

2013 State of the Judiciary Address
Chief Justice Petra Jimenez Maes, New Mexico Supreme Court
Message to the Legislature
January 22, 2013

Good morning, Lt. Governor Sanchez, President Pro Tem Papen, Speaker Martinez, members of the New Mexico House of Representatives and Senate, all my colleagues from the Judiciary, distinguished guests, ladies and gentlemen.

Thank you Deacon Bill for the wonderful and inspiring invocation. And I ask that we take a moment to remember Speaker Lujan and to let his family know that they continue to be in our prayers.

I would like to take a moment to introduce the members of my family who are here with me today: my son, Immanuel Maes, who is filming. Thank you Immanuel. My father, Santiago Jimenez, who is 91 years old. His brother and sister-in-law, my Uncle Vincent, and my Aunt Gloria. My nephew Alfred and his wife Kathleen Benavidez. My sister-in-law Nelda Archuleta, and my cousins Lupe and Antoinette Vargas. Also here are my friends Dan and Dinah Sanchez, Holly Kinley, and Sandra Haaug. Thank you all for coming today. My son Joshua and my two daughters, who live in California, could not be here today.

When I was in church this past Sunday, praying for our budget, I thought about my speech today and I was filled with happiness. I was happy to have been invited by the leadership and members of this Fifty-First Legislature to speak about our third branch of government. Happy because this is the second time I have had the opportunity as Chief Justice of the New Mexico Supreme Court to give the State of the Judiciary Address—I also addressed you as Chief Justice on January 23, 2003, almost ten years ago to the day.

I will begin by sharing with you some of the Judiciary's many accomplishments and then speak about the challenges we continue to face. There is no doubt that these have been difficult times for all New Mexicans. In fact, for many of us the last four years have been the most difficult economic times in our memory. Like every business, family, and individual we hope that we have weathered the worst of the crises and are looking forward to a continuing recovery. While there are challenges ahead, I will briefly highlight some of our accomplishments.

OUR ACCOMPLISHMENTS

1. Self-Represented Litigants

Not everyone coming to court can hire an attorney and many of those who do qualify for free legal services from legal aid providers like New Mexico Legal Aid cannot get legal services because the provider lacks the resources to provide the services. For every client accepted by a legal aid provider, two are turned away. The need for assistance is especially acute in domestic relations cases. Courts report that 75-85% of the litigants in divorce and custody cases come to court without an attorney.

To meet the needs of self-represented litigants our courts have undertaken many efforts: They have recruited volunteer attorneys who represent clients but do not charge a fee; and courts have sponsored legal fairs where volunteer attorneys provide free legal information. In 2011, 557 attorneys participated in pro bono activities across the state serving 12,652 individuals. We thank all the members of the New Mexico Bar whose President, Drew Cloutier, and Director, Joe Conte, are here today. Additionally, we are developing a set of interactive divorce and custody pleadings for self-represented litigants. The pleadings will be in plain English with simple step-by-step instructions. This project is funded by a grant from the State Justice Institute and the first set of forms will be available online this Spring.

2. Alternatives to Litigation

Courts also offer alternatives to litigation. Not every case filed in court needs a trial either before a jury or a judge. That is a good thing; because with 71,211 civil cases being filed this past year, and another 24,746 cases being re-opened, the Judiciary cannot meet the demand. The Judiciary is obligated to provide the public with alternatives to traditional litigation. Under the leadership of Justice Edward Chavez, the Statewide Alternative Dispute Resolution Commission has continued its work to expand ADR services in our courts while ensuring consistent program quality. The Commission sponsored a state-wide summit this year to explore centralizing ADR support services. Centralization will make it easier and more efficient for courts to implement ADR programs and to ensure that the public receives high-quality ADR services.

3. Non-English Speaking Litigants

Our courts have also continued to meet the needs of our non-English speaking litigants. We continue to expand our list of certified interpreters to include not only Spanish but also Navajo, American Sign Language, Russian, Mandarin, German, Italian, and Thai. But there are never enough interpreters. We realized that we had an unused asset in our Courts—our bilingual employees. While fluent, they need training to serve as interpreters on a limited basis. With the assistance of the State Justice Institute, we have developed an online training course for judicial employees. Upon completion of the training, the employee becomes certified as a language access specialist. While this does not certify them as interpreters it does qualify them to translate for court customers outside the courtroom. To date fifty-five court employees have become certified and eligible for a \$1.00 per hour pay increase. While employees must pay for the training, some courts and the Judicial Education Center have provided scholarships to help offset that cost. This program is unique to New Mexico and has become a model for a national effort to develop affordable language access training for judicial employees.

