

State of the Judiciary
Chief Justice James R. Hannah, Supreme Court of Arkansas
Message to the Arkansas Bar Association Meeting
June 8, 2012

President Womack, President-Elect Harwell, Senator Pryor, fellow justices and judges, honorable members of the Bar and guests: It is my honor to be giving this third annual State of the Judiciary address during our joint meeting of the Arkansas Bar Association and Arkansas Judicial Council.

The last year has been both trying and successful, and I am encouraged about the future of Arkansas's Judicial Branch. Today I will discuss the challenges we've faced over the last year; how we have responded to those problems; and what we can do in the year to come to address these continuing challenges. Last year I shared with you my concerns about attacks on the judiciary and what we could do to combat the misperceptions and the misinformation that lead to such attacks. The joint task force on judicial elections hosted a symposium in March.

We had great speakers and a lot of information about how we can avoid the unseemly judicial campaigns that have taken place in the rest of the country. The concerns being discussed by our task force are legitimate, but I have to commend all of your colleagues who offered themselves as judicial candidates this year for running professional, clean campaigns. I think it's an example of how Arkansans are able to compete with each other with dignity and respect.

What we have been spared in Arkansas are massive infusions of out-of-state money for political attacks on judges or the judiciary. Criticisms have been leveled at the courts from day one in our country. It's a symptom of the natural tension that exists when each of the branches is required to impose checks and balances on each other. But the orchestrated and targeted attacks by special interests are a new and dangerous phenomenon for which we must be prepared to respond.

The ability of the judiciary to address problems in judicial elections historically has been rooted in our judicial code of conduct. The White decision by the United States Supreme Court has had a tremendous impact on the enforceability of our judicial code of conduct. And the implications of Citizen United are very disturbing.

Recently an 8th Circuit panel struck down a provision of the Minnesota Judicial Code of Conduct that prohibited a judicial candidate from personally soliciting campaign funds as violating the 1st Amendment. We have the same provisions in Arkansas.

At our request, the Arkansas Attorney General filed a motion and brief with the 8th Circuit asking them to rehear this matter en banc. We were able to get every state supreme court in the 8th Circuit, except Nebraska, to join us. The 8th Circuit did grant rehearing and on March 27, the 8th Circuit in *Wersal v. Sexton*, en banc, reversed the panel's opinion. This is great news. Thank you General McDaniel.

Our Constitution defines rights, it defines the structure of our court system, and it gives the courts authority to settle disputes. In order to carry out our constitutionally-mandated obligations,

the courts must be adequately funded. Our legal system is a necessity, not a luxury. Yet throughout the country, court budgets are being slashed and courts are being directed to raise revenue to operate.

In California, for example, almost a billion dollars has been eliminated from the state's judicial budget. They have had to eliminate judges and other court employees. They are reducing the number of days some courts are open while closing others altogether. These actions have a direct and immediate impact upon a state and its citizens. The resolution of business and commercial disputes are halted.

The ability of individuals to complete a divorce or an adoption; secure the payment of child support; settle an estate—all of these things are greatly delayed. Even where the budgets have not been reduced, state courts still have to find ways to cut costs due to the increase in the cost of court operations. Salaries are frozen. Positions are not being filled. Services are being reduced or eliminated.

Here in Arkansas, we have been very lucky, but still affected by the economy and political climate. An essential part of court operations has been affected.

You are all now familiar with the Administration of Justice Fund. Last fall we were faced with a crisis when there was a dramatic drop in court cost and filing fee collections, which are paid to that fund. The fund pays for many things, but most importantly it pays our trial court assistants' and court reporters' salaries.

We avoided having to impose layoffs or furloughs of trial court assistants, but barely. I want to be very clear about this: The courts were not to blame for the revenue decline. At our request, the Division of Legislative Audit examined the fund. They determined that, while there were a number of factors that contributed to the decrease in the fund, primarily the decrease was caused by lack of law enforcement resources and the poor economy.

Of the courts examined, the number of traffic tickets issued decreased by up to 24 percent. In addition, the number of warrants issued and served for failure to pay decreased by as much as 40 percent. In Rogers, for example, the Police Department Warrants Division was closed. As a result, there was a dramatic decrease in court cost collections. Another factor was the almost complete shutdown of statutory foreclosure filings.

