

State of the Judiciary
Chief Justice Ralph J. Erickstad, North Dakota Supreme Court
Message to the North Dakota Bar
June 21, 1979, in Grand Forks, North Dakota

I thank you very much, President Vern, President-Elect Jon, and Executive Director Joel, ladies and gentlemen of the Bar Association, and guests. I'm very pleased to have again been invited to speak to you on the State of the Unified Judicial System in North Dakota.

First I'd like to say, though, on behalf of all of us, I believe that the members of the Grand Forks Bar Association have shown us great hospitality and an example of determination under stress in their great efforts to renew their lives after the recent devastating flood. It is a remarkable spirit with which North Dakotans face their problems and triumph over adversity. It's a pleasure to be with you all here today.

Now if you will turn with me to our Unified Judicial System, you will recall that in 1975 the Legislature, and in 1976 the voters, approved a New Judicial Article for the North Dakota Constitution. And I'd like to say that that would not have been accomplished had it not been for the support of this very Association and its convention. The New Judicial Article established a Unified Judicial System consisting of, and I quote. "A Supreme Court. A District Court and such other Courts as may be provided by law" end of quote. Thus through the approval by the people of the Judicial Article alone we have become a Unified Judicial System. It is unified in its present form and we are taking steps to implement the mandate of the people in the exercise of our rule-making the administrative authority. The acts of the Legislature in making structural changes in the future may greatly assist us in implementing that mandate.

Now let me review with you briefly some of the steps taken in our progress in improving Court services during this year.

The Interim Judicial System Committee of the Judicial Council and Legislative Council under the Chairmanship of Former Senator and Attorney Howard Freed, with the assistance of the Legislative Subcommittee of the Citizens Committee on the New Judicial Article, Chaired by Harry Pearce of Bismarck, prepared a legislative proposal for the implementation of the New Judicial Article.

The Central Proposal, which became known as House Bill 1066, was passed by the House of Representatives, but failed in the Senate by four votes.

Pursuant to Senate Concurrent Resolution 4089, the Legislative Council will undertake a second study of the legislative implementation of the New Judicial Article "to determine the structural changes necessary and the timetable for such changes," end of quote. The Interim Judicial Aid Committee is Chaired by Representative Dean Winkjer of Williston, who is also a member of this Association. I urge you to follow the deliberation of Judiciary A Committee from whatever viewpoint you hold. With your participation and suggestions, the most effective statutory structure will be forthcoming through which Court services will be provided to the people of North Dakota.

The Rules Subcommittee of the Citizens Committee was established to assist the Supreme Court by providing recommendations for the implementation of the New Judicial Article by rule and administrative action. The Rules Subcommittee, Chaired by Attorney William Strutz of Bismarck, has now completed its present work.

The Rules Subcommittee proposed a rule relating to the duties of Presiding Judges which was approved by our Court on July 6, 1978.

The new rule (AR-2) represents a major step in delegating broad administrative authority to each Presiding Judge for all Court services within each Judicial District. The Court looks to each Presiding Judge for the efficient management and disposition of cases, and the effective management of Court services to the public as litigants, attorneys, witnesses, and jurors. This authority of each Presiding Judge includes the assignment of terms of court, assignment of cases among all the Judges of the Judicial District, assignment of Judges from within the Judicial District in cases of demand for change of Judge pursuant to Section 29-15-21, N. D. C. C., requests relating to local Judicial budget needs, and promulgation of local rules and administrative practices. There are very few local court problems to be resolved and local court improvements to be implemented for which the Presiding Judge does not have the authority to accomplish.

The administrative responsibilities of Presiding Judges are substantial. In Bismarck, Fargo, and Grand Forks, the Presiding Judges have the services of specialized administrative staff to assist them. The attorneys in these areas testify to the value of these services in improving Court services. These services can be made available to other districts as well.

During this next biennium the Presiding Judges will meet regularly with me and our administrative staff for the purpose of resolving problems of administration and adopting uniform procedures for the more efficient administration of our Court System.

Under the New Local Court Rulemaking Process, which is Section 8 of the North Dakota Local Court Rules, each Presiding Judge will establish an Advisory Committee to provide continuing study and review of existing Local Court rules. The Committee comments clearly intend and recommend that the Presiding Judge choose officials and members of the Judicial District Bar Association and Local Bar Associations for membership on the Advisory Committee. Presiding Judge Benny Graff of the former Fourth Judicial District, (now the South Central Judicial District) established the Advisory Committee, and its efforts have met with acclaim by the attorneys of that District.

