

State of the Judiciary
Chief Justice Lorie S. Gildea, Minnesota Supreme Court
Message to the Minnesota Bar Association
June 28, 2018

Good afternoon.

Thank you for that warm welcome and for inviting me to speak today. Before I dig into my comments, I want to thank and congratulate Sonia Miller-Van Oort on a very successful term as president of the MSBA. I also want to be among the first to officially congratulate the new bar president, Paul Godfrey, on his new role. Paul, I very much look forward to working with you in the year ahead.

And, if you'll allow me one more point of personal privilege, I want to take a moment to recognize one other very important person. It has come to my attention that this may be one of my last opportunities to publicly laud—or maybe publicly embarrass—the great Tim Groshens. So as he prepares for his upcoming departure from the MSBA, I just want to offer a few words about Tim. For as long as I've served on the bench and especially during my time on the Supreme Court and as chief justice, I have deeply valued Tim's wisdom, his forthrightness, and his tireless efforts on behalf of our justice system. There is no question that his abilities as a strategic thinker and consensus builder have had an immeasurable impact on Minnesota's bench and bar. Tim, thank you for your service. Best of luck in your next adventure.

Now, let me get back to the task at hand. This speech was billed as a State of the Judiciary address, so let me start there. I am proud to tell the members of Minnesota's Bar Association that the state of the Minnesota judiciary is strong, and getting stronger. This is due in large part to our shared advocacy and public outreach in support of a robust, independent judiciary.

We have come so far from where we were a decade ago, as we struggled to maintain access to justice in the midst of back-to-back recessions and annual budget shortfalls. Our advocacy, combined with a Governor who has championed justice system funding and strong legislative support, has helped bring our courts back from the brink. We've brought down our case backlogs in many areas, expanded services for self-represented litigants, and successfully modernized our courts through our transition to electronic case records and eFiling. None of this would have been possible without the support of the bar, and I'm deeply grateful to everyone who has played a part in this remarkable turnaround.

Perhaps the biggest challenge facing our judiciary right now is one that many businesses and large organizations are facing these days—personnel turnover. I'm guessing many of you have noticed the changing faces in our courthouses in recent years—from the judges presiding over your cases, to the court clerks and staff helping you at service counters. When you step back and take a look at this issue from the statewide perspective, it really is astounding.

Since the start of 2012—just over six years ago—135 new judges have joined our district court bench. That means nearly half of current district court judges joined the bench since 2012.

We have seen this same level of turnover in our appellate courts. There have been 11 appointments to the 19-member Court of Appeals since 2012. And believe it or not, there have been six appointments to the seven-member Supreme Court since 2012. As Chief Justice during

that entire span, I try not to take it personally. I could show you the same type of data about our staff. More than half of our current staff joined the courts after 2012.

I know workforce challenges are not unique—those of you from large law firms could probably share similar stories and data. But I wanted to share with you that our court system has not been immune from the big demographic challenges facing our state and our country, and we're focusing a lot of time and effort these days on staff development, new judge orientation, peer-to-peer mentoring, and other strategies to prepare this new generation of court leaders.

Despite this high level of turnover, the foundation of the justice system in Minnesota is presently very stable. That stability gives us the opportunity to think strategically, long-term, about how we can make tomorrow's justice system even better than today's. In the Judicial Branch, the responsibility for building and monitoring a strategic plan falls to the Judicial Council. For those of you who aren't familiar, the Judicial Council is comprised of all the chief judges from our 10 judicial districts, plus representatives from both our appellate courts, as well as a handful of other judges and court leaders from across the state. The Council serves as the policy-making authority for our courts—it determines our biennial budget request to the Legislature and our own internal budget, it sets statewide policies for judges and staff, and, perhaps most importantly, every two years it adopts a new strategic plan for our courts. As Chief Justice, I chair the Council.

