

State of the Judiciary 2019
Chief Justice Judith K. Nakamura, New Mexico Supreme Court
Message to the Legislature
January 17, 2019

Dear Judge,

Today I thought of writing you a letter. . . . In this letter on behalf of myself and family we want to thank you. If you didn't put me in jail and in treatment I don't know where I'd be right now. I wouldn't even be here.... I feel like I'm reborn again.... I am so happy and proud of myself.

Dear Judge,

I thought you would want to know that my Dad passed away. . . I was with him when he died. Dad's life would not have been extended to age 92 and I would not have had the joy and privilege of his nearby presence without the guardianship case over which you presided. ..Thank you for allowing me the opportunity to give him a dignified, respectful and loved end to his life.

Dear Judge,

You asked me on the last time I stood in your courtroom. "Why do you keep coming back...it's not a nice place." . . I can assure you, I did not keep coming back to jail for the gourmet food or the fine conversation and company . . . I repeatedly came to jail because I had no choice. I am an alcoholic and an addict. . . I needed something different. I needed a good program...I am truly grateful for the opportunity to prove to you that treatment helps us addicts . . . That we are capable of becoming fine people, helpful members of society. I have gone from ...[an] overall worthless individual to someone I still do not truly know or understand, but I like her.

Honorable Lt. Governor, President Pro Tem Papen, Speaker Egolf, members of the New Mexico House and Senate, Justices, Judges, elected officials and honored guests, these are the voices of actual people who have appeared in our courts. They represent people we all know. They are our mothers, fathers, sisters, brothers, sons, daughters, friends, and neighbors. They are the people who deserve the best court system we can provide. And the people we need to remember as we discuss the State of the Judiciary.

So, what is the State of the Judiciary? Let me cut right to the chase. Your Judiciary is certainly busy, with our District, Metropolitan and Magistrate Court judges handling over 357,000 new cases last year. But we are not just sitting in courtrooms hearing motions and trials. Your courts are innovative---finding solutions to our society's woes; operating drug courts, DWI courts, mental health courts, homeless courts, and veterans' courts; and an award winning family support program. The result? Defendants are staying engaged in their communities, becoming more productive citizens, and not committing new crimes.

And our civil courts are just as busy with rising caseloads. These courts are continually implementing creative approaches to address the special needs of civil litigants, from running mandatory foreclosure mediation programs to developing procedures to resolve very complex civil matters in a timely manner. And programs to ensure that our most vulnerable children are being raised in happier more stable families.

Your courts are committed to excellence. We are looking forward and planning ahead so that we can continue to meet our constitutional responsibility to uphold and promote the rule of law while ensuring the fair administration of justice in a system accessible to all.

Over the next twenty-seven minutes I will tell you what we are currently doing and planning and how you can help us to create the very best judiciary – the judiciary that our citizens expect and the judiciary our citizens deserve.

Let me begin though by taking a brief look back ~ especially for those who may be temporarily blinded by the current and very positive economic forecast.

For nearly a decade, our courts were forced to cut expenses, hold positions vacant, and just do without, stretching and straining our resources and employees to such an extent that in January 2017, then Chief Justice Daniels advised in his State of the Judiciary address that the judicial system was on “life support and its organs were shutting down.” That statement was accurate.

We did not have enough money to pay jurors or even pay our rent. Staff vacancies were soaring leaving critical positions unfilled. Nearly every magistrate court in this state closed early because we lacked the manpower to keep the doors open. Our district courts were not immune either with many reducing their hours as well. It took a great deal of hard work and innovative thinking to not furlough or layoff our employees.

Two years later, I am pleased—and relieved (in fact, incredibly relieved)—to report that our courts are beginning to breathe on their own. All courts are now open during regular business hours. We received additional funding from you, renegotiated and reduced our magistrate court leases, and are now able to pay our rent.

Our new statewide jury management system is up and running. We told you when you helped us fund this system that it would help us operate more efficiently. In fact, it has! The savings it has helped the judiciary achieve guarantees that for the first time in 8 years we can timely pay jurors. We will not be seeking loans or supplemental funding. And most importantly we will not be directing our courts to stop holding jury trials!

