

The Third Branch

By Arnold Fishman

Last month I thanked Governor Christie for giving me a subject to write about almost every other month. Well, he has outdone himself. This is two months in a row. In his latest assault on my delicate sensibilities, the other two branches are complicit. The legislature has conspired with the executive to give the judiciary the power to print its own money, and the Administrative Office of the Courts is loving it.

A bill on the fast track to becoming law, gives the courts the power to raise filing fees to create a fund to finance almost sixty million dollars of projects. While there is some chump change for a few other programs that have no business being connected to this legislation such as improving the State Police Laboratory, the two biggies are e-Court and Legal Services. e-Court involves electronic filing, storing and access to the courts of the State of New Jersey. Legal Services, of course, attempts to provide representation to those who are in need. Being a luddite, I cannot express an opinion on the value of e-Court, but those whose opinion I value assure me that, once I get the hang of it, I will love it. The catch is that “once you get the hang of it” part. I point out that I only intend to practice law for another fifty years. But, for the sake of argument, I am willing to assume that it is a worthwhile and inevitable innovation. Legal Services, of course, stands out as a commitment of our government to refuse to abandon the rights of those who would otherwise be unable to vindicate them. So what’s the problem?

The problem is that, call it what you will, this is a tax on the users of the system. The users of the executive don’t pay for the many services provided, and those who benefit from the laws passed by the legislature are not called upon to ante-up for their reward. We the people have determined that some governmental services are so important and so beneficial to civilization in its entirety that they should be paid for by society as a whole. The best analogy I

have heard is that it is like asking only those households with children in our schools to pay school taxes. Educating the next generation is good for each and every one of us, and its cost is shouldered by all. An efficient court system and easy access to it is good for each and every one and, likewise, its price should be born by all.

The AOC in its sixty-page report *New Jersey e-Court The Future of Justice in New Jersey* dated October 2011 proves my point over and over again. In its introduction entitled “The Vision” Chief Justice Rabner states, “New Jersey e-Court ... will foster public safety, aid economic growth, improve the quality of life in our communities, and protect the vulnerable of our society.” The report concludes:

The timely resolution of these civil disputes and criminal justice matters are integral to the order of our society and the public’s confidence in government’s ability to maintain the health, safety, and welfare of its citizens.

...

[A] decline in the quality of justice... adversely affects the lives of all New Jerseyans.

...

[T]he true return on investment for funding the development of New Jersey e-Court information system remains improved quality of life, enhanced outcomes, and timely efficient justice services for the people of our State.”

...

[I]t will help to make New Jersey a preferred place to live and do business.

While it is being opposed by the organized bar, these increased fees should not be framed as being imposed on lawyers. In all industries, every such user fee is passed on to the ultimate consumer. Businesses whose bills are not paid, landlords whose tenants won’t pay the rent, tenants whose landlords won’t fix the toilet, people injured in accidents, partners in failed marriages, parents whose former spouses won’t support their children, citizens mistreated by

government, etc. will pay the freight and struggle to pass it on. Those unable to do so will be the losers. Those unable to afford it will be shut out.

An additional problem is that giving the judicial bureaucracy the power to determine its needs and raise its own funds to satisfy them is not only bad policy, it violates the separation of powers enshrined in our constitution. Our elected representatives, who are routinely subjected to the scrutiny of the ballot box, should exercise the power of the purse strings. Those who are appointed, and upon good behavior destined for tenure, are poor repositories of that awesome authority. The cost of the judicial branch and the cost of Legal Services should remain general budget items and the responsibility society at large.

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