

State of the Judiciary
Chief Justice Maureen O'Connor, Ohio Supreme Court
Message to Ohio Judicial Conference
September 13, 2012

Good morning.

Thank you Judge Swift for that introduction. And thank you for your leadership as chair of the Ohio Judicial Conference.

The officers and members of the Judicial Conference Executive Committee, the staff of the Ohio Judicial Conference and the Supreme Court Judicial College should also be commended for offering yet another interesting and educational program this year.

My colleagues from the Supreme Court are all here as well. Paul Pfeifer, Evelyn Lundberg Stratton, Terry O'Donnell, Judy Lanzinger, Bob Cupp and Yvette McGee Brown. We don't always agree on everything, but we are unanimous that the Ohio Judicial Conference Annual Meeting cannot be missed.

We have to get CLE credits too.

Much has occurred since my first State of the Judiciary Address, and there is plenty to talk about today.

I always look forward to this annual conference because it is an opportunity for us to reflect on the administration of justice.

The daily demands of the courthouse, the crush of our caseloads, the magnitude of our work, offer us precious little time to step back and reflect.

Events like this annual gathering are the opportunities we have to take stock of what we do and consider how we might improve.

So let's seize this opportunity and spend our time together today and tomorrow reflecting on what we can do better. How can we be more efficient? What could we be doing differently?

These are questions we should always be asking as public servants. But, the difficult times we live in make it an absolute imperative.

Last year when we gathered for this conference, I spoke to you of how the Great Recession has caused courts everywhere to face challenges not seen in a generation.

Today I want to take stock of some of the things we are doing to make the courts more efficient, encourage you to continue in your efforts at the local level, and make the case that our argument

for adequate court funding – including adequate judicial compensation – is directly tied to our success in building more efficient courts.

It is inspiring to see courts in every corner of this state working to continue the professional administration of justice in the face of sometimes austere fiscal conditions.

It's often said that necessity is the mother of invention, and these indeed are inventive times in Ohio's courts.

Let's start with a court that makes vital decisions everyday in the Moyer Ohio Judicial Center but often gets overlooked in the shadow of the Ohio Supreme Court. That is the Court of Claims.

The Court of Claims has significantly reduced personnel costs through attrition. Nine staff positions have been eliminated since January 2011.

The court also reduced and will continue to reduce discretionary spending on supplies and maintenance by eliminating the purchase of unnecessary books and redundant software packages, and moving toward a paperless system.

Going forward, the court will realize savings by using a shared-services approach with the Supreme Court for support services such as Information Technology and printing, much like the executive branch does.

These changes have resulted in savings of almost three quarters of a million dollars annually.

All the while, the Court of Claims has been able to reduce the time it takes to decide cases.

Many of these changes have occurred under the leadership of the court's new administrator, Mark Reed, who has been willing to come in and make tough choices and never be afraid to ask how things can be done more efficiently.

Outside of the capital city, courts across Ohio are engaged in efforts to improve efficiency.

As just one of many examples, there is a program taking hold in several courts that offers an innovative approach to one of the most persistently contentious issues we see in litigation: child custody in divorces.

A program called Early Neutral Evaluation is helping families going through divorce or a legal separation to resolve conflicts while saving the courts' time and money.

It has been successful in Marion County, and officials in Hamilton County Domestic Relations Court recently held a training seminar to learn about adopting the innovative practice.

As a type of alternative dispute resolution, the program allows parents and their attorneys to meet to discuss possible financial and custody solutions without having to go before a judge and without involving their children.

Hamilton County expects to be able to resolve cases more effectively for the families, just as Marion County has experienced a 70 to 80 percent success rate in resolving divorce cases before they would have gone to trial.

Another area where we are making progress is in local court consolidation.

Local government officials in several areas around the state have approached the Supreme Court for statistical evidence to support proposals for consolidating judgeships because they, too, are searching for increased efficiencies.

In recent months, Supreme Court staff members have participated in discussions with officials from Mahoning County, Sandusky County, Seneca County and Trumbull County on the feasibility of proposals to consolidate judgeships in their court systems.

We have to find new ways to operate that demonstrate we are running efficient organizations.