Because of the economy, more judges than before were also allowing parties to pay off their fines in smaller increments or with community service and jail time. Another reason the fund was low was one-time appropriations for a variety of projects and programs. At one time, there was more than 18 million dollars in the fund. In the fund's 17-year history, almost 22 million dollars has been appropriated by the legislature to be spent on one-time distributions or supplemental appropriations, several with little connection to the judiciary.

One important lesson from the fund crisis is that we should never rely on fees collected by the courts to pay for court employees. Court fees should not be the sole source of revenue to fund an essential part of court operations. There is an inherent problem with the courts having to make

subjective decisions about the imposition of costs and fees that are used to pay their employees. If we are forced to rely on that system, it will impact access to justice. With filing fees and other expenses, the costs to use the legal system are already cost-prohibitive for many of our citizens.

One out of five of our neighbors lives in poverty. Even those who live above the poverty line have to make difficult choices about how to spend their money. If you have to choose between buying food and paying a utility bill, you're probably not in a position to file a lawsuit or appeal a decision, let alone hire an attorney to help you. Access to justice should not depend on an excessive cover charge at the courthouse door. It's not just our trial court assistants who have been hurt by these shortages. Our court reporters are also vulnerable.

Court security grants have also suffered a hit. The safety of our staffs, judges, and those who visit our courthouses must be paramount. Money for court security grants comes from the Administration of Justice Fund. When it takes a hit, so does the money for security upgrades. Less than a year ago our worst fears were realized when a gunman walked into the courthouse in Crawford County and shot a trial court assistant, Ms. Vickie Jones. He was looking for Judge Gary Cottrell. Thank God it was not worse. Had we been able to provide manned metal detectors, the tragedy may have been avoided. Adequate court security is imperative, and it takes money to implement.

Besides the AOJ Fund, another area that has taken a financial hit recently is our drug courts. We've seen treatment funding go from three million dollars in 2008 to less than a million this year. The long-term benefits of drug courts vastly outweigh the cost of the programs. Drug courts are proven to keep people out of prison and with their families. Participants work in their communities, which repays society in many ways. Cutting money from these programs will cost the state more in the long run, because more people will be in jail instead of addressing the core problem, their addictions and working for themselves and their families. The cost of prison and the cost to society are so much higher than the money needed to pay for drug courts.

We are asking courts to do more and more with fewer resources, yet judges in Arkansas are about to start their fourth year without any increase in their salary whatsoever. I have never felt comfortable talking about salary increases when it involved my salary. I was taught that you work hard, do your job and your compensation would take care of itself. However, as chief justice, I have a responsibility to the state and to the judiciary to address problems that the Arkansas judiciary is facing. And we have a problem that needs to be addressed. We need to attract bright and qualified judicial candidates. We also need to be able to keep the good judges that we have. In order to attract a good pool of qualified judicial candidates, and to be able to retain good judges, we are going to have to increase the salaries of the judges. We have a problem; we need to address it.

I realize that my preceding remarks may sound like all doom and gloom, but the judiciary's situation is actually much brighter than that, thanks to your hard work and innovation. From a technology perspective, we continue to automate the state's courts. Seven judicial circuits are already using the new case management system and making their dockets and pleadings available online. Eleven more circuit and district courts are in progress or finalizing plans to come online, while 22 are on the waiting list. Pulaski County is the first to use e-filing. The one-

year pilot phase began in March.

We will start to work with the other automated courts to implement e-filing next year. The attorneys who have registered to e-file in Pulaski County are a tremendous help to us as we work out the kinks of the new system. We really appreciate your enthusiasm and constructive feedback as we digitize the court system. There is much work to be done, but I am grateful for everyone's assistance.

We have not worked out the details yet, but I anticipate that the appellate courts will begin the process of automating the Supreme Court Clerk's office by the end of the year. The overhaul of our system will include e-filing.