Our strategic planning process is so critical to the success of our courts. It's an opportunity for our leaders to step back every two years and assess how we're doing. We talk about our performance measures: are we getting cases processed in a timely manner? Do we have enough judges and staff to do our work? Then we look for opportunities to address known issues—perhaps a way to leverage new technology to make our courts operate more efficiently. And of course we also focus on our court users—how can we improve our service to attorneys, our justice partners, self-represented litigants, and to the public as a whole?

Yogi Berra once said that “if you don't know where you are going, you'll end up someplace else.” That, in a humorous nutshell, sums up why strategic planning is so important. Our courts have an obligation to both provide a fair and accessible system of justice to the people of Minnesota and to be excellent stewards of public resources. Smart, thoughtful strategic planning is how we meet both those benchmarks.

Today, I want to talk with you a little bit about the successes we achieved, under our strategic plan in the past year, and to preview a couple of items that are coming down the road as part of our current planning process.

Over the past year, much of our strategic focus has been on how we can take the new technologies we built in our eCourt transformation and use them to make our courts work better for the people we serve. We call this process reengineering. One of the biggest benefits of our transition to electronic court records has been the ability to move case processing and other administrative work across the state in the blink of an eye.

This has opened the door for all sorts of new ways of doing business—things we couldn't have dreamed of doing when we operated in a paper world. Last summer, as part of our strategic plan, we undertook a major reengineering effort aimed at ensuring that we continue to provide access to justice in every corner of the state. At this Conference last year, I spoke about how we were centralizing some of our work—like the process of summoning jurors, for example—and moving

that work into 17 of our smallest, most rural counties. This has allowed us to keep courthouses staffed and customer service windows open in those counties.

In recent months, each of our districts have begun using staff specialists to review filed court documents. Rather than, say, having five staff people spending 20 percent of their day reviewing, accepting, and classifying case filings, we have one person doing it full time. In more rural areas, one or two people might be doing this work for several counties. Again, the idea here is that by staff specializing in the work, they become more proficient and efficient.

As part of another reengineering initiative, we are once again strengthening our oversight of court-appointed conservators. Some of you may be aware of our nation-leading Conservator Account Auditing Program. Through this program, which we call CAAP, we use highly trained auditors to review large conservator-managed accounts. This Program has been a remarkable success. Our CAAP auditors are currently monitoring over \$900 million worth of assets. The program has won numerous national and state awards and is now a national model in the fight against financial abuse.

Our current initiative is taking that same model and applying it to smaller conservator accounts. Rather than asking judges and court staff—who likely don't have much finance or auditing experience—to make sure these accounts are being well-managed, we will now have specialized accounting specialists monitoring all conservator-managed accounts in the state.

We are extremely proud of our efforts on this front. This is such an important topic as our state ages, and as more and more people become reliant on guardianship and conservatorship. We've seen so many horror stories from across the country about the devastating harm an unethical guardian or conservator can do. While we know the vast majority of people who serve in these roles do so responsibly, these enhanced safeguards are an important way Minnesota protects its vulnerable citizens.

Another area where technology is opening new doors for us is in the provision of interpreter services. These days, it seems like technology is changing every part of our lives. As part of our strategic plan, we have been pilot-testing new remote interpreting technology.

This technology allows an interpreter to sit in a central location and appear virtually in courtrooms across the state. Using this technology, an interpreter working in a Moorhead office can appear in a courtroom in Bemidji in the morning, Willmar before lunch, and Duluth in the afternoon. We recently had a demonstration of this technology at the Judicial Council and came away extremely impressed with how far video technology has come. The judges involved in the pilot report that it is now working seamlessly in their courtrooms. Based on the success of this pilot, we're now in the process of determining how best to expand the use of this technology in the future.

Obviously, having an interpreter in the courtroom is preferable and is still going to be the standard for trials and lengthy hearings. But in situations where someone may need a rare language translated for a five-minute hearing, or there is a short hearing in a remote location, and we're struggling to find an interpreter who can get there in a timely manner, this new remote technology can be a real asset for everyone involved in the process.

