson

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While it is generally understood that legal representation is guaranteed by the federal and Massachusetts constitutions in criminal cases that involve even the possibility of a jail sentence, no such right exists in most civil cases, even when a person's home, physical safety, relationship to his or her child, access to government benefits or other fundamental civil issues are involved. As a result, people who cannot afford legal representation more often than not have no other choice but to attempt to navigate the legal system on their own.

This is especially true in a poor, mostly rural area such as Franklin County. During the period that I served as the first justice of the Franklin Probate and Family Court from 1997 through 2013, approximately 80 percent of the litigants who appeared before me were self-represented or "Pro Se." In many simple proceedings, this was not a serious problem, and even in some more complex cases, occasionally individuals proved to be quick studies. But most were at a distinct disadvantage.

The Trial Court is making a significant effort to make the system more user-friendly for self-represented litigants, but it is itself significantly understaffed. Trying to assist people unfamiliar with the legal system is extremely time-intensive; and, in any event, the court's clerical staff can only provide information, rather than advice. In the courtroom, meanwhile, judges have to walk a very narrow line in trying to accommodate the needs of Pro Se litigants, while at the same time preserving their ability both to appear and be impartial.

Ultimately, the only real answer is to provide legal counsel in serious civil cases for those who cannot afford it. Some members of the bar help by volunteering from time to time to represent individuals without compensation, but their generosity meets only a fraction of the need. For the remainder, the legal aid agencies that exist throughout Massachusetts — in the four western counties of Massachusetts, Community Legal Aid — must be relied upon.

But the extensive study conducted in the past year by the Boston Bar Association — "Investing in Justice: A Roadmap to Cost-Effective Funding of Civil Legal Aid in Massachusetts" — found that at the present time, these agencies must turn away almost two-thirds of the eligible individuals who seek their services due to lack of resources, which is in turn due to a lack of funding.

While legal aid agencies receive funding from a variety of sources — including some restricted funds from the federal government — state funding has primarily come through a rule of the

Supreme Judicial Court, which provides that the interest earned by attorney's client trust funds in Massachusetts, which are unable to earn interest for clients, would be distributed to these agencies through the Massachusetts Legal Assistance Corporation (MLAC), an entity created by the Legislature. When interest rates were high and the economy was good, this proved to be a significant source of revenue; in fiscal year 2007, MLAC received \$16 million. But then the economy went bad, and interest rates went down; in fiscal year 2014, just \$3.5 million was generated. As a result, legal aid agencies were forced to lay off attorneys, at the very time when they were most needed by the poorer citizens of the state, who have been hardest hit by the same economic downturn.

The state has made up a part of this decline through direct budget appropriations to MLAC — about \$15 million last year — but the Boston Bar Association's report strongly recommends that this amount be increased by a full \$30 million over three years. And while it would seem that Massachusetts, with its ongoing budget pressures, can scarcely afford to increase any appropriation, the BBA report points out that the cost of an enhanced legal aid involvement in the courts would be more than offset by the reduction of costs that would result in areas as diverse as the care of victims of domestic violence, victims of foreclosure and eviction, and care of disabled individuals who have been denied federal benefits because they did not have representation before a Social Security administrative judge.

Since my retirement as a judge last July, I have been appointed by the Massachusetts Supreme Judicial Court to serve as a member of the board of directors of the Massachusetts Legal Assistance Corporation, and, as a result, have had the opportunity to witness the enthusiasm throughout the state on the issue of increased funding for civil legal aid. The present House of Representatives budget provides for a funding increase of \$2 million for the next fiscal year.

Any increase is appreciated but it is vital that the commonwealth provide an appropriation of \$25 million for civil legal aid through MLAC. The budget now advances to the state Senate for its consideration, and I would urge my fellow citizens to contact their respective Senators to request his or her support for the full MLAC budget request in that chamber.

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