That's the selling point funding authorities want to and need to hear.

While we can make the case for more funding we have the reciprocal responsibility of better management and use of those dollars ... we have to be more efficient.

Former Governor George Voinovich made it his mantra, and it is as true today as it was when he led us through our last big fiscal crisis in the 1990s: We must work harder and smarter and do more with less.

So I urge all judges to examine what you do, how you do it and identify efficiencies, eliminate inefficiencies and adopt an attitude that rejects the justification for mediocrity ... "That's the way we've always done it."

Moving on ...

Last year I announced the formation of the Task Force on the Funding of Ohio Courts, which is doing a top-to-bottom assessment of court funding and how we can improve efficiencies.

Their work has proven difficult, as we have found that it is no easy task to identify the total amount Ohio spends on the judicial system from all the various sources of funding nor to identify how much money is generated by the courts through costs and fines. And that's just the starting point. Unless we know where we are, we are at a disadvantage when trying to identify where we want to be and how to get there.

The work is difficult, but it will continue throughout the next year, and I am indebted to all the judges who are working on that body, including several with us here today.

But you know what? Our efforts to improve the justice system are not just about dollars and cents. It also means looking at public policy and the law. For example, capital punishment.

Last year, we spoke of the creation of a Joint Task Force to Review the Administration of Ohio's Death Penalty.

After five meetings, the group is hard at work discussing and debating topics that cover a lot of ground on this important and complex issue.

A sampling of some of the issues raised includes:

Looking at the accreditation of crime labs and coroners to ensure that DNA evidence used in death penalty cases is processed correctly.

The task force is also looking at the training for both defense counsel and prosecutors who handle capital cases and the training for judges who have these cases before them. The group is examining increased record keeping and reporting to the Supreme Court in an effort to maintain better data on death cases, and additional guidance on when judicial intervention is appropriate in cases of ineffective counsel.

Discussions that encompass the very core of the death penalty process are taking place. For example is uniformity in its use better achieved through a state review process rather than a local prosecutor making the decision to indict?

The task force is looking, too, at race and ethnicity in capital cases, proportionality issues and whether or not any recommendations are needed regarding "making the punishment fit the crime."

Judge Brogan is doing a magnificent job as chair and the judges who are participants are dedicated and insightful and a wonderful asset.

I'm looking forward to the final report from the group on ensuring that Ohio's death penalty is administered in the most fair, and judicious manner possible.

Another area identified for change relates to both lawyers and judges.

What about efficiencies on how we as the Supreme Court regulate the practice of law? One area that for years I have heard lawyers and judges complain could be made better is Continuing Legal Education requirements.

CLE reform could be on its way to some major changes.

I hope each of you submitted feedback during the comment period that ended in early July.

From increasing the number of self-study hours, to earning credit for pro bono work, the proposed changes are intended to update some rules to match today's world.

The Supreme Court will receive the results of the public comments as well as recommendations for our review and approval in October of this year. I'm hopeful we will have improvements to announce at the end of the year.

Courts are also working hard to do more in the area of access to justice.

I was recently on a panel discussion with ABA President Bill Robinson where we discussed how the funding problems facing courts around the country underscore the necessity of continuing to make justice accessible to all. We cannot let funding problems close the courthouse doors.

But Funding challenges are but one facet of the access to justice focus.

In Ohio, we are discussing creating an Access to Justice Commission to focus on access to civil justice for the underserved and marginalized of our communities.

The Commission would be staffed by an Access and Fairness attorney specifically hired to spearhead these efforts.

The model for the commission would be found by studying the twenty-seven other states which already have such commissions. I learned how other chief justices structured their programs by attending a national meeting of State Access to Justice Chairs in Jacksonville, Florida in May. Because of their established programs, we know what works and will apply that in Ohio.

The Access and Fairness counsel will work in several areas related to access such as the Americans with Disabilities Act, assisting Bruno Romeo and our Interpreter Services staff in increasing access to justice for those with limited English proficiency, developing a diversity curriculum for judges, and strengthening diversity on the bench and bar.

The Access and Fairness attorney would focus on continuing legal education requirements in this area, working with the affinity bar associations, and combating the existence of biases.