Another way we're using technology as part of our strategic plan is in how we support those who come into our court system without the benefit of an attorney—self-represented litigants. As

you're no doubt aware, this is an issue that has exploded in recent years. By one measure, more than half of civil cases heard in our district courts have, at some point, at least one party that is self-represented. I know this is an issue of importance to the bar, and it's an issue we take seriously in our courts, too. First and foremost, it's an access to justice issue, as we strive to make sure that everyone who comes into our courts has an equal chance to be heard and their cases fairly resolved. But it's also an issue that affects our processing of cases, and our efforts to get cases heard and decided in a timely manner. Simply put, cases move faster and get resolved sooner when attorneys, or litigants who understand court processes, are involved. Our goal in the court system is to make sure that self-represented litigants have the tools they need to bring their issues to court and an understanding of how court processes work, so that they meet their deadlines and are ready for hearings.

All in all, Minnesota has been doing a pretty good job of this. In fact, we've been rated among the top states in the nation in providing assistance to those who can't afford an attorney—an accomplishment that both the bench and bar can celebrate. From our statewide Self-Help Center to the work of volunteer attorneys across the state, this is a real success in Minnesota.

But we are trying to build on this success by using technology to better serve these customers. Earlier this year, we updated all the court forms we offer on our website to fillable smart forms. These smart forms have built-in intelligence that make it faster and easier for self-represented litigants to accurately create and file necessary forms.

In 2018, we're working to launch Guide & File—an online tool that uses web-based “interviews” to help people create court forms. Much like TurboTax or similar software, Guide & File asks users simple questions and then uses the answers to those questions to produce a court form that can be printed or filed electronically with the court.

Another place where we are working to provide more self-help tools comes from the Justice for All project, and I want to thank the MSBA members who have been part of the Justice for All grant project team over the past year. Minnesota was one of just seven states selected in 2016 to receive funding through the National Center for State Court's Justice for All project. Our state's project team spent all of 2017 drafting a project plan for that grant and recently secured a second round of funding to begin implementation.

This funding is going towards developing a “one-stop shop” approach to serving Minnesotans with civil legal needs. By next year, Minnesotans needing civil legal assistance will be able to visit LawHelpMN.org and, by answering a few simple questions about their legal issues, be directed to a tailored set of the most relevant self-help materials, including videos, booklets, and guided form tools. By answering a few more questions about their location, status, and income, users will also be able to connect with free and low-cost legal services. This tool will be supported by existing civil legal aid organizations and—as developed through this project—an expanded roster of attorneys prepared to offer reduced-fee legal assistance to qualifying individuals.

This is really an outstanding opportunity for Minnesota, and I'm proud of the partnership we've built within the justice community to make this project a success. And we can all celebrate the fact that a year from now we'll have this incredible new resource available for Minnesotans in need of legal help.

There is one more thing to cover on the access to justice topic because I want to share with you an item that I, as Chief Justice, am personally pushing to have included in the Judicial Branch's strategic plan for the next biennium. That plan is still going through the approval process, but I want to preview this topic with all of you, because it comes directly out of work done through the MSBA.

As I'm certain many of you will remember, a few short years ago the MSBA engaged in a really robust discussion about how to tackle Minnesota's lingering civil justice gap—the large share of people who can't afford an attorney but who don't qualify for civil legal aid services. I was so encouraged by the MSBA's willingness to take on this difficult issue and was heartened by the formation of the bar's Alternative Legal Models Task Force. The Task Force focused its work on how to bring new resources to serve low and modest income clients. In so doing, the Task Force recognized the challenges facing practicing lawyers in reaching those potential clients. The options considered by the Task Force reflect a need to supplement the existing system in which lawyers exclusively can provide legal advice.

After many months of research, discussion, and debate, the Task Force ultimately recommended that the MSBA work toward implementation of two proposals. The first proposal was designed after a model employed in British Columbia that allows a paraprofessional to become a Legal Practitioner, and provide legal advice, and, in some circumstances, represent a client in court and administrative proceedings under the direct supervision of an attorney. Utah is currently examining this model.

The second proposal was modeled after the State of Washington's Limited License Legal Technicians model—or the Triple LT model. The Triple LT model allows licensed paralegals or administrative assistants to acquire a certain level of education and experience to qualify for licensing through the passage of an exam. Once licensed, the Legal Technician would be able to practice law in a specific area and in limited scope.

