

State of the Judiciary  
Chief Justice Lorie S. Gildea, Minnesota Supreme Court  
Message to the Minnesota State Bar Association  
June 25, 2020

Hello, members of the Minnesota bar. Thank you all for being part of the first-ever virtual State of the Judiciary.

While I'd love to be speaking with you all in person, I am grateful to the staff and leadership at the MSBA for allowing me to be part of this online event.

And I so appreciate the honor of being able to provide you the State of the Judiciary on behalf of my fellow judicial officers and staff at the Minnesota Judicial Branch.

Next Wednesday will mark my 10-year anniversary as Minnesota's Chief Justice. In those 10 years, I've seen a lot of things: the impact of and recovery from the Great Recession, our historic eCourt evolution, a significant expansion of treatment courts across the state, and the livestreaming of Supreme Court oral arguments, just to name a few of the many major changes and advancements in our court system.

Nothing, however, could have prepared me—or any of us—for the year 2020. So we have a lot of ground to cover today.

Before I get too far along in my remarks, I want to take this opportunity to congratulate Tom Nelson on his term as president of the MSBA. I'm confident that Tom never imagined leading our state bar through a once-in-a-generation public health crisis and helping usher in the era of virtual conferences and other major changes.

But as they say: “On the other side of a storm is the strength that comes from having navigated through it.” And Tom has been a remarkable captain for the MSBA during this storm, and we should all be thankful for his service during these challenging times. I'll talk about how our courts have partnered with the MSBA during this pandemic in a short while.

I also want to officially congratulate Dyan Ebert on her new role. Dyan has held many leadership positions in our state's legal community, and I very much look forward to working closely with her in the year ahead.

This year's State of the Judiciary address is coming at a pivotal and challenging moment in Minnesota history. There is the ongoing global pandemic, which has fundamentally changed how we deliver justice across our state and our nation.

But even more pressing, over the past month, our community has been faced with a series of events that have brought to the forefront long-standing issues of racial fairness and equity.

We have each witnessed the sorrow, the pain, the anger, and the incredible determination that has spread from the streets of Minneapolis to all parts across the globe.

As I come before the bar today during this critical moment in history, I want you to know that the state of the judiciary in Minnesota is strong. We are resolved and resilient. We are resolved in our commitment to ensuring all Minnesotans have equal access to justice, as well as trust and

confidence in their judiciary. We are resilient in the face of a global public health crisis and are continuing to work every day to deliver on our Constitutional mission.

Minnesota's first chief justice wrote about one of the promises of Minnesota—the promise that in Minnesota “no one can be denied the right to simple justice.” Our work—for both the bench and bar—is to keep that promise. These recent events, however, have made clear that too many of our fellow Minnesotans no longer believe it to be true.

There is nothing more important to the state of our judiciary than sustaining the public's trust and confidence.

While I believe our courts will always stand for the cause of justice, fairness, and equality, we must not lead only with our words. We must also lead with our actions.

It is crucial that all Minnesotans believe our courts will provide fair, impartial resolutions to their cases and disputes. It is even more important that we, as members of the bench and bar, work as hard as we can, every day, to earn that trust.

To ensure public trust and confidence Minnesotans must see their cases and disputes decided by the rule of law. The rule of law is fundamental to our society, to our democracy, and to preserving the rights and freedoms of every Minnesotan.

More than 300 years ago, John Locke warned us that “where law ends, tyranny begins.” And, for centuries, it has been our profession's shared purpose to safeguard the rule of law in our society.

As Minnesota navigates this tumultuous and painful moment, we must not lose sight of either of these values: All Minnesotans deserve fair and equal access to justice. And, all Minnesotans depend on the rule of law for their safety, livelihoods, and liberty.

In recent weeks, I have spoken with the chairs of our statewide Committee for Equality and Justice. We discussed how that statewide committee can continue to play a critical role in facilitating ongoing discussions and work related to fairness and equity in our justice system.

The Committee for Equality and Justice—or CEJ—is the perfect forum for this work. Its membership is reflective of the state's geographic and demographic diversity and includes representation from judges, court staff, justice system partners, and the public we serve.

