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Court Closures, Budget Cuts Pose Risks for Civil Litigation

Faced with sharply reduced budgets over the last few years, California Superior Courts have raised fees, laid off or furloughed employees, reduced hours and cut services.

In her State of the Judiciary speech in March to the Legislature, Chief Justice Tani Cantil-Sakauye said the statewide court system has seen its budget cut $1 billion — that's 30 percent — since fiscal year 2008-09. The judicial branch has halted 11 courthouse construction projects, while individual county superior courts have been forced to spend down their carefully maintained reserve funds.

Kings County Superior Court employees, who now must take 27 unpaid furlough days a year, even held a garage sale to make money for the court, the chief justice said.

Yet the biggest impact has landed on the state's biggest court system, the Los Angeles Superior Court. There, roughly, 60 courtrooms — including eight courthouses across the county — will close by July, and 511 court jobs will vanish.

In other savings moves, the court will not provide court reporters for any civil cases. And in June, it will shut down its large alternative dispute resolution program after 20 years in operation.

The cuts will hit hard the ordinary consumers who have small matters, including traffic tickets and small claims cases. Several legal aid groups sued the Superior Court over a plan to consolidate all landlord-tenant cases in just five courthouses.

The cuts also will dramatically affect personal injury litigation in Los Angeles County. Under the Superior Court's plan, nearly all personal injury cases, including medical malpractice and wrongful death cases, will be assigned initially to three judges downtown. That's an addition of one to the two initially proposed for the assignment.

Those three master calendar judges likely will carry caseloads of more than 5,000 cases each. As a result, they will not hold case-management conferences nor monitor service of complaints, and they will sharply restrict discovery hearings. For many cases, in fact, the judges may hold only a final status conference before sending them out to trial.

According to the court's description of the program last year, cases will be assigned on the day of trial to one of 10 courtrooms downtown or possibly to a select number of other courtrooms around the county.

That fact worries personal injury attorneys because where a trial takes place affects who sits on the jury which affects how much the case is worth for settlement. That's because juries in downtown Los Angeles tend to award more damages than those in Pasadena, for example. Defense lawyers have said the unpredictability makes planning the litigation budget for a business or insurer more difficult.

Lawyers on both sides also have said they fear that cramming 15,000 cases or more in front of just three judges will mean cases will move more slowly and important decisions — such as motions for summary judgment — may stall.

Similar but less extensive changes have or will affect courts in other counties. San Bernardino Superior Court has closed one small courthouse, plans to close three more and will slash court reporter services. San Diego Superior Court at one point predicted it might lose 250 employees and close or restructure 40 courtrooms.

Even the Orange County court, which previously had a large budget surplus, announced at the end of April that it will close its little Laguna Hills court facility and move all smaller civil cases to the Santa Ana courthouse.

Meanwhile, some federal courtrooms, including those in the Los Angeles area, have begun shutting down a day here and a day there in response to budget cuts imposed on the federal judicial branch by sequestration.

At least in California, there finally is a little good news. The state Judicial Council recently voted to change the way it appropriates funds to county courts. The change will move some money from better-off courts, like Orange County, to poorer courts like Los Angeles and San Bernardino.

And for California government as a whole, tight budgeting, temporary tax increases and a slowly improving economy have produced enough revenue to pump an unexpected surplus into state coffers. Perhaps that might allow the governor and Legislature to return some money to the court system in the upcoming round of budgeting.

Amounts Paid, Not Billed, Limit Other Injury Damages, Too

In a closely watched case in 2011, the California Supreme Court ruled that an injured plaintiff can't collect more in medical damages than his insurer actually paid his doctors and hospitals. Specifically, he cannot demand the inflated amounts the doctors and hospitals billed.

That decision, *Howell v. Hamilton Meats and Provisions, Inc.*, pushed down damages in injury cases broadly, and plaintiffs' attorneys have been hunting for ways around it since.

They haven't succeeded. In early April, the appellate court in San Francisco reaffirmed and somewhat extended the Supreme Court's decision. Then at the end of the month, the appellate court in Los Angeles extended *Howell* even more — to future and noneconomic damages.

The first decision, *Luttrell v. Island Pacific Supermarkts Inc.* held the *Howell* rule applies to cases involving Medicare as well as private insurance. More importantly, it held that courts must start with the *Howell* insurer-paid amount before reducing an award further for other reasons.

The case involved a disabled man who fractured his hip when a malfunctioning automatic door knocked him down and slammed against him repeatedly. Due to his pre-existing mobility problems, he didn't follow his doctors' post-surgery recommendations to try to walk. He rarely even moved in bed, leading to a very serious skin ulcer.

The jury agreed his ulcer was caused by the automatic door accident. But the trial judge cut his award 50 percent because he didn't mitigate damages by following his doctors' advice.

The Court of Appeal held that the man's damages were limited by *Howell* to no more than the $88,000 Medicare paid his doctors. It also held the *Howell* cap had to be applied before the 50-percent reduction, cutting his final award to about $44,000.

The court rejected the man's argument that the total billed amount, $511,000, should be halved and then that amount reduced to the *Howell* cap. Under that approach, he would have received a "windfall" of the full $88,000, the appellate court said.

The plaintiffs in the second case were taxicab passengers seriously injured in a late-night collision with a speeding drunk driver. Even after the trial judge trimmed the jury's awards, each man would have received more than $1 million in past, future and noneconomic damages.

But the appellate court ruled in *Corenbaum v. Lampkin* that the reasoning in *Howell* also applies to future medical damages and to noneconomic pain-and-suffering damages.

Howell held the amounts billed by providers isn't an accurate measure of the reasonable value of past medical services; therefore, those amounts aren't relevant and can't be admitted to help a jury calculate what the value should be.

Even more so, this court concluded, "the full amount billed for those past medical services can provide no reasonable basis for an expert opinion on the value of future medical services."

It is also is inadmissible "for the purpose of providing plaintiff's counsel an argumentative construct to assist a jury in its difficult task of determining the amount of noneconomic damages."

The court acknowledged that setting a dollar value on suffering is difficult and subjective and that judges can give juries little help.

Attorneys often use the amount of economic damages "as a means to help determine the amount of noneconomic damages," the court noted. But that practice provides "no justification for the admission of evidence that is otherwise inadmissible and that is not relevant to the amount of economic damages," it concluded.

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The founder and president of The Rodolff Law Firm, APC, Barry L. Rodolff, is a highly experienced lawyer who has been assisting clients faced with civil litigation for more than two decades. Mr. Rodolff developed his skills with two well-respected defense firms, Schell & Delamer, and Haight, Brown & Bonesteel. He also worked in-house at Travelers Insurance Company, representing a variety of insured companies in many types of litigation. His clients have ranged from small businesses to multinational corporations. Mr. Rodolff brings extensive experience and knowledge in the defense of litigation involving premises liability, business, product liability, personal injury, employment, construction defect, and intentional torts.