Ladies and gentlemen, here is a practical mechanism for attorney and public participation in the improvement of Local Court services. Here is a forum for the discussion of Local Court problems and the development of Local Court service improvements. It is available. It is practical. It is local. When the new Judicial District Advisory Committees are established, with your support and participation Local Court services in your District can be improved. Local Court services in each Judicial District can be improved with the support and participation of attorneys and the public in these Advisory Committees.

It is my hope that the Advisory Committees will encourage wider communication among the Judges of different Courts within each District. The long-term improvement of local Court services depends upon open communication and mutual appreciation of the problems of others. Together the local Judicial District team can meet and solve many current local Court problems.

Similarly, let me say a word to encourage candor in communication between you as lawyers and the members of the Bench at all levels. We need greater communication within the judicial system. And we need greater candor in that communication. If you see a particular problem or identify a general problem, don't hide it under a bushel or allow it to fester in idle conversation. There are practical ways to address these problems at the local and state levels. You must take responsibility to bring these matters to the attention of the appropriate group. If you are in doubt about where to address a problem, drop me a line or a note, or give me a call. I'll do my best to be of help.

Communication is essential at all times and candor in communication conserves the time of everyone. North Dakotans are known for plain speaking. This plain speaking is based upon the belief that it promotes clear formulation of positions and encourages prompt and direct resolution of problems. The Unified Judicial System depends upon this candid communication. Candid communication depends upon you.

Let me summarize. The Presiding Judge is the key administrative official within the Judicial District within the Unified Judicial System, with responsibility for all Court services in that geographical area. The Presiding Judge is the channel for the broad, progressive delegation of Supreme Court authority and the focus of local Judicial planning and administration. The Presiding Judges have responsibility for local Judicial services, and substantial authority to carry out those plans.

Of particular present interest to attorneys are the new Judicial Districts which are effective on July 1 of this year. The Court held hearings in Grafton and Fargo on July 24, 1978, and in Bismarck on August 3, 1978, April 16, 1979, and June 1, 1979, and reviewed many letters and resolutions in the study of this very important matter. The new Judicial Districts are now set, Judicial chambers are now assigned, Presiding Judges are now designated and guidelines for the transfer of those cases is completed. This is the first effort that has ever been successful in over sixty years, and we do expect that you will not be completely happy. But we do hope that you will understand that we have conscientiously taken this step with the view in mind of improving the Judicial services within our State.

We anticipate a smooth transition to the new Judicial Districts. With your patience and your cooperation with the Presiding Judges of your District, the transition will be satisfactory, I'm sure, to all concerned. The future convenience and Court service improvements anticipated during the next two years from these changes should become a source of satisfaction to us all.

As you know, the Judicial District can no longer be viewed as an area of the District Court. The Judicial District is now a geographical area in which all Court services, at all Court levels, should be administered. The Judicial District is, in fact, the primary administrative unit of the Unified Judicial System. These new Judicial District boundary lines should support the improvement and convenience of Court services in your area of the Unified Judicial System.

In reflecting on the developing concept of the Judicial District and the role of the Presiding Judge, the importance of an effective participatory local Judicial District planning process becomes evident. Without participation by Judges at all levels and the attorneys of the local Bars, the delegation of authority which the Supreme Court has made may be ineffectively administered and constitute a burden on a single individual. With representative participation, group wisdom can be harnessed, conflicting views can be weighed, and effective coordination and support for particular projects and local Court service improvements can be formed.

The members of the Supreme Court are making efforts to maintain a current appellate docket. As our case load increases, we may have to reexamine our internal operating procedures to shorten the time for the disposition of appeals. Already we have taken steps to expedite appellate disposition. The new amendments to the Rules of- Appellate Procedure should expedite the preparation of cases for our Court. Certainly the assistance of a new Staff Counsel to the Court will be welcomed.