We asked and you funded our employee workforce investment plan. Because we have improved pay we are now able to attract, hire and retain employees. Vacancy rates in our magistrate courts have declined by about 10%. And, we are no longer routinely losing our employees to places like Target and Walmart that, in some communities, paid better than the courts. While there is still work to be done, especially for our appellate courts, we are on the path to recovery and on behalf of the entire New Mexico Judiciary, thank you.

Are our courts thriving? Not yet. But we are no longer operating in a continual state of crisis. This small bit of breathing room has given court leaders an opportunity to pause, reflect, and consider the future of our judicial branch.

We began by studying the needs of court users, reviewing survey results as well as anecdotal reports from litigants, legislators, business groups, court staff, and judges. Here is what we've learned.

- First, the public finds courts and the legal system confusing, complicated, difficult to navigate, and lacking in technological innovation.
- Second, many New Mexicans are concerned about the role of politics in selecting judges.
- Third, the need to do more for litigants who live in rural areas and for those who are self-represented is undeniable;
- Fourth, litigants continue to be impacted by delays. It is not surprising that some people report they would actually prefer to lose a case quickly, rather than have it drag on, even if they would have eventually won.

With this information in mind, all chief judges, court executive officers, and representatives from magistrate and municipal courts, and with the assistance of the National Center for State Courts, met last Spring to propose solutions to these challenges. We emerged with a single initiative, Advancing Judicial Excellence.

This initiative, which will provide the framework for the judiciary's strategic planning and budgets for the next 3 years is rooted in two simple questions: Are we doing our best work? And how can we do better?

We have begun to answer these questions by identifying specific projects, proposals and recommendations I look forward to telling you about today. Some projects we have begun on our own. Others require legislative action but not necessarily money. And yes, some require money.

Let me begin with our efforts to address the first question: Are we doing our best work? To answer this question we have to focus on two things: personnel and operations. Let me start with personnel; specifically judges.

If your only source of information about the judiciary came from news reports, you might think that our judges only handle criminal cases and routinely and nonchalantly release dangerous people into the community. Of course this is not true!

I promise you, there is not a single judge, not one, who intends to release a dangerous person into the community. We are all New Mexicans, and we too want to live in safe communities.

While criminal cases dominate the news, the reality is that 74% of the cases filed in our district courts last year were civil cases ~ including family and probate matters, adoptions, guardianships, business and real estate disputes, employment matters, insurance issues, claims alleging personal injury and wrongful death and violations of civil rights.

The work of a judge, whether in civil or criminal court, is more difficult than many realize. The letters I began with this morning are examples of the challenging and difficult problems our judges grapple with each and every day. And please, don't take my word for it. Visit your local court, the doors are open. There you will find that nearly everyone who appears before us has something to lose ~ a marriage and children, money and property, and in many cases their liberty. They are scared and they are often angry. Each day judges face seemingly hopeless situations and we strive to treat each person fairly with dignity and respect, to apply and uphold the law, and inspire hope where we can.

I would like to take a moment to recognize and thank the men and women in this room who have risen to this challenge and who have worked day in and day out to serve the judiciary's mission. Would all justices and judges, from all courts, sitting or retired, please stand. Thank you for your commitment, your dedication, and your service.

And, I also want to acknowledge our hard-working and dedicated court staff without whom our judges could not do their jobs. Would all court employees who are here today, please stand. Thank you for your service.

As we move forward, we have to continue to focus on recruiting well-qualified judges with the commitment to do this demanding and challenging work.

I read recently that the Governor has had a difficult time attracting the most qualified people to some of her cabinet positions. We feel her pain.

We too are finding it more and more difficult to attract qualified applicants for judgeships. In 2017 we averaged six applicants per judicial vacancy. In 2018 that number plummeted to just over two applicants per vacancy. And in one district, we had to post the judicial vacancy at least three times before anyone even applied.

It is increasingly difficult to recruit attorneys with civil experience. Recently, only 15% of all judicial applicants had experience in something other than government service. Why do we have this problem? A State Bar survey of New Mexico lawyers provides one answer; it is simple and you have heard it before: pay.

