

State of the Judiciary  
Chief Justice Maureen O'Connor, Ohio Supreme Court  
Message to Ohio Judicial Conference  
September 12, 2013

Thank you Judge (*Jim*) James (*Stark County Family Court and OJC chair*) for that introduction and for the invitation to speak at the Ohio Judicial Conference's annual meeting.

I will offer my congratulations on your 50th anniversary in more detail at the gala event tonight, but suffice it to say that the success of this organization over its five decades is due to the dedicated time and talents of Ohio's judges.

Thank you all for your service then, now, and into the future.

I'd also like to add my recognition to all of the folks that Jonathan recognized. I had the good fortune of meeting with Jonathan. I think we're well served with Jonathan at the helm of the Ohio State Bar Association. I'd also like to recognize my colleagues that are here. We have Justice Pfeifer, Justice O'Donnell, Justice French, and I believe that Justice Kennedy is here as well. Thank you all for being here.

It's also a big honor to have Mary Moyer and Shirley Duncan here. Two women who not only give credence to the adage that behind every successful man is a good woman, but also are examples of many, many successes in their own right.

There's little doubt that the conference and the judiciary have changed much since 1963.

And as I look out on members of the state's judiciary, I can see more recent evidence of the tremendous change since the 2012 meeting. There are many new faces in courts across the state. In fact, we have experienced more changeover on the bench in the past year or so than at almost any time since the founding of the Ohio Judicial Conference.

Some of this change has been unexpected and sad, with the death of several of our jurists: Kathleen O'Malley with the Domestic Relations Court in Cuyahoga County, Judge Ted Klammer from the Lake County Probate Court, and, most recently, Judge Peggy Bryant from the 10th District Court of Appeals.

- Much of this change has come from a highly unusual number of recent retirements when at least 5 percent of the Ohio judicial branch left the bench by the end of 2012.

Change will continue too. We have received indications from several judges of their intention to retire soon.

In fact, our staff has further quantified the comings and goings of the state's bench.

And within the next six years, we estimate that nearly 100 judges will reach the retirement age and be prevented from serving another term and that doesn't take into consideration judges who may retire before the mandatory age limit.

This current and impending turnover underscores a couple important points.

First, it tells us that we all need to step up and help. In addition to the hard work of judging cases and administering our courtrooms, we as judges also have an obligation to participate in the broader judicial community.

With the turnover on the bench, there presents a opportunity for judges to step in and step up. The type of service you offer will vary according to your talents and interests and the community's needs.

You might serve as a mentor. We have many good new judges who are joining the bench and doing a fantastic job. Reach out to them.

You might consider serving in leadership in the Ohio Judicial Conference.

Maybe you will help with one of the individual judicial associations.

However you feel called to service, whether you are a new judge or a veteran, I encourage you to serve in this time of change on the Ohio bench and beyond.

The other area where this change raises an opportunity for action is the long-standing question of judicial selection.

As we witness historic numbers of vacancies occurring, it illustrates clearly how important it is that Ohio has the best system possible for selecting judges.

That's why I announced in May "Ohio Courts 2013," an eight-point plan to strengthen judicial elections in Ohio, to empower Ohio voters, and to support the highest quality judiciary possible.

The plan identifies a series of issues and poses questions surrounding specific potential reforms for public consideration.

Some of you may have been at my address to the Ohio State Bar Association when I unveiled my plan. Many of you have taken the time and care to read the plan and offer your ideas, which has been very helpful.

Today, I would like to report to you on where we are with this initiative, to encourage you to participate as we move forward, and to share with you some of the feedback that has come in on the plan.

I have said it many times and repeat it to you today: Ohio has one of the very best judiciaries anywhere in the world, and that's because of the men and women right here in this room today. But the recent and coming turnover on the bench underscores that we will not always be here and begs the question: Do we have the best possible system for selecting who will serve on the bench?

I have concluded that we can do better. Why? Because polls show that even though Ohioans want to continue to elect judges they believe that judges are influenced by politics, contributions, and other factors.

My plan starts with recognizing that Ohioans want their judges to be elected, then examines eight ways that we might improve judicial elections.

I want to briefly summarize these ideas for you.

#### 1) Should Judicial Contests Always Be Placed at the End of the Ballot?

- Ohio election law places judicial contests at the end of the ballot. Multiple studies demonstrate that ballot order matters.
- Candidates listed first get more voter participation.
- Contests and issues listed first get more participation.
- In recognition of this well-documented phenomenon, Ohio law already mandates that candidates' names be randomized.
- Should a similar approach be applied to the order of contests? Judicial contests come at the end of the ballot and one quarter of voters don't participate in these contests. Coincidence ... I don't think so. They even have a name for it ... ballot fatigue.