Now, I know this is a complex issue, and one that the MSBA has discussed and debated at length in recent years. Of course, I also know that the bar, after much discussion, ultimately declined to endorse either of the recommendations. And with that, the work of the Alternative Legal Models Task Force has been seemingly sitting on the shelf for the past year.

What I'm proposing to my fellow judges as part of our strategic planning process is that we take that Task Force's report off the shelf, blow off the dust, and give it another look. I've read the report and am impressed by the tremendous work that went into it. I am convinced that there is real value in those recommendations and a real path forward for finally shrinking Minnesota's civil justice gap.

The Task Force's report concludes by stating that failing to act on these ideas will mean people of low and moderate incomes will continue to face barriers to justice in our state. I think that is exactly the right message, which is why I want the Judicial Branch to work with you, our partners in the bar, and the broader civil justice community, to give these recommendations another look, and see if we can't find a way to expand access to justice in our state.

Finally today, I want to talk about one other topic that I know is of great importance to all of you and this organization. And I can tell you that it's of equal importance to my colleagues on the bench. Last August, the ABA released a report on lawyer well-being, based on important

research conducted in 2016 that showed stunning levels of alcohol abuse, depression, and other serious health issues within the legal profession. A second survey showed similarly concerning data among law students throughout the country. As the report states: these devastating levels of mental and chemical health issues do not support “a profession dedicated to client service and dependent on the public trust.”

I know this report was a wakeup call for many of us, myself included, who didn’t grasp the full extent of these issues within our profession. And now that we’ve been shown the full extent, we have a responsibility—as members of the bench and bar—to be part of a robust effort to reverse these trends. I want to applaud the MSBA for its work on this issue, helping to raise awareness and provide practical training to attorneys around the state. And, of course, I want to once again commend the work of Lawyers Concerned for Lawyers and remind you that free help is just a phone call or e-mail away.

Most of all, I want all of you to know that the bench also takes this issue extremely seriously. We, too, try to raise awareness and support among judges and court staff on these issues.

And next year, the Supreme Court, through the leadership of Justice David Lillehaug, will be convening a “call to action” education conference on this very important topic. We hope this is a clear signal from our Court that we are committed to engaging on this issue today, tomorrow, and for however long it takes to improve the health and well-being of those in the legal profession.

As easy as it is for others to make light of or disparage our profession, attorneys, judges, and others in the legal community play a crucial role in upholding the rights and freedoms of citizens, growing our economy, and ensuring safe neighborhoods and livable communities. This is a profession to be proud of, and one in which you have a real opportunity to make a difference in people’s lives. We need to do everything we can to make it a profession that people take pride in, find joy in, and can be part of a balanced, healthy lifestyle.

Minnesota has one of the strongest, most accessible court systems in the country, due largely to the contributions of the women and men who make up our state’s Bar Association. It’s a partnership that I, my colleagues on the Supreme Court, and the entire Judicial Branch deeply value.

As I close today, besides offering you my thanks for inviting me here today and for your continued partnership, I will leave you with some homework. The success of our justice system in recent years has been supported by a renewed investment from the legislative and executive branches, after several years of disinvestment and budget cuts.

Throughout this summer and fall, many of you will have the chance to speak to those seeking office in the other branches. There is no better time to talk to elected officials and candidates about the importance of our justice system than when they are asking for your vote.

While times have been good lately, we all can remember too well when our justice system was pushed to the brink. When we had to turn customers away from courthouse windows. When people charged with crimes were being released because we couldn’t meet their speedy trial demands. I would urge all of you to raise the profile of our justice system during this important election season and make sure that candidates across the state know that the bench and bar are united behind a high-functioning, accessible, independent, and adequately funded justice system

for the people of Minnesota. By doing so, you will help safeguard the constitutional promise that is our justice system.

Thank you again for having me. Thank you for listening and thank you for all you have done and all I know that you will do for the cause of justice in this state.