Lawyers with experience in the private sector, including law firms, say that judicial salaries keep them from applying to be judges. This is hardly surprising, given that the average partner in a New Mexico law firm is paid 51% more than a New Mexico Supreme Court Justice.

We appreciate the legislature's recognition of this problem and we support your Commission's recommendation to increase judicial pay. Keep in mind though, that the Commissions'

recommendation still leaves district court judges making about 8% less than the average New Mexico lawyer and about 40% less than the average solo practitioner.

While a pay increase moves us in the right direction, low pay is not the only problem. Another problem is that very few attorneys are willing to give up their practice for what could be a short tenure on the bench. Let me give you an example. If a vacancy occurs in an election year, the attorney must close his or her practice, learn a new job, do the job, and must begin campaigning immediately to win a partisan election in a matter of months. For some of you that may sound like fun but for attorneys, leaving one job to potentially lose another is not appealing. I will not even get into the challenge of hiring employees who could also lose their jobs if the judge is not elected.

Your Courts, Corrections, and Justice Committee has endorsed a constitutional amendment that will start to address this problem. The amendment will allow a new judge to serve at least one year before being required to run in a partisan election. We know that this will encourage more attorneys to apply for judgeships; we have already seen an increase in applicants to fill current vacancies ~ when elections are two years away. As importantly, the amendment will also create greater stability and reduce delay for litigants, whose cases will not have to be reassigned to a new judge. We ask that you support this amendment.

A pay increase and the amendment are only partial solutions to the challenge of attracting well-qualified judicial candidates. There is more that must be done. We must find comprehensive solutions that will remove the role of politics in the selection and election of New Mexico's judges and we look forward to working with you to find those solutions.

Doing our best work requires that judges are trained from day one. Everyone needs training when they take on a new job and judges are no exception. Asking a judge to take the bench, as we do, without any training on how to be a judge is like asking the outfielder to replace the umpire during the 7th game of the world series. There is no doubt the outfielder has been watching the game ~ but the view from behind the plate is much different than the view from the outfield.

While new judges need training before they take the bench, all judges need ongoing education. We all need to reinforce our skills, and stay current with changes in the substantive law, procedural rules, and the best practices in case flow management. Many other states provide year-round robust in-person and web based training for judges and staff. We must do the same.

Why don't we do this? It comes down to money.

The Judicial Education Center is based at the University of New Mexico and funding for training comes from fees on traffic citations. These fees have declined by 31% in the past eight fiscal years. As a result, training continues to be reduced if not outright eliminated for some. Our judges are primarily trained at one annual conference and the majority of our employees receive no training. The money is simply not there to do what we should.

To build and maintain a qualified and competent judiciary capable of fulfilling its mission, we must expand and modernize judicial education in New Mexico. We are requesting \$650,000 for judicial education just to return us to our 2012 funding level. What will we do with this money? What other states have done: we will expand online course offerings and provide regular ongoing training for judges and staff; locally, regionally and statewide.

The importance of education for judges and staff cannot be overstated and I ask that you support this request.

Let me turn now to our court operations.

The task of building the best judiciary requires a clear understanding of the work being done. Identifying the problem is critical to implementing the right solution. If your car won't start you need to know what the problem is. Is it the battery, the starter, or an empty gas tank?

We have initiated several important studies of our judicial system that will help us identify potential problems. First, we have contracted with the National Center for State Courts to conduct a new workload study of the district, metropolitan, and magistrate courts. What we hope to learn is how we might streamline processes, improve efficiencies, reduce delay, and identify where additional judges and staff are needed.

Next, we have also obtained a grant from the State Justice Institute to fund a first-ever evaluation of appellate court processes. And finally, our courts will continue to evaluate internal processes and procedures, aided by nationally recognized performance measures.

These studies are important. They will help us improve how we do business and they will tell us what resources we may need to request from you. So, stay tuned.

In the meantime, there are three areas where we can begin to make immediate improvements. That gets us to our second question: How can we be better?

- We can simplify and streamline our organizational structure and improve case management;
- We can expand our use of technology to improve efficiency, increase services, and reduce delay; and
- We can improve the public's access to - and information - about the courts.

