

State of the Judiciary  
Chief Justice Eric S. Brown, Ohio Supreme Court  
Message to Ohio Judicial Conference  
September 10, 2010

Justices of the Supreme Court, Judges, family members and invited guest: Good morning.

Judge Farmer, thank you for providing me the opportunity to deliver my thoughts on the State of the Judiciary. I also thank Mark Schweikert and the staff of the Judicial Conference in accommodating my Jewish heritage and observance of Rosh Hashanah.

Already, in the past few months, the conversations I have had with Judge Farmer and Judge Schweikert have been most helpful. And Judge Swift, I look forward to working with you to continue to ensure a collaborative and productive relationship as we move forward.

Judge Farmer, Judge Swift, let me assure you, the members of the Executive Committee and all the judges of Ohio that it is vitally important to maintain and strengthen the existence of the Ohio Judicial Conference.

To fully represent the interests of all judges in the state, we need a Conference that is vibrant and independent.

I think everybody in this room recognizes that this moment, this state of the judiciary address belongs to someone else. It belongs to Tom Moyer – the gentleman, the voice of reason, the judge with integrity who defined the qualities we all seek in ourselves.

We are keenly aware of the difference he made, and I might say, that he continues to make.

Tom Moyer took the Supreme Court from the challenges of the 1980s to serving as a model for other states. He quietly brought us into the digital age, he expanded the tools available for treatment and recovery, and he institutionalized the assisted conversations of mediation.

But his contributions far exceed any one program even more than his leadership in restoring the Ohio Judicial Center as important as he was to that effort.

No – his contributions, his life's work was far greater, far more important. Tom Moyer gave renewed faith to the people of Ohio that the courts are the fair and efficient venue for the resolution of their conflicts.

For us as judges, he restored our mission; he gave us new vitality. Tom Moyer reminded us of the Beauty of the Law and for that, his memory is with us today.

Justice Paul Pfeifer is worthy of our special praise for his leadership in the weeks after April 2nd.

The staff tells me that Justice Pfeifer had a diplomat's touch for communication, an intuitive ability of when to bring the staff together and when to send them words of encouragement.

And Justice Pfeiffer has been particularly helpful to me in providing for a smooth transition.

All of us witnessed a sign of the Moyer Legacy as the administrative staff that he assembled not only ensured the continued operation of the court, but also in their efforts to see to it that the Chief received a proper memorial service on May 1st.

Some of the staff is here this morning, starting with Administrative Director Steve Hollon; Assistant Administrative Director Rick Dove; Clerk of the Supreme Court, Kris Frost; Legal Resources Director Art Marziale; Fiscal Director Ronda Perri; Public Information Director Chris Davey; Attorney Services Director Susan Christoff and Legislative Counsel Jo Ellen Cline.

Chief Justice Moyer's personal staff, who worked for him for many years, has been critically important in providing continuity and helping to ensure the high degree of professional service that people came to expect from the office of Chief Justice. I am pleased to have them serve on my personal staff.

There are others from the Supreme Court who are here today, and I ask that they all stand to be recognized.

Many of you know their professionalism and dedication from their work on a daily basis. And now, I can add that their brightest qualities helped guide the court through challenging days.

In light of everything that has happened these past few months, I wish to speak with you this morning about transition, about change, about movement in matters both great and small.

This may seem oddly out of place when discussing the state of the judiciary, because our professional footing as judges is so firmly set in the past.

Yet the work of the courts has expanded, our responsibilities reshaped by our dockets, reshaped by the complexity of the problems that society lays at the courthouse door.

Transition in the courts? Yes, most profoundly.

Every day, every single day that we pull our robes up over our shoulders we manage the change society throws our way.

Take for example the judges in Cuyahoga County. Last year alone, 14-thousand mortgage foreclosures were filed in the courts there. That's more homes than you'll find in medium-size city.

The judges had to manage change just to keep up with the flood of filings, and I'll discuss more about that in a moment.

As business litigation grew more complex, more specialized judges such as Beth Myers and Steve Martin in Hamilton County volunteered to test the feasibility of a commercial litigation docket.

Judges from Franklin, Cuyahoga and Lucas Counties also are participating in the pilot project that, so far, has met or exceeded most everyone's expectations. I look forward to reviewing the final report on the pilot project as we determine how best to proceed.

As more people in Ohio live longer, Judge Tom Swift recognized the need to keep pace with the aging of the population. His ability to see a transition before it arrives is why next month Ohio will hold its first ever Summit on Aging.

Most every judge in most every county has had the grave task of managing budget cuts these past years – some more severe than others.

In some courts, attorneys and administrators were forced to take time off without pay, while others were forced to make layoffs.

These are difficult times. The demands on the courts continue to grow while precious resources do not keep pace.

It's important for us to take into account possible cutbacks in the state's budget and the reality that local budgets may not fare well in the next state budget cycle.

We must accept our responsibility as good stewards of public resources, while upholding our constitutional responsibilities to provide access to our courts, and to provide open and efficient venues for the resolution of disputes.

Sometimes this will require collaboration, and sometimes it will require choices, hard choices. But most of all, it will require creativity on the part of judges.

Despite these dual challenges of case loads and budget cuts, we must move forward.

We must not be content with solving the problems of today at the peril of addressing the promise of the future.

We must prepare for change in order to ensure that the people of Ohio have continued access to courts that provides them a reasonable opportunity for a fair hearing of their matter in a timely and affordable manner.

Improved technology is one example.

If implemented properly it will increase productivity and cost effectiveness as well as promote transparency and access to the courts.