Improving efficiency also requires that we collaborate in the administration of justice at the leadership level.

Last year I announced that we would be forming a working group to explore a process for building a more collaborative model among the Supreme Court, the Judicial Conference and the various judges associations.

There has been true movement toward this end through the creation of the Judicial Leadership Council.

Members of the council will include the seven Justices on the Supreme Court, the five members of the Judicial Conference executive team and a representative from each of the judicial associations.

On a quarterly basis, this group will sit down and discuss matters of interest to the judiciary.

An ongoing practice implemented since I became chief is frequent meetings with Mark Schweikert to discuss anything from legislation, to policy to better communication. These meetings involve me, Mark and Steve Hollon. I find them very helpful, and I hope Mark does as well.

We are committed at the Supreme Court to having the best judiciary possible, and that can only be done through open and continual communication.

We already have one of the most unique judicial structures in the world. This came into sharp focus for me as a result of attending the International Academy for Judges at the University of Haifa Israel for almost three weeks this summer.

Twenty judges from around the world gathered to compare constitutional law, bio ethics and cyber law ... Lest you think it was a vacation there were classes five and a half days a week from 9 a.m. to 5:30 p.m. ... The Constitutional portion was so enlightening.

We judges in the United States and in Ohio are entrusted with an awesome responsibility to interpret our Constitutions.

Other countries' systems of justice don't require their judges to take this broad interpretive view. It's a great tribute that this authority is placed on our shoulders and underscores our nation's belief in the judiciary the public's confidence in us.

It's much different in Romania, Albania, Uganda, Philippines, Rwanda and the other countries that were represented at the academy.

Internationally, courts serve a ministerial function – even in democracies. Only constitutional courts have the authority to interpret the law.

While here in Ohio, all judges from the Supreme Court to the common pleas court have that authority.

I point this out to remind us all of the awesome responsibility we have. Our efforts to improve our system may at times seem daunting, but I am always encouraged in knowing that what we strive to improve is something that is already the envy of the world.

I want to close by addressing a couple of items that are of particular interest to judges as professionals.

First are the changes to our pension system that were passed yesterday in the Legislature.

I've met with PERS leaders to obtain a better understanding of the impact of the legislation on Ohio's judges.

It's important to remember that the cost of living adjustment for retirees will not disappear. It's true that a 3 percent increase will no longer be automatic.

But going forward – if the legislation remains as is – the COLA will either match the consumer price index if it's lower than 3 percent or be capped at 3 percent if the consumer price index is higher. Although the changes to the pension system will be dramatic, it is important to remember that these changes are necessary in order to ensure a solvent system into the future.

Before considering retirement, I encourage you take the time to understand exactly what the PERS changes would mean to you and meet with a PERS representative.

While we're talking about retirement I would like to speak briefly about the topic of visiting judges.

If some of you do decide to retire, you may also be considering continuing to serve on the bench in a limited capacity as a retired assigned judge.

Please keep in mind however, that the Supreme Court has de-emphasized the use of retired assigned judges over the last few years in favor of using sitting judges under reciprocity arrangements.

The retired assigned judge expenditures for courts of appeals, which totaled \$179,062 in Fiscal Year 2008 has declined every year since.

The amount was \$132,132 in FY 2009; \$34,848 in FY 2010; \$23,166 in FY 2011; and only \$660 in FY 2012.

We have many sitting appellate court judges to thank for making this drastic decrease possible. Their willingness to accept assignments outside of their home court and serve as visiting judges in other appellate courts has been invaluable in reducing costs in this area.

Because of this reduction, the retired assigned judge compensation overall – including that directed to common pleas courts – is 25 percent less in FY 2012 compared to five years ago.

As you can see, there have been savings realized in this area of the judicial branch.

Of course, we will continue to use any of the 159 retired assigned judges already on the eligible to serve list in emergencies or when it makes financial sense. But we will continue to focus on maximizing the efficient use of our resources in general and in this area in particular.

In addition, please know that it's OK for sitting judges who need a visiting judge for reasons other than a conflict to recommend a visiting judge.

But don't ask for a specific judge in a conflict case. A conflict case takes you out of the decision-making process altogether.