Let's begin with those areas that require your support.

First, we have two proposals aimed at simplifying the judiciary's organizational structure. Both of these proposals have been endorsed by your Courts, Corrections, and Justice Committee.

New Mexico has 311 judges and justices in 197 court locations. We have 7 different types of courts: a Supreme Court, a Court of Appeals, District Courts, Metropolitan Courts, Magistrate Courts, Probate Courts, and Municipal Courts. Some of these courts are operated and paid for by

the state, others by counties, and still others by municipalities. The vast majority of states have fewer court types than New Mexico.

Multiple court types, like those we have in New Mexico, many with overlapping jurisdiction, are inefficient, create delay, add to scheduling difficulties and are downright confusing for litigants.

Some of our smaller communities have as many as four different types of courts. Let's look at Clayton. I had the pleasure of visiting Clayton last year. Clayton's population hovers around 2,800 citizens. Yet they have a district court, a magistrate court, a municipal court, and a probate court. All are located less than a mile from each other. The magistrate, municipal and probate courts have a combined total of less than 1800 cases. Enough for one judge. Whether or not the City of Clayton or Union County wants or needs that many courts is not the issue; they have to have them. Why does any community have to have all of these courts? Because our law requires it.

Probate courts are constitutionally required in New Mexico, leaving us as one of only 13 remaining states operating these separate courts statewide. And, once you have 1,500 citizens in your city you must have a municipal court even if your magistrate court is capable of handling the caseload.

More courts lead to more problems. For example, inconsistent rulings, judge shopping, duplication of services and the inefficient use of city and county resources that might be better spent on other community needs.

And, it is a public safety issue. The more courts there are, the more places police officers and sheriff's deputies have to be. Multiple courts with overlapping jurisdiction create scheduling conflicts for courts. It takes officers off the street, and creates delay when a case has to be postponed because an officer is testifying elsewhere. This simply doesn't make sense.

So, how do we fix this? Let's take some small steps in the right direction. We have two, no cost, good government proposals this session.

Currently, cities with populations under 1,500 may have their municipal cases heard in magistrate court. Senate bill 173 gives local municipalities with populations over 1,500 this same option.

Similarly, Senate Joint Resolution 8, gives county governments the option of transferring jurisdiction over probate matters to the local magistrate or district court.

Under both proposals, the transfer would occur only upon the request of the municipality or county government and with the approval of the Supreme Court. Requiring the Supreme Court to approve the transfer will ensure that the local magistrate or district courts can handle the cases with current resources.

The transfer also will not occur until the expiration of a sitting judge's term, so no judge will lose his or her position. And, both of these proposals will allow local governments to determine how best to allocate their resources without any additional cost to the state.

It is hard to imagine why anyone would oppose this legislation. It does not require anything but only creates options. Why wouldn't a community want the option to create a more efficient less confusing court system? Let's begin to build a better system with these good government proposals which are good for our citizens.

We also have three technology based funding requests which need your support.

First, to improve transparency, we are seeking \$1.8 million in one-time funding to make more than 80 million pages of court documents accessible to the public without a trip to the courthouse. Right now, the law prohibits us from providing documents online, without removing personal identifying information. Individuals who want these records must request them by mail or in person. The requested funding will allow us to purchase the technology needed to redact this prohibited information and provide easy, online access to these documents.

Next, we are seeking \$450,000 in one-time funding to expand a pilot program known as online dispute resolution or ODR. ODR is a convenient, cost effective, and efficient way to resolve cases quickly through an automated negotiation process.

It has been successfully used for more than 20 years by companies like e-Bay and PayPal. Although it is a new concept in the judicial context, early results from other courts are very positive. A neighboring jurisdiction reports that more than 60% of the cases participating in ODR resolved within about four days, without the intervention of the judge. This is exciting. ODR resolves cases quickly, and frees up judges to focus on more complex civil cases, and on their criminal dockets.

Beginning in February we will pilot ODR in debt and money due cases in three judicial districts. With this additional funding we will expand the pilot to additional judicial districts.