The new state-wide rulemaking process calls for the establishment of three standing committees, in addition to the distinguished Joint Procedure Committee, Chaired by Justice Paul M. Sand, to provide continuing study of the rules and administrative actions to improve Court services for consideration by the Supreme Court. These standing committees are:

- The Attorney Standards Committee, Chaired by Edmund Vinje II of Jamestown;
- The Judiciary Standards Committee, Chaired by Lowell Lundberg of Fargo; and
- The Court Services Administration Committee, Chaired by William Strutz of Bismarck.

The Court looks forward to receiving recommendations and suggestions from these Committees.

The Joint Procedure Committee has continued to advance the cause of effective procedural rules. Justice Paul Sand is Chairman of this Committee of Judges and Attorneys. One of the Committee's major efforts during this past year has been to codify all appellate procedures within the Rules of Appellate Procedure, to clarify and simplify the Appellate Rules, and to reduce the number of time deadlines in the appellate process.

During this next year the Joint Procedure Committee will focus its attention on the review of the Rules of Criminal Procedure in light of present practice and amendments to the Federal Rules of Criminal Procedure. Other areas for consideration include Specialized Procedural Rules for Specialized Court Procedures.

The Attorney Standards Committee has initiated study, through three subcommittees, of Attorney Specialization, Rules for Bar Admission, The Status of the Non-Resident Attorney, and the Cede of Professional Responsibility.

The Court Services Administration Committee, under the leadership of William Strutz, recently recommended to us a procedure for the assignment of cases during the transition to new Judicial Districts. The Committee is also working on proposed Trial Court docket currency standards which are directed toward the goal of prompt disposition of civil and criminal cases within

reasonable time periods and the placement of accountability for docket currency within each Judicial District.

The Judiciary Standards Committee is in the process of organization. The Chairman, Lowell Lundberg, has indicated that early study will focus on the implementation of procedures for the assignment of Temporary Judges and guidelines for Judicial election campaigns.

Each of these Committees provides an important part of a broad effort to assure regular review and improvement of rules and procedures in the Unified Judicial System. This effort is founded on the principle of full participation by the Judges, Attorneys, and citizens of North Dakota.

The morale and recognition of all Judges is a precious commodity in our Judicial system. I would like to call your attention to one particular area of concern to me - the salary disparity among the County Judges with Increased Jurisdiction in our State. These seventeen Judges are becoming increasingly important members of the Judicial team. The future, under whatever structure is adopted for the implementation of the New Judicial Article, will rely more heavily upon their wisdom and energy. Their compensation should be increased and become more uniform across the State in a way proportional to their important contribution to the Judicial services of the State.

If these Judges were made Associate District Judges with expanded jurisdiction as House Bill 1066 contemplated, our Judicial system could be immensely improved.

As you know, the Court has authorized an experimental period of twelve months of electronic and photographic coverage of Supreme Court proceedings. This occurred in response to a Petition by WDAY, Incorporated, and Mayer Broadcasting Company, pursuant to the New Rulemaking Procedure.

The purpose of this effort is to improve public information about Appellate Court proceedings and opinions. There is a need for better understanding of Court services and Trial and Appellate Court decisions to which we have only begun to address ourselves. We must develop information services which make the important elements of the trial and appellate decisions and Court services available to the public in clear and attractive ways.

By February of next year we will know better how this experiment has been received by our people. Incidentally, eighteen states presently permit such coverage on a temporary or permanent basis.

Planning for future Court service improvements is increasingly essential. The Judicial Planning Committee, chaired by Justice Vernon Pederson, continues its work in this area. It has just completed a planning proposal for the next biennium which has been presented to our Court for review and implementation, or will very shortly be presented to us.

The proposal before us includes recommendation to provide an inventory of law library facilities available in North Dakota, and a study of alternative ways to provide adequate Trial Court facilities and other things. We welcome this assistance in clarifying alternative choices and charting the direction of development for the Unified Judicial System.

Let me review, also, the recent work of two important committees related to the legal profession: The Bar Board and the Disciplinary Board.

The Bar Board, led by Attorney Hugh McCutcheon, supervises the admission of attorneys to the practice of law. We welcome Ward Kirby of Dickinson, a Past President of your Association, who was recently appointed as a new member of the Bar Board, joining Hugh McCutcheon and John Kelly.

Perhaps a somewhat longer than annual perspective on the Bar examinations of North Dakota would be of interest to you. During the six-year period, 1973 to 1978, 497 applicants took the North Dakota Bar Examination, Of these applicants 71 percent were University of North Dakota Law graduates, and 29 percent were out-of-state law school graduates. Of this total number, three percent failed the examination, for a passing rate of 97 percent over the six-year period.

