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Courts must remain open

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Imagine that it's early December. You have some important legal business to take care of: finalizing a divorce, evicting a tenant, obtaining a protection order, adopting a child. You go to the courthouse and find that the Superior Court has been closed. You cannot proceed with any of those important events in your life, all because the county failed to provide the necessary funding and everything has shut down.

Fortunately, that won't happen here in Spokane. But that was a real threat to citizens in Grays Harbor County.

Grays Harbor is a small county on the southwest corner of the Olympic Peninsula along the Pacific Ocean. For years, the three Superior Court judges of that county, well aware of the economic and budget problems facing all levels of government and private businesses, have attempted to work cooperatively with county commissioners on issues affected by the lack of funding.

They didn't sue when the county failed to provide a courtroom for the third judge, even though the Legislature authorized that position 20 years ago.

They didn't sue when the county failed to provide funding for courthouse security. Later, a county sheriff was shot and stabbed and the judge who rushed to her aid was also stabbed.

But then the county commissioners cut the court's budget into the bone. The cuts last year were so severe that court funding would have run out in November. So anyone attempting to conduct legal business in December would have had nowhere to turn. This was done in spite of the Washington state Constitution's requirement that the Superior Court "shall always be open, except on non-judicial days."

Only when circumstances became so dire that the courthouse doors would literally close did the judges finally sue the county. While they were at it, they included courthouse security and the third courtroom in this rare lawsuit.

As also required by the constitution, the judges requested that the Washington attorney general's office represent them in the lawsuit. The AG's office is required to represent all state officers, including Superior Court judges. In this case, the AG's office hired private lawyers to represent the judges.

Did the Legislature applaud the courts for standing up for the citizens of Grays Harbor County having access to justice, and for enforcing the requirements of the constitution? No. Rep. Jamie Pedersen of Seattle sponsored House Bill 2024, which removes the requirement that the attorney general represent state officers, including Superior Court judges, in any case where funding is in issue at the county or state level.

Legislators say this bill does not preclude judges from bringing a lawsuit; it just prevents taxpayers from covering the cost. But it puts judges to a Hobson's choice: shut down the courthouse when funding runs out, or personally hire attorneys to keep the doors open.

Legislators say judges should just ask attorneys to represent them for free. But that violates Washington's Code of Judicial Conduct and ignores the statute that says no government employee can solicit, directly or indirectly, gifts or favors that reasonably would be expected to influence the person. Nobody would want to come into court knowing that the opposing attorney had done the judges a favor by giving them free legal services.

The delicate balance between branches of government has worked so well that the only case prior to the Grays Harbor lawsuit was 127 years ago, when the judge needed candles for the courtroom and fodder for his horse. There is no urgency to pass this bill.

A far better approach would be for legislators, the attorney general's office and Superior Court judges to report back to the Legislature later this year on creative cost-containment solutions. Before upsetting the delicate balance of power in Washington's government, we should pause and seek a safer alternative.

Ellen Clark is the presiding judge of the Spokane County Superior Court.

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