The Office of Professional Programs recently made your CLE records available online. You can now register at the judiciary website to see how many hours you have earned. The Clerk's office will soon be able to accept payments for attorney license fees online through our website. Speaking of the website, it is currently being redesigned. The goal is to make it easier to find the information you need and provide the services you have asked for.

Automating the courts is a massive undertaking which costs a lot of money, but ultimately it will make us more efficient and cost less. Lawyers who practice in different jurisdictions will have easier access to the courts and their records. The public and press will have an easier time finding information. Litigants will also have better access to justice. In fact, Arkansas Legal Services is working with the AOC to allow victims of domestic violence to file petitions for protective orders online. So often they have no means to get to the courthouse.

In response to the crisis with the Administration of Justice Fund, judges took the lead in examining the potential causes of the downturn in their local communities and developed several innovative responses. Courts are hosting amnesty days or setting special docket days specifically so parties can pay their overdue fines. Other courts are now allowing parties to use credit and debit cards to make payments. Some are certifying court-owed obligations in order to garnish state income tax returns. We are supporting federal legislation that will allow intercepts of federal income tax returns for delinquent court fines, fees and costs, just like delinquent child support.

Probably every judge has initiated a conversation about this issue within his or her legal community. Judges are talking to court clerks and law enforcement to identify problems and find solutions. Still, we should not just talk about these things when there's a crisis. In fact, the last month's collection of fees and costs were down.

We should always be engaged in our communities and be searching for ways to work better together for the benefit of everyone. We'll be talking to the legislature next year to request that the trial court assistants' and court reporter salaries are made part of the state budget so they are paid like other state employees.

There is a lot of competition for general revenue funds, so I anticipate we are really going to have to fight for this change. We will need your support to help convince the state that our trial

court assistants' and court reporters' jobs should not depend on how much money we collect from costs and fees.

Additional full-time district judges will be added beginning January 1, 2013. For the first time we will have district judges serving more than one county. The court has made some rule changes making it feasible for our state district courts to be a court of record. I can now appoint state district judges to serve as circuit judges. A big savings for Arkansans.

We are surely progressing to our goal of having all of our district judges full time. This will happen. This is the most important and positive structural change in the Arkansas's judiciary in our state's history.

At the request of the Arkansas Bar Association, we added a civility clause to our oath. What we added was:

I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them.

To opposing parties and their counsel I pledge fairness, integrity, and civility not only in court, but also in all written and oral communications.

This spring, for the first time, I administered the new oath to our new attorneys.

At the judicial election symposium in March, Minnesota Circuit Judge Kevin Burke, President of the American Judges Association, told us about the Litigants' Bill of Rights as his solution to the public's misperceptions and misunderstanding about the courts. This Bill of Rights gives the people who use our courts the right to be listened to; the right to be treated with respect; and the right to understand why a decision is made. This argument is based upon a long line of social science research which makes clear that a citizen's satisfaction and compliance with orders or directives of the court are tied not so much to whether they win or lose but whether they perceived that they were treated fairly and had the opportunity to be heard.

Treating people with respect and explaining decisions builds trust and confidence in the judicial system, and it creates legitimacy. Litigants and people who come in contact with our courts can and should be our best ambassadors. When the public hears a negative ad or hears negative comments on cable news, their experience with the courts should contradict the rhetoric.

Procedural fairness should be the number one goal for all of us. It is in our own interest to ensure that all persons are provided these rights. Even if they lose, those who feel they got a fair shot and were listened to will trust the judge's decision. If they trust the decision, they will abide by the order. It's that simple.

We judges owe this duty to the lawyers who appear before us, too. I've heard that sometimes lawyers disagree with judges' decisions. Well, the same bill of rights theory applies. If an attorney is treated with respect in court, is allowed to make an argument to a judge who really listens, and understands why a decision is made, then that lawyer can trust the system, too.

There is no perfect judge or lawyer. There is no perfect legal system. What we do have is an opportunity to make it the best system we can. A system which protects our neighbors, protects everyone's access to justice, and protects our democracy.

More than one-and-a-half million cases are filed each year in this state. That means we have more than one-and-a-half million opportunities a year to strengthen the judiciary. What a great opportunity we have. We must take advantage of these opportunities. We cannot afford to waste these opportunities.