

State of the Judiciary
Chief Justice Jon J. Jensen, North Dakota Supreme Court
Message to the Legislature
January 3, 2023, in Bismarck, North Dakota

Members of the 68th Legislative Assembly

Thank you for the invitation to speak this morning.

Governor, other representatives of the executive branch, and elected officials, your attendance is appreciated.

Members of the 68th Legislative Assembly, your task is never easy.

You are trusted to weigh and attend to the best interests of the people of the State of North Dakota within the proper constraints of government.

You are required to balance many competing interests.

You are required to acquire knowledge of not only how the executive branch agencies and the Judicial Branch operate, but what you can do to facilitate better service to the entire state of North Dakota.

Thank you for serving the State of North Dakota.

This morning I will address two aspects of the judicial branch – what the judicial branch accomplished since you last convened for a regular session and some of our legislative priorities.

What the judicial branch has accomplished.

To provide a reference point, I will begin with a brief overview of the judicial branch.

We have 52 trial court judges and 5 justices of the Supreme Court.

Since the early 1990s we have operated as a unified State Court system, eliminating our county courts and consolidating all of our judicial functions, with the exception of municipal courts of limited jurisdiction, into a single court system.

Our judges serve in eight judicial districts.

The NECJD consisting of Grand Forks and Nelson Counties.

The NEJD consisting of Benson, Bottineau, Cavalier, McHenry, Pembina, Pierce, Ramsey, Renville, Rolette, Towner and Walsh counties.

The ECJD consisting of Cass, Steele and Traill counties.

The SEJD consisting of Barnes, Dickey, Eddy, Foster, Griggs, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, Stutsman and Wells counties.

The SCJD consisting of Burleigh, Emmons, Grant, McLean, Mercer, Morton, Oliver, Sioux, and Sheridan counties.

The SWJD consisting of Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope and Stark counties.

The NCJD consisting of Burke, Mountrail and Ward Counties.

NWJD consisting of Divide, McKenzie and Williams counties.

Although reciting the name of each county is a lengthy process, it is intentional. It is a reminder to those within the judicial branch that we serve each and every citizen in North Dakota, in each and every county.

In our last annual report to you we noted our judicial system had 159k new cases and 21K reopened cases.

In criminal cases alone, our district courts handled:

Hundreds of jury trials.

7,847 felony criminal charges

17,485 criminal misdemeanor charges and

2,221 infractions.

Our caseloads are increasing.

Every one of our districts are handling more cases and handling the caseload with less judicial officers than were in the judicial branch in 1990.

In addition to the district court caseload, our district judges also preside over juvenile court matters and the “specialized dockets.” Our “specialized dockets” include individuals with alcohol and drug related non-violent offenses, offenders in domestic violence cases, and more recently addressing issues unique to veterans.

We remain committed to being accountable to the legislature and the citizens of North Dakota. To provide that accountability every one of the 180,000 cases handled within our judicial system each year is tracked for both docket currency and how long our judges are taking to render decisions.

Docket currency measures the time from when the case enters the judicial system until the time the file is closed.

Each case type has a standard time.

Each quarter the presiding judges of each judicial district are required to report any case outside the time standard.

Any case outside the standard must have an explanation.

Our state should be proud that less than 2/10th of one percent of our cases fall outside those standards and, the majority of those cases are outside the standard at the request of the parties or other factors outside the control of the judicial branch.

We also track the time it takes for judges to make decisions, allowing 90 days from submission of the task to the judge by the parties.

Each quarter the presiding judges provide a reporting with a required explanation.

For the past two years our state can be proud that less than 5 cases each quarter fall outside the 90-day period and no case has appeared on more than a single report.

We accomplish this work with a budget of 2/3 of a single percent of the state budget.

There is a final event that requires recognition.

After serving the Court since 1978, first as a justice, then as Chief Justice, and finally again as a justice, Justice Gerald VandeWalle has announced his retirement as of January 31, 2023.

He has served the state well.

I request we stand and recognize him for that service.

Some Legislative priorities.

Clerk of Court Transition.

Two years ago, in the State of the Judiciary address, the Judicial Branch noted that we would return in 2023 to request the transfer of contract clerks to state employment.

Currently, the judicial system contracts with 39 counties to provide state clerk of court functions.

While the number of counties is large, the majority of the clerk of court functions are completed in offices with state employees.

Our current system dates back to the 1990s when the judicial system went through unification, eliminating county courts and transferring all of the judicial functions to state district courts.

Even before the actual unification process in the early 1990s, the proposal to unify our judicial system, including integrating the clerk of court offices into state offices was part of the plan outlined in 1975 by the Chief Justice of the North Dakota Supreme Court.

The idea of transferring all clerk of court functions to state employees began with the concept in 1975, was partially implemented in 1990 and in 2023 it is time to complete the transfer.

In terms of comparisons to other states, North Dakota is unusual.

Several experiences have made it clear completing the transfer will be beneficial.

First, we have had state offices for over thirty years.

Those offices are our most efficient offices.

Those offices complete a majority of the clerk of court functions in the state.

Second, while we have some great individuals working pursuant to contracts, there are challenges.

While some contract offices function well, others do not and as a result, significant time is required from state offices to assist contract offices.

Contract offices are not state employees, the individuals report and are accountable to the county commissioners.

It is unusual for any operation to not have direct supervision of its workforce.

It also results in significant differences in abilities between state offices and county offices.