As part of the CEJ's current strategic plan, the committee is exploring several important issues, such as:

- How our courts can ensure that those who are called for jury service, selected for jury panels, and seated on the juries accurately reflect the diversity of our community;
- What steps our courts should take in response to the latest Probation Revocations Report from the Sentencing Guidelines Commission, which found, among other things, that American Indian men and women had far higher probation revocation rates than other racial or ethnic groups; and

- How our judges and courts across the state can expand our community outreach, and put into action the lessons we learn from the various community listening sessions we routinely hold across the state.

The CEJ is also nearing completion on new jury instructions for judges with the goal of educating jurors on:

- what implicit or unconscious bias is and how it impacts their duties as a juror, and
- what steps jurors can take to address and manage their own implicit or unconscious bias.

This difficult moment in history demands that we redouble our efforts to ensure that everyone in our state believes in the promise of simple justice. With the leadership of the CEJ, we will continue to identify specific actions and goals to promote a more fair and equitable system of justice in Minnesota.

Turning to resiliency, I am going to focus on the impact the COVID-19 pandemic has had on our courts, and the historic steps we have taken to ensure access to justice during this public health crisis.

As I said before, the state of Minnesota's judiciary remains strong. And, that is due in large part, to the resiliency shown by our judges, court staff, and justice partners during this once-in-a-lifetime crisis.

But, as I will share with you: this pandemic has also challenged our ability to fulfill our Constitutional responsibilities like never before. And addressing the long-term impact of the pandemic will require an all-hands-on-deck approach from the bench, the bar, and our entire justice community.

The first positive case of COVID-19 in Minnesota was confirmed on March 6. As you'll no doubt recall, that announcement set off a chain reaction that very quickly, and very fundamentally, changed public and private life in Minnesota.

On March 13, Governor Tim Walz declared a Peacetime State of Emergency in Minnesota. Hours later, I convened an emergency meeting of the Minnesota Judicial Council, our statewide policy-making body. Following that meeting, I issued a statewide order that kept courthouses open, but temporarily suspended work on certain case types and discouraged the public from making any non-essential visits to court facilities.

Less than a week later, as the pandemic's impact on Minnesota came into sharper focus, the Judicial Council met again and determined more robust measures were needed. On March 20, I issued a new order that temporarily suspended most in-person court proceedings, limited public access to court facilities, and restricted courthouse service windows to only telephone and email support. We also directed judges and court staff to begin working from home unless needed at the courthouse to conduct a limited amount of vital business.

This state of limited courthouse access became our reality for more than two months. I can't really express the gravity I felt having to sign an order restricting public access to our court facilities. The entire ethos of our judiciary is to expand access to our courts and preserve the public nature of our justice system. But, as we know, ours is a very human endeavor, one based on close, personal interactions in sometimes crowded and cramped courtrooms. Our challenge

was to figure out how to maintain access to justice at a time when “close, personal interactions” had become a prime vector for spreading a deadly new disease.

Thankfully, my colleagues on the Judicial Council understood that we could not simply suspend cases for the duration of the pandemic. We needed to develop a solution that would allow us to continue processing cases and providing access to justice even when all of us could not be at our courthouses.

In mid-March, we developed a statewide Remote Hearing Workgroup, composed of court administrators and IT experts. We asked that Workgroup to explore technologies that would allow our district and appellate courts to begin conducting hearings remotely, with judges, attorneys, parties, and others participating from their homes or offices.

The Judicial Branch had some experience using remote hearing technology, especially in large, rural counties. But never had we attempted such a large scale shift to "virtual" courtrooms.

The Workgroup acted quickly to ensure that each courthouse had the best possible technology and software needed to conduct virtual hearings, and that our judges and staff were trained to conduct these hearings from their homes or chambers.

At the same time, the Workgroup developed an array of training materials to help attorneys, justice partners, and other court users adapt to our new reality. The Judicial Branch has launched a webpage—you can see the link here on your screen—to assist Minnesotans who must participate in remote hearings and provide information to members of the public who wish to access remote hearings.