Finally, we are seeking \$550,000 in recurring funds to expand the use of a remotely administered early-assessment program. In short, this program helps courts decide who can be safely released into the community pending trial. Only nonviolent offenders are eligible for this program. The offender appears from jail by video, and court personnel housed at a central location elsewhere administer an evidence-based screening tool. The program has successfully operated in the Bernalillo County Metropolitan Court for decades. And recently, we obtained a federal grant and expanded the program to five additional counties. It is now time to take the program statewide.

That completes the money requests. If you were to fund all of our general fund requests, including our base budgets, the Judiciary's percentage of the entire state budget will be a minuscule 2.55% down from our equally minuscule 2.68%.

I have to say, I feel like I have just finished an episode on "Shark Tank." You don't have to start shouting out your offers – just vote yes.

Let me wrap up by reporting on several projects that do not require funding or significant legislation; but do demonstrate your Judicial Branch's commitment to advancing judicial excellence.

The Supreme Court has joined a national effort to improve court efficiencies by consolidating courts administrative functions. We are doing the same by combining the administrations of magistrate and district courts within a judicial district.

Historically, the Administrative Office of the Courts (AOC) has centrally managed New Mexico's 47 magistrate court locations, including its 67 judges and 277 employees from its offices in Santa Fe. The AOC remains the only AOC in the country charged with managing the day-to-day functions of courts. As you can imagine, it has been difficult to respond quickly and manage local needs from a distance. Consolidating the administrative functions of our magistrate and district courts has several benefits:

All district and magistrate court clerks will be comparably paid and cross-trained, allowing us to move staff where we have shortages, thereby keeping courts open;

- Eliminating duplicative functions frees up staff and resources to provide new services to the public including self-help centers.

- We can coordinate and share other resources like jury pools; and

- Our AOC can focus on what other AOC's in the country do: operate statewide programs; provide our courts administrative support and ensure we are adhering to best national practices.

Consolidation began last fall with a pilot program in the 12th Judicial District (Otero and Lincoln counties) and has recently expanded to the 6th Judicial District. By the end of the fiscal, year all districts will have completed this successful transition.

Next, we are using technology to make navigating the court system simpler for all involved. In addition to working to expand the use of e-filing from civil cases to criminal, we have rolled out a program which allows parties to complete divorce and custody forms from their home computers. We launched this program called, "Guide and File," last October. Parties —most of whom are self-represented—are guided through a series of questions to complete court-approved forms. It is like Turbo Tax for divorce cases. Although, the forms must then be printed and filed at the courthouse, you can imagine that being able to complete the paperwork at home reduces the stress of an inherently difficult situation.

We are also working to find ways to improve access to and understanding of court processes. We know that many litigants simply do not have the money to pay for a lawyer or lack legal services in their community. To address this issue, the Supreme Court, working with the New Mexico State Bar, is exploring the use of a different type of legal professional in New Mexico. Currently recognized in some states, these professionals are often referred to as Limited License Legal

Technicians (LLLT). They are specially qualified and certified paralegals authorized to provide greater legal assistance in specific areas of the law.

Lastly, we really are moving into the 21st century. Like courts across the country we are working to use video, text, and social media to inform the public about court dates and important events, and educate on court processes and procedures.

Lt. Governor Morales, President Pro Tem Papen, Mr. Speaker, and honorable members of the New Mexico Legislature, your Judicial Branch is innovative, forward thinking, hard-working, and committed. But together we can do better. It takes courage to take the long view, to plan and build something that may not be completed during your term ~ or in some cases during your lifetime. But our citizens deserve no less than the best judicial branch we can offer. We take pride in our work and will continue to do our best to uphold the rule of law and provide fair, timely and equal access to justice for all.

Let me end this morning with the voice of a young woman who reminds us all why supporting and building a better Judiciary matters:

Dear Judge,

. . . I am a miracle. I woke up in the bottom of a dark hole and clawed my way to the top again . . . Please, if nothing else, remember me. The next time someone with a drug or alcohol problem stands before you too thin, scared, hopeless and angry, please think of me and who I have become because you let me get help... there is a tiny glint of hope in that addict's eyes. Please give it a chance to grow.

Thank you.