4. Advances in technology and automation

Foremost among our accomplishments is our implementation of a new case management system for the district and magistrate courts. In 2007, you gave us \$11 million dollars to implement a new case management system. We began the project by involving judges, court managers, court staff, attorneys, and our IT staff to develop a comprehensive management plan and delivery schedule. Next, we chose the Odyssey case management system. Our goal was to implement Odyssey in all magistrate and district courts by December of 2013.

Implementing a new case management system is not as simple as inserting a disk into a computer and installing new software. All existing data had to be standardized and corrected so that it could be converted to the new system. All court staff and every judge had to be trained to operate the new system. We could not halt the work of the court so most of the installation work was done during the evenings and on weekends. The project consumed our staff's work lives and impacted their personal lives. Vacations, weddings, and even non-emergency medical procedures, were planned around the Odyssey roll-out schedule. Our IT staff put in countless hours on the road—away from their homes and their families.

The project also required the cooperation of district and magistrate court staff across the state and would not have succeeded without the commitment and dedication of our employees. Court staff like Sherry Weingarten from Moriarity and Toby Fouratt from Roswell, whose courts went online early and who then helped train others. While I cannot name all of you individually, I would like to acknowledge Toby and our Odyssey project managers who are here with us today: Stephen Prisoc, Marlin Mackey and Renee Cascio. These individuals were committed to this project and more importantly to being sure that it was done right, and I am proud to report that their work paid off. In December 2012, the Odyssey case management system was fully installed in every magistrate and district court in the state.

I understand that nationally 25% of Government IT projects fail, and that 40% of government technology projects are over budget and not completed on schedule. And I know that there are members of this body who are concerned about the use of taxpayer dollars on large scale IT projects. But I want you to know that as a result of careful planning and because of the selfless dedication of the JID staff, as well as every court clerk, every court supervisor, every court manager and every judge in the State, the Odyssey roll-out was completed a year ahead of schedule and within budget. We are now working on the second phase which is implementing Odyssey in the Bernalillo County Metropolitan Court in Albuquerque. That project is on its own schedule and due to be completed this year. Additional funds are needed because of the court's unique processes. The final phase will be implementation of Odyssey in the Supreme Court and Court of Appeals. This is a different program than what was installed in the trial courts, so our budget request includes funding for this project.

I am also pleased to report that not only was the implementation a success but that we are already seeing its benefits. The National Center for State Courts, at no cost to New Mexico taxpayers, has undertaken a study to compare case processing time pre-Odyssey and post Odyssey. While the sample size is small, only three magistrate courts and one district court, the preliminary results are positive. The results indicate a significant decrease in district court and magistrate court case processing times. The Center also found that Odyssey saved time by eliminating needless duplication. We ask for funding to document how technology is improving court efficiencies statewide.

5. E-filing and E-Citation

The success of Odyssey has allowed us to move to electronic filing. In eight of our thirteen judicial districts lawyers are now required to electronically file all civil pleadings. Statewide, this

accounts for 70% of all civil filings. I know that e-filing has been challenging for some lawyers. It has not been easy for court staff either. Change is hard. But most lawyers have found e-filing to be more efficient and economical than paper filing and service. And it is here to stay. By Spring e-filing will be mandatory for civil cases in all district courts.

Similarly, the Judiciary has also worked closely with our justice partners to streamline processes. For example, sheriffs' deputies in Las Cruces are now issuing electronic citations. These e-citations are automatically entered into the court's case management system eliminating needless duplication of data entry and paper filings. It is especially helpful for court clerks who do not have to try to read an officer's handwritten paper citation. With the success in Las Cruces, we are prepared to work with other law enforcement agencies to implement electronic citations.

These are just a handful of our many accomplishments. I urge you to read the annual report to learn more about our activities this year. You can find the annual report on our website. I will now address the challenges.

THE CHALLENGES

1. Base Budgets and Vacancies

Like the rest of State Government, the fiscal crises of the last four years forced courts to make difficult decisions regarding the allocation of scarce resources. Under the leadership of Chief Justice Chavez and then Chief Justice Charles Daniels the Judiciary stepped up and we made significant cuts to our budgets. I remember Chief Justice Chavez on the phone with our Chief Judges and court executive offers thanking them for their proposed budget reductions but then asking them to look harder and find even more places to cut. Chief Justice Daniels worked with the Judiciary, the Legislature, and our justice partners to look closely at our organizational structure, court polices, processes and procedures to see how the New Mexico Judiciary could operate more efficiently with fewer resources. With funding and assistance from the National Center for State Courts, the Reengineering Commission identified present and future challenges and proposed recommendations for addressing those challenges. Recommendations which we continue to pursue.

