

State of the Judiciary 2003
Chief Justice I. Beverly Lake, Jr., North Carolina Supreme Court
Message to the General Assembly
April 7, 2003

Lieutenant Governor Perdue, Speaker Black, Speaker Morgan, President Pro Tempore Basnight, Senators and Representatives of the 2003 General Assembly: I am pleased to advise you at this time of the progress and status of North Carolina's Judicial Branch of Government.

In representing our 5,582 employees throughout the State, and on behalf of the thousands of our citizens whom we serve each day (your constituents), I would like to give you a broad overview of the current status of our court system, or you might say the State of our Judiciary, and I will then conclude with a recommendation to this General Assembly.

I hope to impart to you, at this very critical time in the history of our State, a deeper appreciation of the work of the Judicial Branch of our government and emphasize just how vital our court system is to the lives of every North Carolinian. In so doing, I will mention, at least in passing, many of the important programs and initiatives that we now have ongoing within the Judicial Branch.

I am pleased to report that in spite of our fiscal woes, we are still meeting the basic needs of justice for our people. We have, I can assure you, one of the best, most innovative, and busiest court systems in the nation. However, as you know, the citizens of North Carolina have a court system that is severely, I should say very severely, underfunded. Now, while I certainly realize that this is not a year in which fully adequate funding can, at long last, be achieved, I do assert (and I strongly solicit your support for) the proposition that there is no more room for any further permanent cuts. It is simply no longer possible to do more with less, as we have been doing over the past two years.

Some of you have heard me say before that our court system has been historically underfunded. For at least a decade, our entire Judicial Branch of government has received less than 3% of all the monies available to the State of North Carolina. Two years ago, I reported that the Administrative Office of the Courts received 2.8% of all funds available, and now that figure is at or below 2.6%. In dollar figures, our budget has dropped from \$317 million in fiscal year 2000-01 to \$311 million in 2001-02 and to \$304 million in fiscal year 2002-03. If we sustain the cuts the State Budget Office has requested for the Governor's budget for fiscal year 2003-04, our budget will be at \$297 million. I would be extremely remiss if I did not advise you that this further restriction of our budget -- this cut -- will severely impact our ability to serve the people of North Carolina.

In my State of the Judiciary speech to the General Assembly two years ago, I stated: "It is simply a fact of life that we live or die by the computer. From the county magistrate's office to the Supreme Court, new technology saves valuable time, a great deal of money, and lives. Our law enforcement officers are back out on our streets more quickly, and our citizens don't have to wait as long for critical services at our 100 offices of clerk of court In terms of case management and backlog, our courts are doing reasonably well in light of the continued, substantial increase

in cases and petitions filed at all levels each day.” However, I also stated, in quoting former Chief Justice Burley Mitchell in his address to the legislature four years ago: ““Many elements of the existing equipment, software and communication vehicles are so old and outdated that we cannot begin to meet the needs of the various users across the state.””

I reminded the General Assembly two years ago that we are now, by evolution, committed to the course of technology. There is no turning back, and like a boat launched on a rapid river, if we do not stay the course, we will founder. If we do that, it will cost the taxpayers of North Carolina many millions of dollars to relaunch and get back to where we are now and millions more to recover lost ground. Technologically speaking, that is precisely where we are now. We have taken significant first steps in the areas of law enforcement and criminal justice with the E-Citation and statewide Warrant Repository programs now in development, and in the civil area with Judgment Abstracting for statewide online access to clerk of court information. However, we desperately need the funding to maintain and advance these vital, cost-saving programs.

While funding and resources for the courts have been decreasing, court workload has been increasing in both quantity and complexity. In the last three years, total case filings in North Carolina’s courts increased from 2.8 to 3.1 million cases per year, an increase of nearly 11% in these three years. Last year alone, we witnessed a 5% increase in the number of felony cases filed in our courts. Our case load at the Supreme Court last year included 144 appeals, 662 petitions for review by each member of the Supreme Court, and over 900 separate motions for determination. Cases involving the death penalty demand the Supreme Court’s closest review. Last year, the Supreme Court issued 27 opinions in death penalty cases, an average of one death penalty decision every two weeks.

Our Court of Appeals, the intermediate, general appellate court, sitting in panels of three, last year disposed of a record 2,441 appeals and petitions and nearly 6,000 motions. In our trial courts last year, over 100,000 felony cases were filed and more than one and a half million criminal misdemeanor cases were filed in district court. Our clerks of superior court handled over 150,000 estates and special proceedings. We project that by the year 2006, two and a half years from now, our total case load will increase another 12%, to a record 3.5 million cases.

