

State of the Judiciary
Chief Justice Gerald W. VandeWalle, North Dakota Supreme Court
Message to the Legislature
January 7, 2009, in Bismarck, North Dakota

Introduction

Lieutenant Governor Dalrymple, Speaker Monson, members of the Legislative Assembly, Governor Hoeven, state executive officials, my judicial colleagues and other friends. Thank you for allowing me to appear before this Joint Session of the Sixty-first Legislative Assembly of our great state. This is the 9th State of the Judiciary message I have presented to you and the 25th Assembly of the North Dakota Legislature I have had the opportunity to observe. I do not take the privilege to appear before you lightly, and I continue to feel that sense of excitement and anticipation that, at least for me, comes with each session.

Task Force on Racial and Ethnic Fairness

I am sure I will not be the first person you have heard remark on the changing demographics of our state of North Dakota. In addition to the continuing trend of an aging rural population, and, after years of a constant ethnic population, new economic opportunities are bringing people of different races and backgrounds to our state. It is our hope that they are finding North Dakota as open and as welcoming as our own ancestors did and that they will make North Dakota a home for themselves and their children.

A fair and impartial court system is a cornerstone of our form of government, and it is no secret that the strength of the court relies on the respect of the people. We must be certain that our courts are meeting the needs of all North Dakota citizens, including our first citizens, the Native Americans, as well as those new residents from other ethnic backgrounds who have come to our state seeking a better life and the equality our form of government promises. Bias cannot be tolerated in any governmental branch or institution, but it is particularly harmful in the courts, to which the public looks for fairness and neutrality. It is imperative that we identify and address any real or perceived bias within the court system. To this end, we will establish a task force on racial and ethnic fairness whose work will begin later this year. Funding for this task force is included in the Judicial Branch budget.

Study Resolution on Elder Issues

North Dakota has an aging population and the issues of the elderly are becoming more urgent. Within 30 years, more than 30% of the population of our rural counties is expected to be over 65. This, in conjunction with North Dakota's continued loss of young people, creates a situation in which family members who could normally be expected to provide care for their aged parents live far away. Elder abuse, neglect, and exploitation involve complex civil and criminal issues that require a sustained and committed response by the courts and society. There is a need for the state to ensure that vulnerable adults are being protected and that is why we have submitted a study resolution on elder issues. Identifying the issues is one step. Resolving them will require the cooperation of all three branches of government at both the state and local level. As a state, we have a proven record of being able to work together. When there are problems to be

addressed we don't ignore them and we don't build walls between those agencies or groups that are most impacted by the problem. Instead, our model has been to bring our brightest and most knowledgeable folks together to build solutions that rest on collaboration and communication. This is one area in which that model of problem-solving is needed. I urge you to give serious consideration to accepting this study.

I have been asked to chair a task force on elder law for the Conference of Chief Justices and the Conference of State Court Administrators. I hope it is not because of my advancing age but rather because I raised the issue to the Conference, and it is an issue that is emerging in many states as the baby boomers reach retirement age. I hope to bring to the task force some of the issues and solutions we will be considering in North Dakota, and I hope to bring some of the thinking of the task force to the interim study if you accept this resolution for an interim study.

Mediation Pilot Program

With your support in the last legislative session, we began a mediation pilot program to address the needs of families going through divorce and child custody issues. The family-law practitioners in North Dakota are resourceful in helping couples resolve their differences without direct court intervention. The mediation program is designed to alleviate the lingering bitterness that can blossom when custody and visitation issues are not able to be effectively resolved without court intervention. The program has been established in two judicial districts and early evaluations are showing an exciting rate of success. Seventy-seven percent of couples going through the program have resolved their differences and report that the process was beneficial. We know that the program is achieving its desired result, not just by the number of cases that are settled, but by the comments we are receiving from participants. Comments such as, "it brought the two of us to a place where we were at least able to talk about the issues" and (the best thing about it was) "being able to talk face-to-face for the first time in months." We continue to evaluate the program to assure that the results are lasting and not merely a lull in the process of separation of a family, but we are encouraged by our progress and eager to expand the program to more areas of the state.