We knew that the decisions that we made during the fiscal crises ran the risk of impacting our ability to serve the public. But decisions had to be made to deal with the crises at hand. Like a parent who must decide which children will get winter coats and which will get shoes, courts were forced to address their most pressing needs first. But like every parent, courts knew full well that the time would come when they would have to deal with the consequences of their decisions. That time is now.

Our first priority was to keep our courts open and operating to serve the public. To do that, courts undertook a number of cost cutting and cost saving measures. Chief among these were (1) deferring building and equipment maintenance and repairs, and (2) leaving authorized employee positions vacant. For example, one court gave up its fire alarm contract resulting in increased false alarms and associated disruptions to staff and the public. Others gave up

maintenance contracts on security and surveillance equipment resulting in increased repair times and costs when the equipment malfunctioned.

Staff vacancies are also impacting our ability to do the business of the courts. Court staff have assumed additional duties as a result of vacant positions. Fortunately, the implementation of Odyssey has helped us to become more efficient. But, we are only more efficient because our employees have been required to learn an entirely new way of operating. Court staff now enter data in the courtroom as cases are heard. This is a tremendous time saver for both the court and the litigants, but leaves fewer staff physically available in the court clerk's office to meet the public's needs.

In order to avoid employee layoffs and furloughs and keep their doors open, some courts left vacant higher cost staff positions. In the Second Judicial District this meant holding open an attorney position assigned to assist with on-record appeals from the Bernalillo County Metropolitan Court. Unfortunately, and unforeseeably, a second attorney was out on family medical leave for an extended period of time. As you can imagine this created a backlog of cases. Even with the hiring of a contract attorney, they are only keeping pace with the incoming appeals but the backlog remains. This office needs to be fully staffed.

Courts have also kept positions vacant in our drug courts. As a result, fewer individuals have been enrolled and served in these programs. We know that drug courts work and are requesting funding to rebuild these programs. Deferring maintenance and maintaining vacancies were reasonable and necessary short-term solutions to the crises at hand. After four years, however, they are impacting our ability to serve the public and are no longer sustainable. Our base budget request includes funding to address these issues and I urge you to adopt our request.

2. Staffing at an Appropriate Level of Compensation

The Judiciary is entirely dependent on its human capital—our employees. Like all government employees, our court staff have not seen an increase in their salaries since 2008. We understand that you are concerned about authorizing a compensation increase in the current economic climate. But it is critical for the judiciary to be staffed at an appropriate level of compensation. Why? Because New Mexico taxpayers deserve to see a return on their investment. As I mentioned earlier, taxpayers have spent \$11 million dollars for the Judiciary to implement the Odyssey case management system. A substantial portion of these funds were spent to train court staff. But let me make it clear, we did not just train them how to use a new case management system, we changed their jobs. Court clerks no longer simply date stamp documents and place them in file folders. Instead, our new case management system requires court staff to have a much more detailed understanding of the court process. Because Odyssey links parties and events, staff must know what should be linked and what is likely to occur next. Moreover, as I mentioned earlier, court staff now enter data in the courtroom as cases are heard, which also requires a more detailed understanding of court processes.

Our employees have willingly taken on new tasks and learned new skills. Skills, which quite frankly, make them very appealing to private sector employers. When these employees leave, we

must hire new employees. But we have a hard time filling positions. When qualified applicants understand what the job requires and the amount we are able to pay, they say, "No thank you."

We have invested in our employees and need to retain them to see the return on that investment. But we cannot expect to retain our best and brightest employees when their take home pay in January 2013 is less than it was in 2009. Let me give you an example.

In January 2009, then Chief Justice Chavez introduced you to Rozalyn Cox a Court Clerk II in the Clovis County District Court. Roz is an exemplary employee and was instrumental in making the Odyssey roll out a success. Roz is married to Marv who works at Cannon Air Force Base. They have four children. In January of 2009, Roz was able to insure and feed her family. At that time, after all payroll deductions including family health insurance, she took home \$880.74 every two weeks. By January 2013, Roz had stopped insuring her children. She could no longer afford the cost of the premium and still buy groceries. In January 2013, her take home pay, without the insurance premium, was \$847.83. This is \$32.91 per pay period less than she was making in 2009, when she could still afford to insure her children. As our economy continues to improve our most valued employees will have more opportunities outside the Judiciary. We don't want to lose them. Help us keep them by funding a compensation increase.