If you need convincing about the importance of moving ahead with technology, talk to one of the judges from the Montgomery County Common Pleas Court, which has moved ahead with electronic filing knowing that it will be critical to managing the case loads of tomorrow.

I am personally aware that Franklin County is not far behind, and I have already begun conversations about e-filing in the Supreme Court.

Sometimes transitions result in heartburn and chaos, but these challenges require us as judges to be creative. Sometimes we simply have to put a new set of eyes on an old set of problems.

Here's an example.

A few weeks ago I met with judges in Cuyahoga County, Nancy Fuerst and Eileen T. Gallagher, along with magistrates, mediators and housing advocates.

Judge Fuerst is the Administrative Judge and Judge Gallagher oversees the Cuyahoga County Common Pleas Court foreclosure mediation program.

Joining me from the Supreme Court were Stephanie Hess, who you all know for her leadership of the Supreme Court Case Management Section, and Jacqueline Hagerott, who I'm sure you know for her work regarding court sponsored dispute resolution programs.

Here's what the judges told me: if a lender and a homeowner are allowed to use dispute resolution to work out a mortgage agreement, the time it takes to mediate such a case and try out the solution often requires more than a year of meetings and phone calls and the collection of documents.

If mediation is allowed to run its course, the case could easily stay on the judge's docket for more than a year – surpassing case management time guidelines.

In other words, for doing a good thing by allowing the lender and the homeowner to work out and try out a sustainable payment agreement, the judge could get singled out for exceeding reporting standards.

By the way, everybody in the meeting knew this problem could be magnified in a few weeks when 320-million dollars becomes available to Ohio homeowners facing foreclosure through the Ohio Hardest Hit Fund.

This federally funded program has built-in time posts that could cause delays in foreclosure cases pending on court dockets.

Again, for the program to work the way it's designed, the judge with responsibility for the case could exceed the 12-month guideline for completion of foreclosure cases.

In response to this inherent conflict, the Supreme Court, working with judges and staff in Cleveland, quickly developed a pilot project to test the feasibility of a few significant changes for reporting on those mortgage foreclosure cases assigned to mediation.

Under the pilot project, such a case would not be listed as active for reporting purposes, but rather would be separately listed on a mediation status report. Procedurally, nothing would change, but the proposed system removes the impediment of statistical reporting as a reason for not sending a case to mediation.

Once the case is in mediation, it will still be monitored statistically, but it would not be reported as overage as part of the judge's traditional case load.

Nationally, some courts are being criticized for speeding through foreclosure cases, effectively limiting the possibility of working out a sustainable payment plan between the homeowner and lender.

Many foreclosure cases are like that: typically, when the homeowner abandons the property these cases can proceed quickly through the legal process. But that doesn't mean that it should be the way all foreclosure cases are managed.

The plan developed for Cuyahoga County gives the judges the tools to tell the difference between cases that can be expedited and those that need just a bit more time so they can be resolved to the benefit of all parties.

If you think changes such as these could help in your county, please let us know. We are willing to look at expanding the pilot project.

Here's another example that addresses an urgent need while simultaneously avoiding added expense.

The Supreme Court has long supported moving toward full-time professional judges in order to avoid the appearance of a conflict between a part-time judge who presides over cases one day only to appear in a different court the next day as an attorney representing clients.

This week, two County Courts with part-time judges in Montgomery County made the transformation to Municipal Courts with full-time judges. The two remaining County Courts there will be eliminated over the next 11 years.

Belmont County is considering a similar consolidation, and there have been numerous suggestions that consolidating courts in Mahoning County may be an important consideration for addressing budget, facility and safety issues in Youngstown.

This year the Supreme Court tested the first group of interpreters to be certified as court interpreters without requiring the use of a certified interpreter.

The Supreme Court sought to ensure that local courts had access to interpreters with in-depth knowledge of both foreign languages and legal terminology while at the same time recognizing that a rule requiring the use of certified interpreters could be prohibitively expensive.

Structuring the program this way makes efficient use of court resources while also helping judges manage the growth of cases involving those who are not proficient in the English language.

The Ohio Judicial College this week unveiled a new effort to expand the reach of judicial training on ASTAR and science-related topics by way of on-line self-study courses.

Topics include neuroscience evidence, addiction treatment technologies, nano-science and most importantly the role of judges in determining the admissibility of scientific evidence.

I am told that the programs are designed to be truly interactive with mid-course quizzes and opportunities to comment about the coursework material.

Judges are eligible for up to six hours of credit, and the long-term goal is to use this model to allow broader, more convenient access to science related topics. It's the first of its kind in the country, and we hope to build on its success.

Using on-line video presentations when we once met in classrooms, reshaping our statistical measurements to give lenders and homeowners an opportunity to agree on new lending terms, and consolidating courts while maintaining the public's access are just a few examples of how the courts must adapt to new economic realities.

Confronting these new economic realities is not an option, it is our responsibility.

We as judges, we as leaders of the judiciary must recognize that we must renew our efforts to ensure that the people of Ohio can rightfully place their trust and confidence in the courts.

The people have faith in the courts when the face of the clerk, the face of the bailiff and the face of the judge is one they can identify with – one that says to them that all people, no matter their skin color, their religion or their sexual preference, will be afforded a fair trial.

The people have faith in the courts when litigants have adequate legal representation.

The people have faith in the courts when we as judges bring order from the chaos of some legal proceedings.

As judges we are responsible for guiding the search between hearsay and facts. We guide the search for truth, the search for justice.

As judges we will confront the challenges of today and those of the future in much the same manner that we have in the past: by applying our breadth of knowledge, our depth of understanding so that we may fairly apply the rule of law.

I am honored to serve as your Chief Justice and I thank you for providing me this opportunity today.