While admitting I may be a little biased, I would say what the judges and staff in our courts were able to accomplish in such a brief time frame is nothing short of astounding.

By the end of April, our district courts were holding an average of roughly 900 hearings per day. By the end of May, we were up to 1,700 hearings a day. By last week, we were conducting more than 2,000 hearings per day. The vast majority of these hearings are being held virtually, using technologies and processes hardly any of our judges or staff had used for this purpose before the pandemic.

While this has been tremendous progress, not surprisingly, we are still holding significantly fewer hearings today than we were before the pandemic arrived in Minnesota. As you can see on the screen, in early March, our courts were holding more than 3,800 hearings per day.

I also want to give some kudos to my colleagues on our two appellate courts, as well. For nearly three months now, we have eschewed in-person oral arguments in favor of either virtual oral arguments via WebEx or non-oral arguments.

Here on the screen, you can see a few photos from the Supreme Court’s first-ever virtual oral argument on April 1. I know those of us on the Supreme Court are eager to get back into the courtroom. At this point, we’re just waiting for the State Capitol to resume normal operations before we begin holding in-person oral arguments again.

And I want to be clear: just because we took the precautionary step of limiting in-person courthouse access, that doesn’t mean our courts weren’t open for business.

Throughout the course of this pandemic, our courts across the state have still been providing telephone and email assistance to court users. The Court Payment Center was still accepting payments and answering customer questions about their traffic tickets or citations. Our statewide Self-Help Center saw a little dip in call volume right at the start of the pandemic, but since then, they've been just as busy as ever in providing legal guidance to self-represented litigants over the phone or by email.

We have also seen more and more Minnesotans relying on the various online tools we have developed to make it easier to do business with the courts. One example is Guide and File, which uses a web-based interview process to help litigants complete and file court forms in certain case types, such as starting a divorce, or asking for an order for protection or harassment restraining order.

In January, about six percent of all divorce filings in the state were completed through Guide and File. Last month, it was more than 40 percent. We saw similarly large spikes in usage in our HRO and OFP Guide and File interviews. It's clear that during this era of social distancing that people are looking for ways to do more and more of their essential business online, and Guide and File and the other electronic tools we offer to court users have become incredibly.

I have tremendous admiration for the work of our judges and staff across the state who have helped lead this transformation of our courts and who have adapted so quickly to this new reality.

I am also grateful to members of the bar, and the rest of our statewide justice community, who have been our partners in this remarkable effort

Throughout this process, we have held regular teleconference meetings with bar leadership, public defenders, prosecutors, county leaders, and others to discuss and coordinate our pandemic response.

This type of partnership during times of crisis is indicative of the strong relationships we have built within our justice community. I am ever so grateful to be able to collaborate with such dedicated leaders and professionals. Together, we have truly helped preserve access to justice during this historic crisis.

At the same time that our courts began shifting to remote hearings, we also started to plan for how we will eventually return to regular, in-person court operations. A group of judges and court administrators from around the state, affectionately known as The Other Side Workgroup, has been leading us in thinking about how our courts will return to normal when we are on "the other side" of the current pandemic.

The Workgroup's first step was to develop short-term and transitional strategies to help district courts continue to process as much casework as possible during the pandemic.

In the first weeks of the crisis, our courts used those short-term strategies to decide how to prioritize urgent casework as we ramped up our capability to conduct remote hearings.

On May 15, I issued a statewide order in consultation with the Judicial Council that transitioned our courts out of these short-term strategies and into a new transitional phase of court operations.

During this transitional phase, our courts have been carefully and gradually increasing in-person operations.

That includes expanding the number of hearings happening inside the courtroom. This transitional phase also meant opening up courthouse service windows to the public. As you know, courthouse service windows are a gateway to our courts for the people of Minnesota, and are crucial to ensuring access to justice. Since the middle of June, at least one courthouse service window is open in each county across the state.

We've also reopened the Minnesota Judicial Center in St. Paul, including the customer service window at the Clerk of Appellate Court's Office and the State Law Library.