Last year, our 105 superior court judges across the state disposed of 287,392 cases, approximately 96% of the number filed, and our 235 district court judges managed to dispose of nearly 2.4 million cases, or almost 98% of the total cases filed. As you can see from these numbers, our trial judges are doing a tremendous amount of work, and they are doing it exceptionally well. However, they are no longer able to keep pace with the incoming surge of people seeking help from our courts. In this regard, I would like to again recall the words of former Chief Justice Burley Mitchell, who stated in his 1999 address to the General Assembly: ““Our trial courts are struggling but holding their own. They will not be able to do so much longer without help.””

These words were prophetic, as was the report of the internationally respected Gartner Group, which warned of severe, pending problems due to lack of technology in our courthouses across the state. I reiterated to the General Assembly two years ago that without additional or at least

continuation funding, these programs will falter and fail, thus wasting the investment made to date.

In most of the counties of this state, serious cases, like child custody, abuse and support frequently do not receive the timely and detailed attention they deserve. There are simply too many cases for the available court personnel. A study three years ago by the independent Jefferson Institute reported the need for 50 more deputy clerks in North Carolina each year for four straight years in order to bring these offices to the staffing levels that should exist. We are now in the third year, and with no new clerks, 150 people behind that recommendation. Some of our larger clerk of court offices are now limiting their service hours due to this severe personnel shortage, and the lack of any technology to fill the void.

The very heart, the core of our judicial system is in the offices of our clerks of court, which take in and properly account for over \$1 billion of taxpayer and citizens' money each year. Our clerks and deputy clerks are seriously undermanned and underpaid. Similar studies have identified like needs for additional prosecutorial, magistrate and judicial staffing resources as well, for the sake of public safety. For example, substantial increases in plea bargains, that are in reality plea necessities or capitulations, in way too many felony cases clearly affect public safety.

Two years ago, in my State of the Judiciary, I gave the General Assembly one clear example of where we have been far less than cost-efficient, and have flat-out failed the people of North Carolina. I stated that it is not an infrequent occurrence for a superior court judge to open court on a Monday morning for the call of the calendar and then the trial of an important case. The attorneys are in place, the litigants are there, the witnesses are there, the clerk of court is there, and the courtroom is filled to overflowing with prospective jurors from throughout the county. The case is ready to proceed----with one notable exception. There is no court reporter. The entire process disintegrates, not just for that important case, but frequently for the entire session of court. This is because we did not have then and we do not have now sufficient court reporters to cover our judges in court, and the funding for any kind of reliable video or audio backup has not been forthcoming.

The damage from this kind of breakdown is measured not just in the cost of wasted time and resources, but also in the enormous amount of bad will and hostility generated and directed toward our court system by all those citizens who have been made to suffer the wasteful loss of valuable time out of their lives. The cost of a court reporter is minimal compared to this. Also, the lack of sufficient court reporter resources is probably the single factor most responsible for extreme delay in appellate review of cases.

Let me give you two examples of court reporter problems which have caused substantial delays (from three to five years) either in getting the case to the Court of Appeals or to the Supreme Court for review. The first case is State v. Eddie Mitchell Ivey, a capital case out of Robeson County. There were two court reporters involved in this case. One became ill, went on disability and could not finish her transcript, and the other was fired. A person who worked with the reporter on disability typed a set of transcripts which had many significant gaps where the typist could not understand the notes of the two reporters. The AOC contracted with others to review the work of both and the result was again poor, at best. Over a four-year time span, the Supreme

Court heard nineteen motions in this case from the Appellate Defender's Office, and we processed four separate special orders attempting to get the transcripts typed and the record settled. Finally, our Court allowed a motion from the Appellate Defender's Office for a new trial. The first trial had lasted four weeks, resulting in a total waste of the trial judge's time, the attorneys' time, the clerk's time, the jury's time, and the time of the expert witnesses. The use of the courtroom was lost for four weeks. The defense attorneys alone reported spending over nine full weeks of time that could have been spent on other cases for the Appellate Defender's Office.

The case of State v. Todd Boggess, another death-penalty case, was an eleven-week trial with six weeks of jury selection. The transcript is over 9,000 pages, 44 volumes of transcript. At one point in the process, the court reporter refused to transcribe portions of the transcript because she felt she should have been paid for four copies of the transcript rather than two. On one motion, the Supreme Court returned the case to the trial judge so that he could actually put the court reporter in jail until she finished the transcripts. At this point, it is over five years after trial, and to my knowledge, we still have not received the transcript. The defendant has been on death row now since March of 1997.

At the Court of Appeals level, there are motions in hundreds of cases each year for extensions of time for preparation of the transcript by court reporters, who obviously must prepare their transcripts for the appellate courts when they are not taking testimony in the trial courts. Two years ago, I asked the General Assembly to give us at least four additional court reporters as a priority matter. Today, we have a net loss of one.

