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PERSPECTIVE

Cross-examination skills and the court funding crisis

By Niall P. McCarthy

With inadequate court funding, California has far too many courthouses where self-help lines extend through hallways due to staffing shortages; far too many courthouses with major backlogs on child custody cases; and far too many courthouses where getting a civil case out to trial requires nothing short of divine intervention. Courts are often forced to balance budgets in ways that harm the most vulnerable members of society. Budget cuts close special court programs that deal with juveniles, indigent defendants, drug addiction, veterans and victims of domestic violence. These vulnerable groups have the greatest need for an open court, yet are denied a forum to fight for their rights.

Despite the spirited push of many passionate and dedicated judges and attorneys in California, there is one glaring deficiency which has limited our success in the fight for funding: California courts do not have an advocate in the governor's office. Each of the last five years has resulted in a "next year" promise from Gov. Jerry Brown. We cannot accept any more "next year" mantras. Brown's 2017/2018 budget is mediocre in terms of court funding. It will not fix the critical shortages in many courthouses in California, nor will it provide adequate funds for courthouse construction and repair. In the limited remainder of Governor Brown's time in



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Gov. Jerry Brown during his State of the State address in Sacramento in January.

Sacramento, perhaps he will repair his legacy and fully fund the courts. Perhaps not.

The apex of the court funding crisis arose only after Governor Brown was elected. No one had a chance to vet him on this issue. If vetting had occurred, we would have discovered that the governor has a passing interest in the courts, but no affinity for the court system. Many assumed that a governor who was a lawyer would fully appreciate the courts' vital role, but were surprised by Brown's disinterested view of the courts. Let's not be surprised again.

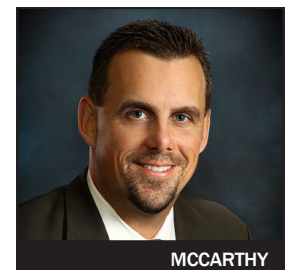
As a legal community, we have an opportunity to get an advocate for our clients and our profession. The election of our next governor is in November 2018. As lawyers, we have access to all of the candidates. Lawyers are in frequent communication with Gavin Newsom, Antonio Villaraigosa, John Chiang, Delaine Eastin and the other gubernatorial hopefuls.

Lawyers are trained in the art of cross-examination. We know how to extract information. Those skills are transferable outside the courtroom. Before donating to, endorsing or supporting a gubernatorial candidate, ask the following question: "What is your plan to fully restore court funding?" If possible, use your phone to record the answer. If you are not in direct contact with a candidate, write them. Have your colleagues write them. When you get a response, persist with follow-up questions. We need firm commitments from these candidates for action, not generalized promises. Lock them down.

Take that answer and share it with the Open Courts Coalition, the Bench Bar Coalition, ABO-TA, and the many other groups fighting this battle. If candidates do not commit to restoring court funding, they should not receive our support. The legal community must be unified and resolute in this demand.

Lawyers donate millions of dollars to candidates running for governor in California, give candidates access to their networks, and volunteer on campaigns. Our first obligation is to our clients. Without a fully funded court, our clients suffer. We need a governor who will prioritize the courts during the annual budget negotiations. In the past few years, we have lacked that essential ingredient. Let us use the next 18 months to find a fierce advocate for court funding for the governor's office. Our vetting process begins today. Get your cross-examination skills ready.

Niall P. McCarthy is a partner at *Cotchett, Pitre & McCarthy, LLP* and co-chair of the *Open Courts Coalition* — a group of dedicated lawyers with members from district attorney and public defender offices, plaintiff and defense lawyers, probate lawyers, family lawyers, IP lawyers, legal aid lawyers, and lawyers from every other imaginable practice who advocate to increase funding for California courts. Over 200 different bar associations and legal groups are affiliated with the *Open Courts Coalition*.



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