

State of the Judiciary
Chief Justice Rebecca W. Berch, Supreme Court of Arizona
Message to the Arizona Legislature
March 17, 2010, in Phoenix, AZ

President Burns, Speaker Adams, members of the Senate and House of Representatives, colleagues, guests, and fellow Arizonans. Good afternoon and thank you for the opportunity to speak with you about the State of the Arizona Judiciary. It has been an extremely busy session for all of you, and I appreciate that you have taken the time to be here today. I was asked to begin by introducing myself. I know many of you already, so I will keep this brief.

I am a native Arizonan and have watched this state grow and prosper. I am the product of the Arizona public school system, from kindergarten through law school, and have had the privilege of living and working in the neighborhoods and communities in which I grew up. My family – my husband, parents, brothers, aunts and uncles, cousins, children, and now grandchildren live here. In fact, my husband, Professor Michael Berch, and my daughter, Jessica Berch, are here, seated on the floor, as are my parents, Bob and Jan White, who are seated in the gallery. This background shapes and influences my perspective and I share the affection that the citizens of Arizona have for this State. I care about Arizona and its future.

It's a privilege to stand here before you today representing Arizona's court system. I became the Chief Justice last summer, following the retirement of Chief Justice Ruth McGregor after nearly 20 years of service to the Arizona Courts. We allowed her just a few months off before appointing her to serve as a special master to oversee the cases involving public officials in Maricopa County. I want to publicly thank her for her service to the State. Serving on Arizona's supreme court is an honor. I know my colleagues share this sentiment. Joining me here today are Vice Chief Andrew Hurwitz, Justice Michael Ryan, Justice Scott Bales, and Justice John Pelander, who joined the Court in September, after serving for 15 years on the Court of Appeals.

Arizona should be proud of its judiciary. It is one that is regarded as knowledgeable, fair, and professional – among the best in the country. Although the economy is bad right now, the quality of the courts and judges, and the quality of justice in Arizona remain strong. Our judges and employees strive every day to maintain the high standards for which Arizona courts have become recognized, both within our state and nationally.

A large part of the strength of Arizona's judiciary stems from our systems of electing and selecting judges. As many of you know, since 1974, we have employed "merit selection" for all appellate judges and trial judges in Maricopa and Pima Counties.

We have spoken with many of you about how important merit selection is to our system of justice. Arizona's open and transparent version of merit selection, coupled with Judicial Performance Review and retention elections, has been celebrated as one of the best merit selection systems nationwide. Just this past October, the United States Chamber of Commerce's Institute for Legal Reform cited Arizona's merit system as an example for its "Best Practices Guide to Commission-Based Judicial Selection."

I. BUDGET

Our State is experiencing an unprecedented economic downturn. This has created challenges for those who serve in all branches, and at all levels, of the government. History has shown us that during financial crises, the need for effective and efficient courts is heightened. Let me give you a glimpse of how the current economy has affected the judicial branch. We operate a court system that serves a growing population of more than six million people. While case loads are growing, funding for the courts is declining. The recession has rocketed the filings in superior court civil cases up 29% in just the past fiscal year. Filings have increased 75% overall since 2005.

The brutal economy has affected everyone. These pressures are felt in our courts as Arizonans struggle with evictions, foreclosures, credit card debt, family support issues, and so much more. In times of economic stress, people and businesses are unable to pay their bills. In the family law area, these financial pressures cause surges in divorces, child support requests, and custody disputes. We find there are more requests for domestic violence orders of protection. And sadly, we also see more children who are abused or neglected.

On the business side, we see increases in contracts cases, such as construction litigation, evictions, and foreclosures. It has proved true with this economic cycle as well. From 2008 to 2009, contracts cases increased by 45% and jumped a staggering 131% when compared with 2005. In fact, overall, statewide general jurisdiction case filings – that is, cases in superior courts – rose by more than 215,000 cases over the last fiscal year.

So now more than ever, courts are providing crucial services, because when times are difficult, more individuals and businesses depend on courts to peacefully resolve their disputes. I am proud of the men and women of the court system who have found the energy and the ingenuity to make the system work, even when facing reduced staffing and funding, and coping with skyrocketing workloads. We know that matters are not going to get better right away, and we understand that we must continue to do more with less.