Contracts are with the counties, not individuals. As a result the clerk function is often shared between multiple individuals, and the individuals can frequently change.

While the practices and procedure of our state offices are consistent and uniform, the contract counties are not.

This creates challenges for the judicial system itself and for litigants.

It should be the same process to file a document in every county.

Third, this is not a new proposal.

There have been state offices for 30 years.

No county that has transferred the clerk of court functions to state employment has requested to reverse the process.

In contrast, since 1990 some contract counties have elected to transfer to state employment.

Fourth, this is not a proposal to eliminate local offices.

The proposal is to keep the same number of individuals in the local offices.

As mentioned previously, there are many great individuals working in contract counties and we want those individuals to have more opportunities and more challenges within the state system.

We also confirmed during the COVID-19 pandemic the ease with which we can move work within the state system.

When state office A is busy, state office B can immediately take over part of the workload. We do that now in state offices.

For example, it is difficult to retain skilled workers in western North Dakota.

We have been able to transfer workload to other state offices to maintain the same level of service to citizens in western counties.

In 1990 it was necessary to move people to where the work was. In 2023, we can move the work to where people are. Positions can, and will, remain local.

The judicial branch is committed to remaining in every county and serving North Dakota citizens in their home counties.

But we should do that in the most efficient and cost-effective manner.

We understand there are counties that will need to make adjustments.

Some contract counties clerk of court offices also provide other functions, and counties will still need to retain someone for those duties.

A few county employees hold multiple positions and are paid for multiple jobs. Those individuals will need to choose to stay county employees or transfer to state employment.

While these are important things to consider, our primary consideration must be to provide uniform, and consistent service to citizens of North Dakota in the most efficient and cost-effective manner possible.

Preservation of the current system may benefit a few specific individuals but transfer to state employment benefits most individuals working in contract counties and creates a better system for all of North Dakota.

Judicial Salaries.

We have 52 great trial judges in North Dakota.

General jurisdiction. Traffic tickets to Misdemeanors to Felonies, including murder. Civil cases from family law, probate, business disputes, collection cases, personal injuries and property tax challenges.

Juvenile court.

This is different than many states where the large number of judges allow specialization in family courts, criminal courts, juvenile courts, and civil courts.

Our small number requires our judges to know everything as judges of general jurisdiction.

Volume of work. As noted earlier, our 52 trial judges, along with the help of our clerk of court staff, juvenile court staff, administrators, reporters/recorders and others are tasked with approximately 180,000 new or reopened cases each year. That is an incredible workload. As also noted earlier, our judges work hard and consistently perform within our time standards.

Geography. Our small number of judges requires service to multiple counties. The SEJD includes 14 counties and is served only seven judges. Similarly, the NEJD includes 11 counties stretching from the Minnesota border to north of Minot, and is served by six judges. We have fewer judges today than we had in 1990 with exponentially higher caseloads.

We ask a lot of our trial court judges. They have challenges of being judges of general jurisdiction, large caseloads and large geographic responsibility.

A healthy judicial system must provide opportunities for highly qualified individuals with diverse backgrounds to become judges.

We have great judges in North Dakota, but that is because of good fortune.

In the past five years we have had several open judgeships filled by election with only one candidate on the ballot.

Vacancies filled by the Governor's office used to routinely have a dozen or more candidates, many from private practice. Now, some positions attract just enough applicants to send options to the Governor's office for selection.

The vast majority of applicants are either individuals moving from one government position to another or candidates with minimal experience.

A healthy judicial bench has individuals from diverse backgrounds; people who have represented farmers, ranchers, small and large business, families and others in private practice.

The reason we have small numbers of applicants and almost no applicants from private practice is because the compensation paid to our judges does not reflect the required work.

In the Governor's recent budget address he noted there are state government positions that need more than the across-the-board state compensation increase. Judges are in that group of positions.

Judges have fallen behind other state positions. Judges rank 330th on the list of state positions in terms of compensation.

That does not include local county and school district positions, a number of which also provide greater compensation.

There are a number of attorney positions within the executive branch which routinely appear in our courts whose compensation exceeds the judges' compensation.

The entire judicial budget is 2/3 of 1% of the state budget. Judicial salaries are 1/10 of 1% of the state budget.

In terms of the state budget our request is relatively small.

We are requesting a 6.4 million dollar increase to our biannual budget to provide judges with increased compensation.

One time expenditure. The judicial branch is requesting a one-time expenditure to move the judicial system to a renovated and expanded Liberty Memorial Building.

Cost of 55 million dollars.

Project first put forward by Governor Dalrymple.

Progressed to development of initial plans for the project.

Judicial Branch voluntarily withdrew the project when unanticipated budget shortfalls appeared.

The judicial branch is in need of the facility.

It also creates space within the Capitol for the legislative branch.

Thank you for the opportunity to speak today.

The judicial branch has enjoyed a terrific partnership with both the legislative and executive branches.

When I stood here in 2021 I shared with you a conversation I had during the 1991-1992 legislative session with Chief Justice Ralph Erickstad. Chief Justice Erickstad had previously served in the legislature and as he prepared for his State of the Judiciary Address I asked him his approach. He indicated his approach was to ask for what was needed, nothing less and nothing more. The judicial branch will continue to perform its duties and ask only for what is needed, nothing more.

Best wishes for a productive legislative session. The judicial branch wishes you well.