

## *Moving toward privatizing our courts*

By Lisa Spiwak

California courts have been devastated by deep budget cuts. In California, over 50 courthouses have been shut down and over 250 courtrooms are now closed.

Fewer courtrooms and fewer judges mean that it takes longer to get into court and that could be highly relevant to any business seeking legal redress from damage caused by the oil spill that affected the Gaviota Coast shortly before Memorial Day.

These victims are reliant on the California court system to administer justice and provide relief. It used to be that once you filed a lawsuit, you could get to trial within one year under the “fast track” system. Now, cases are not likely to get to trial for five years or more.

Our court system is on the borderline of a constitutional crisis. A change in a child custody order can take at least four months because of lack of staff. Due to budget cuts, many counties are no longer providing court reporters for hearings or trials. It is now up to the litigant to contract with a court approved court reporter to record the proceedings.

Without a transcript of the proceedings, it is impossible for the losing party to file an appeal. Since the number of research attorneys supporting judges has been cut, the hearing dates for motions are being scheduled further and further out so that they have time to review the motion papers. A hearing that used to be calendared within

45 days of it being filing, is now

being set eight months out. People are waiting in line for five hours just to pay a traffic ticket. Since so many courts are now closed, people are driving hundreds of miles to go to court and, as a result, they are losing witnesses necessary to their case.

Since it is not likely that California will become flush with cash any time soon, a new plan has been devised by several business-friendly advocacy groups in California to construct a more efficient court system. The plan is to create private courts with full judicial authority to issue warrants, subpoenas, declare guilt or innocence and hand down sentences.

It is estimated that these private courts would

save the state more than \$3 billion. Opponents of private courts say that this would give an unfair advantage to the wealthy because they can pay to get to court quicker. However, if the wealthy take all of their legal matters to private courts, it benefits the people that cannot afford private courts because it frees up the available

### Viewpoint

courtrooms in the public state courts for their use. The public courts will be less congested and cases will move quicker and more efficiently.

There is also concern that private courts will open up the floodgates for bribery and injustice with money being used to buy court favors. The plan’s advocates believe that moving the administration of justice into the private market will make justice better because competition between court systems for cases will create an incentive for each court to run fairly, efficiently and swiftly.

There is evidence that our state legislature is warming to private sector involvement in our court system. This evidence can be found in AB No. 2332 introduced by Assembly Member Bob Wieckowski last year. It created the

Trial Court Employment Protection and Governance Act, which established specific standards that must be adhered to when contracting for court services by the private sector for work that is customarily performed by trial court employees.

More recently, Sen. Mark Leno introduced and passed Senate Bill 682 which further defines the parameters by which our trial courts may contract out services to the private sector. Essentially, if it can be proven that the services being contracted for cannot be satisfactorily performed by trial court employees and that those employees will not be displaced by the private sector, and that there is cost savings involved, then private sector contracts are permissible.

These pieces of legislation almost certainly are the precursor for the eventual institution of private courts as a viable solution to uphold justice as it was intended to be upheld before our state went broke and our constitutional rights became compromised.

• *Lisa Spiwak is a partner with the law firm Spiwak & Iezza in Thousand Oaks.*