Now, I would like to move away from the pure numbers and try to put a more human face on our judicial system. Thanks to the dedication of members of the General Assembly, we have been able to maintain over the past few years a number of new programs designed to help individuals, families, and most important, our children. These include such programs as our drug treatment courts, family courts, custody mediation, arbitration, the Guardian Ad Litem Program and foreign language services. This is now a big item with the tremendous increase in our Hispanic population.

In just a few years, we have achieved some very positive results through our drug treatment courts. As you know, the majority of criminal cases arising in our trial courts have a direct connection with substance abuse. The drug treatment courts require much more time and energy on the part of our judges and other court personnel than do ordinary courts. Likewise, our family courts are very labor intensive, but in my opinion, they are well worth the extra investment. We now have eight family court pilot programs around the state, and we very much need to expand this concept statewide. We are showing continued expansion of the arbitration and mediation programs, including the new mediation program at the Court of Appeals. Our custody mediation has shown tremendous acceptance as thousands of divorcing couples are working out parenting agreements instead of fighting it out in court.

Speaking strictly of children, our court system deals with literally thousands of our children each year. One of the finest examples of our pro-active, people-oriented court system is seen in our Guardian Ad Litem program. During the last fiscal year, this program provided essential representation to 15,364 abused and neglected children, through 3,610 volunteers and 99

attorneys. Last year, 41,203 juvenile delinquency petitions were filed, and over 43,000 adjudicatory hearings were held in juvenile matters. Significantly, 67% of the children involved in the juvenile justice system have a substance abuse problem, and over 75% of abuse and neglect cases show parental drug use and abuse as the major cause. There are presently 5,500 cases concerning families with children in mediation, which equates to 14,000 children benefitting from this program.

I strongly submit to you that each and every one of these children, that we are helping in these times of extreme crisis in their lives, are far more at risk than any child in our public school system, in Smart Start or in More at Four, and they are equally precious to us. Our future, through the lives of these children, is directly impacted through our juvenile and domestic courts and the other programs I have mentioned.

These many services, which are provided by thousands of dedicated people each and every day, including Saturdays and Sundays, are making a real difference in the quality of life for all the people of North Carolina. These services address the fundamental, personal problems so important to the daily lives of our people, and they are the responsibility of our judicial system, over and above our core constitutional mandate to give just and speedy resolution to all cases for trial in our courts.

Now, in this light, let me give you some funding comparisons, which serve to illustrate, I believe quite well, the very low priority standing of our Judicial Branch and indeed our legal system which is the foundation of our government and serves all the people of North Carolina. As I said, our current budget for the entire court system in North Carolina is now \$304 million, down from \$311 million. The North Carolina Mental Health Services budget by comparison is \$581 million. Now, I have no problem with that. I am all for mental health. The budget for our Community Colleges is \$643 million, more than twice the budget for all our courts, and I certainly know how important our Community Colleges are to this state. By further comparison, the budget for only the Wake County Public Schools is \$730 million, substantially more than twice the money made available to run our court system. Again, I am certainly supportive of our public schools, although I do wish they would teach our young people much more about civics, our free enterprise system, and the great history of our country. Further, by comparison, the latest available survey shows North Carolina ranked 39th in the nation in per capita judicial-legal expenditures, at \$58 per capita here compared to a national mean of \$90.

My friends, the people that we all serve, the people of North Carolina, deserve far, far better than this. This priority standing in terms of recognition and appreciation, as reflected in resource and funding commitment, is comparable to a World War I tank trying to survive on the battlefields of today. Notwithstanding our current budgetary distress, our Judicial System does not need and does not deserve to be left stagnant and deteriorating somewhere deep in the middle of the 20th century, when additional funds are being made available in other areas of our state government with a higher priority, thus allowing these new initiatives to move appropriately into the 21st century.

Now, let me turn to the recommendation which I mentioned and which will save our State substantial money. Our Judicial Branch of government operates not just with too little funding,

but also without the authority to best manage the resources it does have. I am therefore proposing new legislation designed to rectify this critical deficiency. I understand this legislation has been introduced with bipartisan support. This proposal will improve the management of the Judicial Branch budget in ways that have been recommended by blue-ribbon commissions since the 1950's, and will also provide for accountability to the General Assembly in the use and management of Judicial Branch funds.

No significant enterprise, much less a branch of government, can be effectively managed by the rigid line-item budgeting system under which we are now operating. Because of the way funds are appropriated and fixed now, opportunities for economies and efficiencies are lost. When case loads and circumstances change, as they frequently do at a rapid rate, the court system cannot respond. Last year, the Administrative Office of the Courts could have saved the state thousands of dollars, and sped up the process of appeal, if it had had the authority to use the funds from just one vacant position to buy modern court reporting equipment. The allocation of positions, the jurisdiction of judicial officials, the use of money to upgrade obsolete and worn-out equipment, and many other matters affecting day-to-day operations are fixed in statutes or uncodified in budget bills which guarantee inefficiencies and the failure of justice in many cases. The workload that comes to the court system is fluid. It changes in nature and over different geographic regions. The budget of the Judicial Branch is managed once each year by the Legislative Branch and then refined and even reduced by the Executive Branch between sessions. This is not in accord with our Constitution, which mandates appropriate funding for the court system.

