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Chief justice makes pro bono plea to lawyers

By Dan Tuohy

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When he isn't presiding over the New Hampshire Supreme Court, Chief Justice John T. Broderick Jr. is often traveling the state to deliver a plea for lawyers to take on more pro bono cases, citing a widening "justice gap," the danger of there being two court systems, one for the wealthy and one for the poor.

The delivery of justice grows more complicated as more people choose to represent themselves in court, he says.

His is a unique bully pulpit, the position as administrator of state courts. In his role he is urging private companies to donate resources "for the public good," as pro bono means in Latin.

"We all have an ethical and professional obligation to do all that we can do," he said in a telephone interview with Herald Sunday.

Early results are promising. Devine, Millimet & Branch, which has an office in North Hampton, is among the law firms making new commitments. It has created a new pro bono committee and, in collaboration with the Bar Association's pro bono program, launched what it calls a SWAT team of volunteer lawyers to handle landlord-tenant cases on an expedited basis.

Broderick said lawyers and court administrators must "turn and face the beast" to help people whose lives may be fundamentally changed due to a legal outcome.

The economic divide between haves and have-nots is not lost on John E. Tobin Jr., executive director of New Hampshire Legal Assistance. He pointed to a new livable wage study as evidence that financial hardships block legal support for thousands in the state.

"There's a huge unmet need," Tobin said. "New Hampshire has always had a strong pro bono program, but he's trying to take it up another notch."

Broderick said the state is now only serving a fraction of the thousands of people who meet the eligibility for free legal help.

"It's like a triage system," he said.

Broderick said an increase in pro bono services is only part of the solution. And he admits he has heard at least one lukewarm reception to his calls, a response he believes stems partly from the New Hampshire Bar's history of representing those in need.

Besides renewed legal assistance, the court system itself must be less cumbersome, provide additional resources and seek alternatives, according to Broderick.

To that end, the Supreme Court has also adopted a new rule for unbundled legal services, which allows a person representing himself or herself to seek a lawyer for a special appearance or to argue a specific point. The client can get expertise for one aspect of his or her case, thus reducing the financial burden of hiring a lawyer for the entire case.

"You can pinprick a problem in the system," Broderick said of the rule, which took effect July 1.

Litigants can also seek alternate-dispute resolution, a process in which a mediator helps people resolve complaints. Broderick said 60 to 70 percent of these cases are settled without a judge. And he believes people are more likely to live up to a decision if they have a hand in resolving their dispute.

Broderick is taking these steps before returning to the Legislature to ask for additional funding for legal assistance to show that the courts are working on the problem.

Broderick is encouraging other law firms to confer with John Tobin, at New Hampshire Legal Assistance, on how best to use their resources.

New Hampshire Legal Assistance, a nonprofit law firm, offers civil services to seniors and eligible low-income people. It's one of several agencies providing free or low-cost legal help in the state. Some offer advice for those who choose to represent themselves in court.

The New Hampshire Bar Association runs a lawyer referral service and a pro bono program, which helps about 1,000 clients a year.

The Legal Advice and Referral Center, a coalition of groups providing representation, works in partnership with agencies like New Hampshire Legal Assistance. Other groups coordinating services include the Disabilities Rights Center and the New Hampshire Public Defender Office, which provides representation to adults in criminal cases and in some juvenile cases.

Franklin Pierce Law Center in Concord runs a free legal clinic as part of a course. John D. Hutson, dean of the law school, said Franklin Pierce seeks to promote pro bono work as part of the culture of lawyering.

"It's been a big issue everywhere," Hutson said. "There are lots of ways to define a profession. One of them is you have a moral obligation to give back to the profession."

The school conducts legal clinics in which people with real problems can seek assistance. Students handle the cases with the assistance of a faculty member who is a lawyer. They get practical, hands-on experience working cases that involve everything from property law to criminal law. The clinics are funded in part by the New Hampshire Bar Foundation.

In his State of the Judiciary Address to the Legislature in 2005, Broderick said the rising number of people and small businesses that cannot afford a lawyer to represent their

interests is the single biggest challenge facing the courts.

He forecast a continued increase in pro se litigants, those who choose to represent themselves. The numbers Broderick cited are impressive. In 85 percent of civil cases in district courts, at least one party is self-represented.

A New Hampshire Citizens Commission on the State Courts, which the chief justice helped establish, produced a report and several recommendations last summer.

The commission recommended an expansion of legal representation to civil litigants unable to afford counsel and a network to help self-represented litigants navigate the legal system. Such a network could focus on a limited number of non-criminal cases in which essential rights are at stake, according to the commission.

In addition to the legal services provided by New Hampshire Legal Assistance and others, the New Hampshire Judicial Branch has its own self-help center. The center offers tips on how one gets started, as well as ways to avoid court altogether.

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