As part of this transitional phase, we also began to pilot-test new ways of conducting criminal jury trials in the era of social distancing. We invited our courts across the state to volunteer to be part of this pilot process. In order to participate, courts had to develop a detailed health and safety plan and complete a lengthy checklist to address changes to facilities and protocols to meet social distancing and safety needs.

In total, we now have six counties pilot-testing criminal jury trials. This includes Blue Earth, Hennepin, McLeod, Olmsted, Ramsey, and Scott counties. So far things have been going fairly smoothly in our early pilots. We have gotten to three verdicts so far and five cases are in trail this week. We are also pleased to hear that a high percentage of potential jurors are responding to their summonses and are reporting for duty.

My order on May 15 also made clear that outside of these pilots, no criminal jury trials will be held before July 6, and no civil jury trials will be held before September 1. But just last week, the Judicial Council approved a process that provides a pathway for more and more counties to begin resuming criminal jury trials next month, once they have taken the necessary health precautions and have an approved plan in place.

As we strive to maintain access to justice to our courts during this pandemic, our number one priority remains protecting the health and safety of everyone who comes into our courts.

Each of these transitional efforts I've just described has been undergirded by a statewide COVID-19 Preparedness Plan we developed in partnership with the Minnesota Department of Health based on guidance from the Centers for Disease Control and Prevention.

The Minnesota Judicial Branch COVID-19 Preparedness Plan details the safety measures that each court facility must follow. This includes guidelines around:

- Social distancing;
- Face coverings;
- Cleaning and disinfecting; and
- The layout and configurations of courtrooms and common spaces.

For those of you who have been in courthouses lately, I'm sure you've seen this Preparedness Plan in action. From new signage, to increased cleaning and sanitation, to additional barriers and Plexiglas, to reconfigured spaces, it should be clear that our courts are making public health and safety our highest priority.

True access to justice means people in our courthouses are safe and feel safe.

While much of our focus has been on maintaining access to justice during this public health crisis, that doesn't mean other important work in the Judicial Branch has stopped. Before I turn to some of the long-term challenges our courts will face as a result of this pandemic, let me first get you up-to-speed on some other significant developments.

For those of you who have attended my last two State of the Judiciary addresses, you may recall my remarks regarding the bar's Alternative Legal Models Task Force. I applauded the MSBA for your work on identifying new and innovative ways to tackle Minnesota's lingering civil justice gap. And I announced that the Supreme Court planned to pick up this mantle by forming an Implementation Committee for a new pilot that would permit greater use of legal paraprofessionals to address the justice gap.

That Implementation Committee was chaired by Justice Paul Thissen and Court of Appeals Judge John Rodenberg and included representation from the bar and others in the justice community.

The Committee met 11 times between April 2019 and February 2020, hearing from judges, court administration staff, attorneys, paralegals, and others with interest in the Pilot Project.

The Implementation Committee filed its report with the Supreme Court on March 2 of this year.

The Committee recommended that a Pilot Project be established to evaluate the expanded use of legal paraprofessionals in providing legal services in two substantive legal areas: landlord-tenant disputes and family law disputes.

Specifically, the Committee recommended that legal paraprofessionals participating in the Pilot Project be authorized:

- to provide advice to, and appear in court on behalf of, tenants in landlord-tenant disputes, but only in courts that have dedicated housing court calendars; and
- to provide advice to, and appear in court or at mediations on behalf of, clients in family law disputes involving issues of child-support modifications, parenting-time issues, paternity matters, and other specific topics.

The Implementation Committee recommended that the Pilot Project run from January 1, 2021, to June 30, 2022. The Minnesota Supreme Court is currently accepting public comments on the proposed pilot. Public comments must be submitted to the Clerk of the Appellate Courts using the appellate courts' eFiling application no later than July 17, 2020. The Supreme Court will hold a public hearing on the proposal in the Supreme Court Capitol Courtroom on

August 11, 2020, at 10 a.m. I certainly hope we hear a lot of feedback from bar members on this vital topic.