In 1958, when the Bell Commission recommended the type of budgeting and management authorities that the court system still does not have, commission chairman Spencer Bell explained: "Only by pinpointing responsibility can the people fix blame for failure and force corrective action." The legislation that I am asking for today would create the budgeting system much like the one that applies to the General Assembly itself and would be similar to the system that applies to our university system. The system of higher education in this state is the first in the nation and is certainly one of the very best in the world. I submit to you that if our university system would try to operate, adapt and grow the way our Judicial Branch must now, it would not be one of the best in the nation or in the world. As a separate and coequal branch of government, our court system simply cannot be accountable unless we have the authority to manage our resources. Responsibility and accountability go hand in hand.

This Judicial Branch Fiscal Integrity and Accountability Act would appropriate funds to the court system on a non-reverting basis. This would allow the courts to use the money that is appropriated each year for their most urgent needs. The Act would not allow the court system to use the non-reverting funds to create new positions or any other continuing or permanent obligations. This budgeting approach applies to the General Assembly's own funding, and to other units of government. It is necessary and appropriate for the Judicial Branch of government as well. The Act would also vest the Administrative Office of the Courts, upon advice and consultation of the State Judicial Council, with the authority to manage the budget. The management authorities in the Act for the Judicial Branch of government are similar in kind and scope to the authorities that exist in the university system. They are the authorities that were

recommended for our court system in the 1950's, again by the Medlin Commission in the 1990's and now by the State Judicial Council as well.

The flexibilities in this Act would enable the court system to respond to unusual and pressing demands. For example, we could on a temporary basis send additional personnel to help in places experiencing an unusual crunch of cases, such as the serious and chronic backlog for first-degree murder cases in Robeson County. Our budget is so restricted now that when a district attorney was in dire need of a new copy machine, we could not get one because there was no money left in that line item. We could have bought him a computer, as that line item had some funds left, but we could not get the copy machine and we could not transfer the funds.

A national survey just conducted reveals no other state in which the court system's budget is restricted the way it is in North Carolina. In many states--including to name a few, Georgia, Kentucky, South Carolina, Utah and Washington--the courts have the basic responsibilities and authorities that we seek. This Act is essential for the proper functioning of our court system. The fiscal crisis we now face has brought this long-standing need to a heightened focus. The time has come, and I urgently solicit your enactment of this much needed reform.

Now, let me close very quickly on a happy example of how the people working in our court system are not only surviving the depressing reality of inadequate working conditions, inadequate pay and even possible job loss, by innovation and a dogged determination to give the very best they have every day for the people of North Carolina.

The example I want to cite to you is the remarkable initiative undertaken by Judge Kristen Ruth, a district court judge in Wake County, who on her own decided to incorporate into her orders the collateral court resources that were already available to her and to implement a new, innovative approach to the collection of child support. Through her collaborative efforts in bringing into her courtroom representatives of electronic monitoring services, Carolina Dispute Settlement Services and Wake County Human Services (including the alcohol treatment center and Job-Link), Judge Ruth has substantially increased child support collections by using alternatives to incarceration.

This new approach to the collection of child support greatly benefits children financially, provides opportunities to the unemployed parent (primarily a noncustodial father), creates a more favorable family atmosphere, saves the taxpayers money, and reduces overcrowding in the jails. In the last fiscal year, Wake County collected over \$24.1 million in child support, far exceeding all prior collections in Wake County. Furthermore, the use of eighty electronic monitoring units for the non-violent, non-custodial fathers in child support cases reflected a cost avoidance of \$491,844 for the county and taxpayers in the fourth quarter of 2002 alone, since the cost for electronic monitoring is \$8 per day compared to a cost of \$68 for housing one inmate in jail per day.

Additionally, in terms of reform, we have taken the lead nationally in forming the Actual Innocence Commission to fully review our criminal justice system to establish procedures to decrease the possibility of convicting the innocent in North Carolina.

These are the kinds of things we are doing and the kind of people we have working every day in our court system for the people of North Carolina. I am tremendously proud of all of our people in the court system, and I would like to see the people of North Carolina, through their representatives in the General Assembly, give all of these dedicated public servants, the recognition and appreciation that they so richly deserve.

Thank you for letting me share these thoughts and facts with you. I wish for each of you a most pleasant and productive legislative session.