Arizona's courts are funded from several sources – by the state, counties, and cities. All levels of government have had to reduce budgets, and court budgets throughout the state have been cut back correspondingly. At the state level, for example, we have taken budget cuts and sweeps totaling more than 38 million dollars in the last two years. Our general fund budget now is less than it was in 2005; in fact, we're nearly at 2000 levels. While these cuts have been steep, we appreciate that even these cuts have resulted from our working together with you, and we appreciate that you have allowed us the flexibility to manage these reductions. The budget for next year reflects additional cuts that will greatly affect court operations. But we understand that these are tough times and that you have had to make difficult decisions. We will do our share. And despite any budget constraints, we are committed to the people of Arizona and will ensure that justice is preserved in our State.

It is this commitment to justice that guided us as we drafted the court's new strategic agenda. As Chief Justice, it is my responsibility to provide direction to the judicial branch for the

coming years. I have titled the courts' new strategic agenda Justice 2020. Twenty-twenty denotes clear vision – the vision to see clearly what is occurring and place it in context; to see the things we are doing well and to build on them; to fix the things that need improvement; and to see how we must build to meet future needs. It is also said that hindsight is 20/20. So in developing the courts' strategic agenda, we reviewed where we have come from and how we have developed to help us better understand our foundations and history so that we can build on our strengths.

Justice 2020 then is a vision, a long-term roadmap to guide the courts through this fiscal crisis and into the future. It sets forth the strategic steps we need to take now to allow us to function for the next decade and beyond.

The Strategic Agenda contains five major objectives:

- Strengthening the Administration of Justice,
- Maintaining a Professional Workforce and Improving Operational Efficiencies,
- Improving Communications,
- Protecting Children, Families, and Communities, and
- Improving the Legal Profession.

Because time is short today, I will highlight just a few of these goals.

“Strengthening the Administration of Justice” is the first goal of the agenda. Alexander Hamilton called justice a “constitutional imperative.” Arizona’s founders, like the founders of our nation, similarly gave the justice system constitutional status as a coequal branch of government. We must honor that commitment by strengthening our courts to ensure the protection of every citizen’s right to prompt, fair, and impartial justice. But prompt hearings cannot occur unless the court is sufficiently equipped to handle them. More and more in this modern era, technology is essential to provide efficient services. For this reason, technology is a focal point of the Justice 2020 strategic agenda. Technology allows courts to do more with less, by creating efficiencies that save money and time, while providing accountability and transparency. Let me give you an example. We have nearly completed rolling out a statewide case management system in all superior courts. It has been a complex and enormous project. Our next step is to bring this same case management system to all of the limited jurisdiction courts. This technology will position us to more effectively handle the growing caseloads and more efficiently process cases and provide necessary court services.

The case management system I just mentioned will also serve as the platform on which we will implement e-filing, which, given reduced staffing, increased caseloads, and public demand for information, we must adopt. Our citizens deserve the convenience of electronic filing and access to court documents. Courts will also benefit from going paperless. We will save money by not having to store, file, retrieve, reproduce, and mail millions of documents each year.

Our e-filing initiative is called AZturbocourt and will support e-filing in all types of cases, in all Arizona courts. With e-filing, cases can be filed from anywhere, at any time. AZturbocourt will

be completely supported by user fees. No general fund money will be spent.

We have already begun to distribute court orders by e-mail, saving mailing costs and making distribution faster and more efficient. We also send electronic notices to victims so that they can learn instantly of the status of a case or any continuances or rescheduled hearings. And just three days ago, I went online to respond to my summons to serve on a Maricopa County Superior Court jury.

The court has unveiled a web page this year that reports the performance of the appellate courts in our state. We are one of only four states in the nation that publicly reports these stats online. Following up on an idea that sprang from the Supreme Court's Commission on Victims in the Courts, we have just launched a victim restitution web page. The site provides information to victims of crime regarding restitution, and it offers local, state, and national resources for information and education. We will continue to deploy technology so that we can meet the demands of our citizens.

II. EVIDENCE COMMITTEE

To further the administration of justice, I am also announcing today the formation of a committee to examine Arizona's Rules of Evidence. These rules govern the introduction of evidence in both civil and criminal proceedings and help ensure fairness in the administration of cases and help eliminate unjustifiable expense and delay. Vice Chief Justice Andrew Hurwitz, a national expert who serves on the Federal Rules of Evidence Advisory Committee, will lead this comprehensive review of our rules to determine whether they would benefit from modification or updating.