Another important project that is moving ahead during our pandemic response is an ongoing effort to provide online public access to district court case documents.

During last year's State of the Judiciary address, I shared with you some of the frustrating technical challenges and delays we had faced as we worked with a vendor to develop this online application.

We spent the second half of 2019 reassessing our options, and early this year, the Judicial Council decided the best, most cost-effective approach would be to build this online portal using our own Judicial Branch experts and IT staff.

Through this project, we will develop a brand-new online application to replace our current public access application - Minnesota Public Access (MPA) Remote.

The new application will provide online access to many public district court documents. The current plan would allow users to view the first page of documents as a preview, and then users would have the option of paying the copy fee to view subsequent pages and download or print the entire document.

We are in the early stages of this work, but are hopeful to have the first phase of the project—including the ability for users to search by case number and access certain public documents—ready to pilot in early 2021. Subsequent phases of the project will add additional functionality, including searching by name.

I could not be more excited to have this project moving forward. I know this is a project of great interest to the bar, and trust me when I say I am just as eager to get this project completed as you are. The ability to view and download public court documents online will be a huge step forward for public access and transparency in our courts. I can't wait for the day I get to tell the bar that this service is finally available.

One last project I want to mention briefly is the development of our very first Judicial Branch mobile application.

Earlier this month, we published the My Minnesota Juror app in all of the major app stores. We designed this application for use by jurors and prospective jurors. Once people are summoned for jury duty, they can download the app to receive directions to the courthouse, fill out the jury questionnaire, and access a machine-readable barcode to speed up their daily check-in process.

We are going to be surveying app users to gain feedback and ideas for future enhancements. And it's entirely possible that we will take what we learn from this project and use it to develop more mobile applications.

To close out this year's State of the Judiciary, I want to talk a little about the challenges that lie ahead of us, and why we are going to need strong partnerships in our justice community now more than ever.

I've talked a lot today about how we are navigating the COVID-19 pandemic and working to maintain access to justice during this public health crisis. But make no mistake: the pandemic's impact will be felt for a long time.

When the pandemic first hit, one of the first things we did was create a new code in MNCIS that allowed us to track how many cases were impacted by the pandemic. This could be cases where a hearing was canceled or rescheduled, or a party was no longer able to attend a hearing because of the pandemic.

To date, we have tracked more than 150,000 district court cases that have been impacted by the pandemic. Not surprisingly, despite our best efforts to continue hearing as many cases as



possible during the pandemic, we have seen a significant increase in the number of cases pending during the pandemic, particularly among criminal cases.

There are a number of ways to look at backlog. One way is to take the number of cases pending that require a court appearance before and after the pandemic. When we look at that number before the pandemic started and compare it to now, we see that there are 30,000 more cases pending now than there were before the pandemic.

Let me try to put that figure in some perspective. Looking just at the growth in our case backlog—those additional 30,000. We estimate it would take more than 31,000 hours of judge time to process that additional backlog. That's 31,000 hours of additional time just to get us back to our usual pending caseload. About two-thirds of that time would be spent processing the new backlog of Major Criminal cases.

And to state the obvious: judges can't process these cases alone. So that 31,000 hours of judge time also means added staff time, added attorney time, added prosecutor time, added public defender time, added court security time, and on and on. Bottom line: this will be a big challenge. Not an insurmountable one, but one that will require a statewide, collaborative effort among our entire justice system.

The Other Side Workgroup I mentioned before is just starting to think about what it will take for us to get through this backlog. Perhaps we'll need to explore longer court hours, or greater use of senior judges and adjunct judicial officers.

We are urging our justice partners to think about this problem as well. Are there diversionary programs that could be used to move certain cases out of the courtroom? Could prosecutors or case parties take more proactive steps to reach plea agreements or negotiated settlements?

To be clear, these are just some of the ideas we're starting to brainstorm and discuss with our justice partner organizations. Like any large challenge, there are no easy answers or simple solutions. The only answer is to make this a shared priority in our justice system, and to work together to continue providing timely access to justice to the people of Minnesota.