3. Need for Additional Judges

Finally, I would like to turn your attention to our need for additional judges. The relationship between reduced funding to the Judiciary and resulting delays, particularly in civil litigation, is a national problem and New Mexico has not been immune. Each year we measure our clearance rate, which compares the number of cases filed in a year with the number of cases disposed of that year. The rate reflects our ability to handle the demand on our courts. Statewide our district courts had a clearance rate of 97.7% in 2008. At the end of 2012 that number had dropped to 90.4%. Not surprisingly, when you drill down into the data, you find that in courts across the state, civil and domestic cases are pending for longer periods of time.

The impact of this delay cannot be underestimated. The connection between a strong judiciary that is able to resolve disputes in a timely manner and the economic well being of a community is widely recognized. Businesses count on courts to resolve their disputes in a timely manner. Delays and uncertainty make them less likely to do business in New Mexico. Moreover, delays in litigation tie up funds which could otherwise be invested in new jobs and business expansions. In fact, at least one economist estimates that nationally, funding cutbacks to the judiciary between 2009 and 2013 will result in total lost investment income of 52.2 billion dollars.

Court delays also result in increased legal costs to the litigants. When a party in a civil proceeding files a motion for summary judgment both parties incur attorneys' fees. The longer it takes for the court to hear the motion, the less likely the parties are to settle the suit. Both parties believe that the judge will rule in their favor, thus hampering court ordered mediation and settlement conferences. Settlement conferences that the parties must pay for. Finally, when the motions cannot be heard until shortly before trial, attorneys have to prepare their case for trial on all issues because they don't know how the judge will rule. Again, both parties incur attorneys' fees even though they may not actually go to trial on all issues.

And then of course there are the emotional costs. Children in a high conflict divorce and custody case suffer the consequences of their parents' behavior when it takes over a year and half for the court to hear their case. The parties in a personal injury case can't move on with their lives when it takes the court more than a year to retry a case after a jury could not reach a decision. Particularly heart wrenching are delays in cases involving some of our most vulnerable citizens, those subject to guardianship. Courts lack the resources to investigate and be certain that family conservators are fulfilling their obligations. Increased caseloads and statutory deadlines in other types of cases mean that hearings in guardianship cases may be postponed or delayed. As a result, courts cannot always ensure that these individuals are adequately cared for.

The Judiciary is more efficient than it has ever been and we will continue to strive to improve. The simple fact is that we cannot keep up with the demand. We need more judges. The Judge Workload Study shows that based on current case filings we need twenty-three more judges throughout the State. We know that you cannot fund twenty-three judges for FY14. We are requesting nine. Yes, I said nine. Nine, not two. Nine, not five. Let me tell you why.

The public's demands on the Judiciary have not decreased. While we are certainly more efficient at getting cases to our judges and our judges have become more efficient at resolving them, justice still takes time. Judges must still read the parties' pleadings, listen to the witnesses' testimony, review the law and make a decision. We need to provide the public with timely justice and we need to be sure that judges have the time to fully consider each case. This requires more judges. We need more judges in the following courts:

- One in the First Judicial District Court in Santa Fe assigned to civil cases
- Three in the Second Judicial District Court in Albuquerque assigned to civil cases
- One in the Third Judicial District Court in Las Cruces assigned to civil cases
- One in the Fifth Judicial District Court in Lovington assigned to civil cases
- One in the Thirteenth Judicial District Court in Bernalillo assigned to civil case
- One in the Magistrate Court in Las Cruces assigned to criminal cases; and
- One in the Metropolitan Court in Albuquerque assigned to civil and criminal cases.

These judges will help us meet the public's demand for timely resolution of their disputes.

I have not addressed all our needs as they are contained in the Judiciary's Unified Budget. Justice Richard Bosson is leading our effort to reform judicial pensions. In addition, we have a number of important legislative initiatives which you will find described in our Unified Budget book.

CONCLUSION

As I mentioned at the beginning, it has been ten years less a day since I delivered my first State of the Judiciary Address. Much has changed since that time. Governors, legislators, even Justices have come and gone. And yet, some things have remained the same. Among them is our shared commitment to the people of New Mexico and to the delivery of justice. We have accomplished

a great deal together and I want to thank you, not only on behalf of the Judiciary, but also personally, for your support.

What is the state of the Judiciary? With your support we will continue to be strong. We are lean, we are efficient and most importantly we are unwavering in our commitment to bring justice to the people of New Mexico. I am confident that we can meet the challenges ahead and look forward to our continued collaboration. I am very happy to have been invited to give you the State of Judiciary in 2013. Thank you.