The Attorney Standards Committee is presently studying the issues of an appellate procedure from adverse decisions of the Bar Board, and residency requirements. We look forward to receiving recommendations in these areas. I hope you will share your views on these subjects with the members of the Committee.

The Disciplinary Board is Chaired by Jake C. Hodny of Grafton. With reorganization following the change in the Rules of Disciplinary Procedure, the Disciplinary Board now consists of Henry G. Ruemmele of Grand Forks, State Representative Alice Olson of Cavalier, Frederick E. Whisenand, Jr., of Williston, State Representative Ruth Meiers of Ross, Malcolm H. Brown of Mandan, Ronald G. Splitt of LaMoure, David Peterson of Bismarck, and Bea Peterson of New England. These people, and the East and West Committees, are providing a very important service on behalf of us all.

Between 1974 and 1978 the Disciplinary Board received 269 complaints against attorneys, of which 200, or 75 percent, were dismissed. Forty-four, or 16 percent, resulted in private reprimands. And 25, or nine percent, initiated disciplinary proceedings. Of these latter 25 complaints, 18 complaints resulted in nine suspensions and one public reprimand.

The public tide is changing, and we can expect greater demands for attorney accountability. The Disciplinary Board will be called upon to make an even greater sacrifice to time and energy to meet these expectations.

The Attorney Standards Committee is presently studying the issue of possible expungement of disciplinary records in cases of unfounded and frivolous complaints as an additional protection against long-term, unnecessary embarrassment to professional reputations.

The Judicial Qualifications Commission of seven members is Chaired by Jane Knecht of Fargo. During the period October 1975 to December 31, 1978, the Judicial Qualifications Commission received 55 complaints, of which 45, or 82 percent, were dismissed, and 10, or 18 percent, resulted in disciplinary proceedings. Of these 10 complaints, one resulted in a public censure by the Supreme Court, and nine resulted in private censures by the Commission.

Jane Knecht has asked the Judiciary Standards Committee to consider developing guidelines and standards to govern the conduct of candidates for Judicial office. This kind of positive assistance

to Judicial candidates and Judges can provide a positive guidance and suggestions can help Judges to avoid the causes of many complaints.

As you know, the 1979 Legislature has authorized five new District Court Judges to be allocated to four of our Judicial Districts.

As you also know, the Judicial Nominating Committee was approved by the 1979 Legislature, but vetoed by the Governor on the ground that the Governor was excluded from making appointments to the Committee. It is our understanding, and we have now been informed, that he has established a Judicial Nominating Committee by Executive Process.

Governor Link has a great responsibility in these appointments, for he will name more than 25 percent of the Trial Court of general jurisdiction in North Dakota in the next few weeks. I urge you to consider this momentous fact and its impact on our practice and the future of North Dakota. I will urge you all to assist the Governor and his Committee in making these crucial appointments. He will be making, he will be filling, six positions.

In the Temporary Judge Bill, the 1979 Legislature acted innovatively on a small scale to improve Judicial services in North Dakota. The Temporary Judge Statute authorizes us or authorized us to appoint and compensate attorneys as Temporary Judges in any Court other than the Supreme Court. Whenever the Supreme Court determines that the appointment is reasonably necessary and will promote the more efficient administration of justice. As you know, the Supreme Court has recently established a temporary procedure for the appointment of Temporary Judges. We anticipate the development of procedures by the Judiciary Standards Committee for permanently implementing this important service.

I hope that the lawyers of North Dakota will offer their services in this program and consider this service as the professional duty and honor that it will be. We are grateful to the 1979 Legislature for providing this tool for the Unified Judicial System.

In conclusion, this is the beginning of a new era for the Judicial system of North Dakota. The New Judicial Article established a Unified Judicial System. It is being implemented carefully and cooperatively by members of the Bar, Judges, Court personnel, and other public citizens.

Let us break ground as a team, let us work together as partners, for the common good of the people of North Dakota.

I thank you again for this opportunity to share these views on the progress of our Unified Judicial System in North Dakota. With your great support, we know that we will be able to continue to improve our Judicial system to the ultimate benefit of all of our people. Thank you very much.