Drug Courts

A model of problem-solving courts that most of you are familiar with is drug courts. Since I last spoke with you, we have expanded juvenile drug courts into both Minot and Williston. We are currently in the planning stages for an additional juvenile drug court in Devils Lake. Drug courts are costly, but they are a proven method of resolving problems people are having with alcohol and drugs. These resolutions don't represent just the closure of another case, but a permanent and positive change in the life of the child who appears before the court. Drug courts play an important role in helping troubled children find the path to a healthy, productive adulthood. Adult drug courts, too, have been started or expanded in Grand Forks, Fargo, Bismarck and Minot and have proved effective in reducing recidivism rates. This is not a court system success alone. We rely on a strong partnership with state agencies, private providers, and non-profit organizations to carry out the drug court mission and we all share in its success.

Funding for Education

Speaking of working together to resolve problems, I congratulate Lt. Governor Dalrymple and the members of the Commission on Education Improvement and the North Dakota Legislature for working together to resolve the issue of funding for elementary and secondary education in North Dakota. Although I ordinarily do not talk about matters which have been the subject of litigation in our courts, some of you will recall that this matter was in our court nearly two decades ago and reached the Supreme Court some 15 years ago. My colleagues from other states are impressed by the fact the Executive and Legislative Branches in North Dakota were able to resolve this issue without an order from the Supreme Court.

Civil Legal Services for Indigents

There is a recognized need for adequate civil legal services for indigents. These services are provided to poor people who are involved in the legal system. These issues usually are related to housing, health, public benefits, and child and family matters. Federal funding for civil legal services does not keep pace as the need increases. As interest rates drop, so does the income from lawyers' trust accounts, IOLTA, which has also provided funding for civil legal services. In North Dakota, part of the funds for civil legal services comes from civil filing fees. Since 1997 the civil legal services share of these funds has been capped at \$400,000. I support legislation that removes the cap or raises it to some figure that will provide indigent litigants better access to the legal system.

Judgeships

Better access to the courts depends on more than just access to an attorney. To ensure fair, independent and timely resolution of cases, the courts must be adequately staffed and funded.

In prior addresses, I have shared my concerns that the reduction of judges from 53 to 42 was too deep a cut. That number was established by legislation in 1991, and was not based on any type of study or consideration related to population, geography or case filings. Our internal weighted caseload study, which we later put in place, measures judge need based on both number and type of case. These studies are done annually, and they have always shown a shortage of judges. I have resisted earlier suggestions that we increase the number of judges insisting that a long-term need be demonstrated. The past five studies have shown a continuing need for five additional judges. I am not here today to ask you for five new judgeships, but I am here to ask for two new judgeships this biennium, one for the Southeast Judicial District and one for the Northwest Judicial District, and authorization for one new judgeship for the East Central Judicial District to be funded in the following biennium. We have done what we can do internally to alleviate the issues created by the shortages of judges, but it has not been enough. These three districts need the services of at least one more full-time judge.

Judicial Salaries

It is not comfortable for me, as a judge, to ask for larger salaries for judges, but as the administrative head of the court system, it is my duty to do so. A sound salary administration plan is critical to attracting and retaining the best qualified people we can to provide judicial services. We must continue to take steps to ensure that district judgeships are sought after by the best and brightest of the practicing bar to assure the caliber of judicial leadership the state of North Dakota needs and deserves. The Governor's budget proposes a 5% increase for state

employees, and we are also requesting salary increases of 5% in each year of the biennium for the judges and justices. This adjustment will bring us to a level where salaries for North Dakota judges are somewhat closer to their counterparts across the nation, and in particular, closer to the salaries in our sister state of South Dakota.