Since we last spoke, we have partnered with the Association of Municipal and County Judges to form a working group to examine reactivating the acting judge reimbursement formerly part of the court's budget.

I thank Judge Reddin and the other judges and staff who came together to examine the issue and make a proposal of what should be included in the legislation that would have to be enacted to restore the reimbursement. The proposal was submitted to the court in August and will receive priority as we begin our budget process this fall.

Funding will have to be scrutinized and legislation enacted but I said we would revisit with an aim to restoring reimbursement and I will keep my promise.

I recognize that being a judge is not an easy job ...

There's a lot on your plate. There are decisions you've made during the day that keep you awake at night wondering if you made the right call. But you are not alone.

I want to remind you of the network of support that is available to you every day.

First, please remember that the Supreme Court is a resource you can turn to. We are here to help. You can talk in confidence if a situation arises that's troublesome. The Supreme Court staff can provide guidance and advice on many topics such as case management, specialized dockets, and mediation. As many of you know, technical assistance is also available.

Second, there are others you can turn to as well: the Ohio Legal Assistance Program or the Judicial Assistance Group or your colleagues. A judge is not immune to substance abuse, mental health issues stress and anxiety. Personality conflicts arise among multi-judge courts. Some judges can be bullies. In other words, judges have problems at the office just like other professions. The difference is the public arena in which judges find themselves. A problem, whether personal or professional can swell out of proportion when it is unaddressed. Please for your sake, for the sake of the court as an institution and for the community you serve, get help at the first signs of trouble.

It's not easy pointing out to a colleague a mistake in judgment, but sometimes those difficult conversations are necessary even if they are unwelcome.

It's not easy to intervene when there is a problem among colleagues, but if you don't who will? The Supreme Court will help you if you need our assistance, and the JAG is always available.

I encourage you to be proactive with any concerns.

As I close I think that you should be aware that I continue to actively discuss judicial compensation with the General Assembly. I have met with all four leaders in the Legislature and a majority of the members who are also lawyers to talk with them about compensation and other improvements to the judiciary.

And you should know that these discussions have not fallen on deaf ears – we do have advocates in the General Assembly who agree that judges are underpaid in Ohio.

I have advocated for the creation of an ongoing elected official compensation commission which would make recommendations to the General Assembly on a regular basis regarding compensation for all elected officials in Ohio, from county commissioners to the Governor. Judges cannot isolate themselves when it comes to increased compensation. We have to be willing to be part of a comprehensive compensation review for elected officials.

Since 2008, no judge in Ohio has received a raise. And according to the records we maintain, this has been the longest stretch of stagnation in judicial salaries since the 1950s.

A national survey released in July noted that Ohio ranked in the bottom half of all 50 states for judicial pay.

I can make no promises, just as those who would support us can make no promises, but I am hopeful this issue will be addressed very soon. I promise to keep you up to date on any developments.

Keeping you up to date is a great segue into the topic of Court News Ohio.

It is a way that the Supreme Court is available as a resource to you as a clearinghouse of information.

We recently launched a new program that is a first in the country and that I want to encourage you to utilize.

Court News Ohio is a dynamic multiplatform news and information program that offers you the latest developments in case law, rule changes, and administrative matters in the Ohio judicial branch. The program includes a website with daily news, a monthly news magazine that you can get in print or online, and even a TV program on the Ohio Channel.

If you haven't checked it out yet, I encourage you to visit courtnewsohio.gov. Contribute news, read about topics specifically related to the judiciary and showcase positive things happening in your court. CNO has just launched, and the reaction has been very favorable. Check it out.

As one last final piece of business, we will say goodbye to one of our colleagues at the end of this year. It's no secret that Justice Evelyn Lundberg Stratton has been torn between doing her elected job and focusing on ways to improve the lives of veterans and those with mental illness.

She will soon leave the court to devote herself full-time to those causes, serving those who served their country and those of our citizens who suffer from mental illness. Thank you Eve for your distinguished service on our court and to the judiciary as a whole over these many years. You will be missed.

Thank you for your time and attention today. Thank you for all you do every day to serve the cause of justice. And God bless you.