Of course, what makes this even more complicated is that our courts' success is based heavily on the support we receive from the state Legislature.

And in case you haven't heard, the COVID-19 pandemic is also wreaking havoc on the state's finances. Last month, state budget officials took the rare step of releasing an updated budget projection to account for our new fiscal reality. According to this updated projection, the state now faces a \$2.4 billion deficit for the current FY20-21 biennium.

Finance experts also warn that the pandemic will have a "significant" negative impact on the state's next two-year budget, which begins July 2021.

As of today, I can't tell you with any certainty what impact the state's budget situation will have on our courts. Though I will say that the vast majority of funding for our courts comes through our legislative appropriation.

As the Legislature and Governor navigate these significant budget challenges in the months, and maybe years, ahead, they are going to have to make a lot of difficult decisions about our state

budget. I fear the impact these difficult decisions could have on our courts and broader justice system.

Our justice system and the people who rely on our courts can ill-afford to see budget cuts and freezes hamper our ability to address the long-term impacts of this pandemic. Timely access to justice relies on having enough people and resources to hear and process cases, provide legal counsel, and support self-represented litigants. Now, more than ever, we need to work together to ensure fair and adequate funding for our justice system.

Which brings me to my final topic: how the bench and bar can work together to ensure fair and timely access to justice in Minnesota and maintain the strength of Minnesota's judiciary.

First, I want to thank the bar for your patience and understanding as our courts have been trying to navigate this historic public health crisis. I know what a challenge it has been for you and your clients as we have had to delay and postpone hearings and begin conducting so much of our work remotely. I know you didn't take a lot of IT classes in law school—I sure know that I didn't—but I have been so impressed at how attorneys have adapted to this new reality.

I am here today to ask for your ongoing flexibility and adaptability as we transition back into more normal operating conditions. Given the state of the pandemic, I think it's fair to assume that remote hearings are going to be a reality for a very long time. And as we start to tackle the backlog I mentioned before, we will explore an array of strategies to help ensure timely access to justice for the people of Minnesota.

We are going to need your partnership in this process. Both to continue adapting and adjusting to our changing legal landscape and to help us find the creative and innovative solutions that will help us eventually move the judiciary to the other side of the pandemic.

We also need the bar's partnership in advocating for our justice system as the state deals with the budget challenges ahead. We need the voice of the bar and its members at the Capitol as lawmakers decide how to prioritize state funding. We have been able to weather this once-in-a-lifetime crisis because our courts have been well-supported by the Governor and Legislature in recent sessions. But we risk serious damage to our justice system—and major delays for attorneys and court users—if that support disappears as we move into this next critical phase of our pandemic response.

We also need your voice during the upcoming election season when you are talking to your local candidates. 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.

I would urge all of you to raise the profile of our justice system among our elected officials, and make sure that policymakers 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.

Finally, I want to end my remarks today by coming back to where I started. I want to ask the bar to be a part of our ongoing efforts to build public trust and confidence in our courts and work toward a more fair and equitable justice system.

On July 4, 1992, one year after leaving the U.S. Supreme Court, Justice Thurgood Marshall reminded us that, “The legal system can force open doors, and, sometimes, even knock down walls. But it cannot build bridges.” That job, he said, “belongs to you and me.” It is incumbent on the bench and bar in this state to heed these words and work in partnership to help build bridges to a more just and equitable future for Minnesota. Each of these challenges before us—timely access to justice, fairness and equity, public trust and confidence—represent individual strands in a single thread. While each is vitally important, the success of our statewide justice system depends on our ability to protect and strengthen each strand. If we lose one, the entire thread can quickly unravel.

That's what makes the strong partnership between the bench and bar here in Minnesota so important. Through our shared effort, hard work, and an unending commitment to the rule of law, to fairness, equity, and justice, we can take on these challenges and provide a system of justice worthy of this great state and its people.

Thank you all so much for attending today's session, thank you for listening and thank you for all that you have done and all that I know you will do for the cause of justice in this State.

Thank you and take care.