Supreme Court Facilities

The needs of the judiciary are not confined to staff and salaries. It is time to reintroduce the subject of adequate facilities for the Judicial Branch. I expect that, with very little exception, most of you were not around in 1975 when the last judicial space needs analysis was done. At that time, the entire Supreme Court operation consisted of 5 justices and 11 support staff. Since then, you have consolidated county and district court, and unified administration under the Supreme Court. County employees in the office of Clerk of Court became state employees. The function of the Supreme Court in relation to the district courts has gone from oversight of the lower courts to administration of the courts as envisioned by the Judicial Article of our State Constitution. The court system is now a large organization with 53 locations, 5 justices, 42 judges, 285 state employees, and 32 contract county employees to manage. We have added staff and services to carry out these management duties. Facility management has worked with us but with limited or no space available in the Capitol complex, we have been forced to temporarily locate part of the staff in leased premises. We are in need of additional space so that we can continue to carry out our mission of providing justice to the citizens of North Dakota. When we moved into the Judicial Wing more than 25 years ago, it was billed as a 10-15 year solution. The North Dakota courts were part of the territorial government when North Dakota became a state 120 years ago, and the North Dakota courts will continue to be here for at least another 120 years. We are requesting that this legislature authorize a space needs analysis so that we can begin looking for a permanent solution for the needs of the Supreme Court.

Rent for District Court Space

Property tax relief is an issue this legislature is expected to look into. With this in mind, I raise the subject of paying the counties rent for court space. Since the court filing fees were diverted from the county treasury to the state general fund in 1995, this matter has been discussed several times over the years but has not reached resolution. Each time it comes up I have said that I am not opposed to paying rent, but it must be a legislative solution that is equitable for the counties but still ensures that the space provided for the court is adequate in both size and functionality. I would not advocate the court system assuming ownership of courthouses, as some state court systems have done. But, I do advocate a role for the state in assuming a share of the cost of building new courthouses with the judiciary having meaningful involvement in the planning of the court facilities.

Case Management System

The court system relies heavily on tradition, but it operates like any other modern business. That includes the use of technology to track case files, court judgments, and fine payments. Last biennium, we were provided funds to plan for the replacement of our district court case management system. We have spent the past 18 months studying our needs and the different types of case management systems that are available to the courts. We have selected a well-established vendor with a proven track record of providing a solid, well-liked, and reliable case

management system. Of course, it comes with a price tag to match. We are confident that this is a system that will meet our needs today and well into the future, and we are asking for the funds to purchase this software.

For the Record

I note for the record that Judge Cynthia Rothe-Seeger, the first woman to become a district judge in North Dakota, chose not to seek reelection. Judge Wickham Corwin, a Fargo lawyer, was elected to the position in November 2008 and assumed office January 1, 2009.

I note with sadness the death on September 9, 2007, of Gary Holum, former District Judge in Minot, and the death on June 25, 2008 of Surrogate Judge Jon Kerian, former District Judge in Minot.

Conclusion

I have attempted to outline for you the human issues which I believe the Judicial Branch, with your assistance, should tackle in this next biennium; a report on the development of those programs which are currently in progress in the Judicial Branch, and finally, an outline of the pragmatic needs of the court system which support and make possible the programs which directly affect the citizens of our state.

Lieutenant Governor Dalrymple, Speaker Monson, and members of the Legislative Assembly, I speak for my colleagues, the trial judges and the justices of the Supreme Court, when I thank you for your consideration and support of the Judicial Branch. We are all, legislators, Governor, Legislative Branch officials, judges, privileged to be engaged in the great endeavor to make our system of government one that serves the citizens and one the citizens respect. The genius of our form of government is that individually none of us could begin to achieve what, together, we can and will accomplish. I am grateful for the opportunity to speak with you this afternoon. I wish you wisdom and good fortune as you begin the Sixty-first Session of the Legislative Assembly of the State of North Dakota.