III. PROTECTING VULNERABLE COMMUNITIES

On other fronts, our courts have always played an important role in protecting vulnerable citizens. From our youngest citizens to the oldest, we must help protect those who cannot look out for their own interests by ensuring adequate oversight and regulation for those charged with caring for them. On the other end of the spectrum from the children, we have a growing population of aging baby boomers. This demographic reality will increase filings in the areas of guardianship, conservatorship, elder fraud, and probate, and requires rigorous oversight and fiduciary accountability.

I am pleased today to announce two new initiatives that will help us improve our work in these areas. First, Judge Ann Scott Timmer, Chief Judge of Division One of the Court of Appeals, has agreed to chair a committee to examine ways to streamline and improve monitoring for those for whom guardians or conservators have been appointed. The Committee's work will help us find ways to protect the best interests of those who must rely on others for their well-being, and will help us serve families who seek assistance on behalf of a loved one. Second, the Court will form a committee to review the fees that are charged by those appointed to serve as guardians and fiduciaries. Arizona has led the way in the area of fiduciary licensing and regulation but we must always strive to do more. Justice 2020 challenges us to look at new ways to meet these priorities with a balanced, creative approach.

IV. FOCUS ON THE LEGAL PROFESSION

Justice 2020 will also focus on improving regulation of the legal profession and the practice of law. As with many professions, the practice of law is changing. Transactions nowadays often cross state lines and even national borders. Lawyers practice and provide advice and legal representation to businesses in multiple states. We must modernize the rules governing the practice of law to adapt to these changes. To help accommodate this reality, lawyer regulation and admission rules must change. Beginning this year, attorneys who have been in practice for at least five years and have passed a bar in another state may be admitted to practice law in Arizona “on motion.” The “reciprocity” provision of our regulation requires that Arizona lawyers must be allowed to practice in those states to whose lawyers we grant reciprocal privileges here. Of course all candidates admitted here “on motion” must still meet rigorous criteria, such as character and fitness standards, years in practice in good standing, and attendance at an Arizona-law course. They must also have a JD degree from an accredited law school.

Once an attorney is licensed to practice here, we must set forth clear standards to regulate legal work and, should these standards for professional conduct not be met, a clear path for investigation and resolution of lawyer misconduct cases. To that end, I have established a lawyer discipline task force chaired by AOC Director Dave Byers and charged its members with reviewing Arizona’s lawyer discipline system and suggesting changes. That committee has now filed a petition – online – setting forth recommended changes, and we are accepting comments on that petition now. The court will review the proposals and comments this Fall. The resulting system will improve our ability to provide a swift, fair, and cost-effective process that protects the public and preserves the professionalism of the law, while affording due process to those charged.

V. CONCLUSION

Time prevents me from delving further into the details of Justice 2020, so I encourage you to visit our newly refreshed web site, which can be found at www.azcourts.gov, to learn more about the new strategic agenda. An effective court system is vital to a vibrant state. We know, for example, that when companies look for places to locate or expand, a fair, effective, and efficient court system places high among the factors they evaluate. The citizens deserve a quality judicial system as well. This agenda takes steps to ensure that our standards and reputation remain high, positioning Arizona as a place that people want to live and companies want to do business.

In the years ahead, we will continue to focus on improving communications and fostering public confidence in the judicial system. We will remain committed to maintaining the highest standards of professionalism within our workforce. We have tried to be good citizens of the State by thinking broadly about ways to help raise funds to balance the budget – even when those funds do not inure to the benefit of the courts. We will keep doing so, because it is the right thing for Arizona and for the courts. We ask in return, as you have been doing, that you continue to allow us to manage the courts’ budget.

And so I thank the members of our legislative and executive branches for their partnership on working through the tough issues that face the judiciary and our state. We value the courtesy and respect you have shown to the judicial branch and hope to maintain the high level of cooperation. When I look back on my years of service to the state, I would like to remember not the difficult economic times, but the good things we have been able to accomplish for the State of Arizona. These are the legacies that will make us proud. While Arizona's immediate future appears difficult, those who love our state know that there is no better community of individuals than Arizona citizens to rise to the occasion and find solutions.

The courts at all levels in Arizona commit to our partners in government and to the citizens of Arizona that we share this goal and are focused on a clear vision for the pursuit of justice in our State. It is this vision of excellence that judges and court employees bring to work each day – and their ability to bring the constitution to life for all those who seek justice in our courts – that makes me proud to work side by side with them, serving the citizens of the great state of Arizona.

We look forward to continuing this work and ensuring justice in twenty-ten, in twenty- twenty, and beyond.

Thank you.