#### 2) Should All Judicial Elections Be Held During Odd Years?

- As an alternative or possibly in conjunction with the first idea, what if elections for the Supreme Court, appellate courts, common pleas courts, and county courts were held in odd years, like those for municipal courts?
- During presidential and mid-term elections, races for the judiciary get lost in the shuffle. The judiciary competes for attention with partisan candidates for president, senator, congress, governor and others who are able to shout their messages while we as the judicial candidates are only able to whisper.
- Would separate, dedicated elections for all judgeships receive the attention an independent branch of government deserves?
- Would voters benefit by knowing that all judges are on the ballot at the same time instead of some during even years and some during odd years?

### 3) Should Ohio Centralize & Expand Its Civic Education Programming and Institute a Judicial Voter Guide?

- Studies routinely show that citizens' knowledge of the judicial system is inadequate, and voter participation and engagement in judicial elections is less than in elections for the other two branches.
- People often say I don't vote for judges because I don't know the candidates or I vote because of a familiar name or I follow a slate card.
- This can be partially remedied by moving the elections to allow for greater showcasing of the judiciary and having more resources for voters to learn about the candidates.
- Should there be a statewide, Web-based repository for judicial candidate information and a formal body for conducting judicial debates? That would be a great start.
- With 30 days to vote, there's plenty of time for citizens to perform research about judicial candidates and that could start with a central repository of uniform information about each candidate on the ballot.
- Most voters spend more time researching what kind of products to buy online then investing time to find out more about candidates on the ballot. The program I'm proposing could be a boon to citizens gaining knowledge about the candidates and feeling empowered to vote.
- Finally, should the use of cameras in the courtroom in Ohio be expanded?
- Some communities' government access channels – in Medina and Massillon to name just two – televise municipal court proceedings. What a great way to offer a learning experience for the voters. End result they see our courts in action and have real knowledge of our system.
- The state Supreme Court has successfully utilized cameras in its courtroom for more than 10 years, and there is evidence to support the idea that more transparent courts result in more public confidence. We have expanded cameras to now include Court of Claims proceedings in an experimental pilot program.

### 4) Should Ohio Remain the Only State in the Union that Holds Partisan Primaries Followed by Non-Partisan General Elections for Judges?

- Twenty two states elect their judges in competitive elections. Seven hold elections where candidates' party affiliation appears on the primary and general election ballots.
- Fourteen have non-partisan elections where the party affiliation does not ever appear on the ballot.
- Ohio is the only state that holds overtly partisan primaries with ostensibly nonpartisan general elections.

- Should party affiliation have any bearing on races for an office that requires absolute impartiality?
- Is it time for Ohio to join the other states that have abandoned party affiliation in judicial elections altogether?
- Some scholars and other observers have argued that party affiliation is a valuable cue for voters, particularly in low-information races like judicial races. I argue that it is a miscue and perpetuates the belief that politics matter in how a judge does their job.

5) Should Ohio Join the Other States that Have a Formal, Non-Partisan System for Recommending Nominees to the Governor to Fill Judicial Vacancies?

- More than half of Ohio's judges first take the bench by appointment to fill a vacancy rather than through an election.
- Thirty-six states have some type of formal system to bring together citizens from diverse backgrounds to carefully consider candidates for judicial office.
- Ohio has experimented with nominating commissions with varying degrees of success in the past.
- Cleveland is fortunate that Cuyahoga County has a successful program fulfilling this function.
- The American Bar Association has advocated this approach. Should Ohio adopt in law judicial nominating commissions for gubernatorial appointments?
- The larger issue at work here is direct accountability to voters especially when you consider the significant number of judges who run unopposed in elections.
- In fact, in last November's general election, two-thirds of the candidates on the ballot were unopposed.

6) Should Appointments to the Ohio Supreme Court Require the Advice and Consent of the Ohio Senate?

- In the federal system and in a handful of states, judicial appointments by the chief executive (the president or the governor) must be confirmed by the Senate.
- In fact, in Ohio from 1803 until 1851, the legislature was the sole body that appointed judges.
- Given the volume of appointments that are made each year, it might be impractical to have this requirement for all judicial appointments.
- But, what about for the highest court in the state, the body that also exercises superintendence authority over the entire court system? Should the Ohio Senate have the authority to approve appointments to the Ohio Supreme Court?

- This system could work effectively with the proper structure ... the criticism is of course that we don't want to duplicate the experience of the federal system ... to that I say shame on us if we can't devise a better system than what is being used in Washington.

#### 7) Should Ohio Increase the Basic Qualifications for Serving as a Judge?

- Another recommendation over the years has been to increase the number of years of practice necessary to run for or be appointed to a judgeship.
- Currently, an attorney needs only six years experience before assuming the bench.
- Across the United States there are varying requirements for legal credentials before becoming a judge from no prior years of practice to a maximum of 10 years.
- Three recent legislative proposals would have implemented longer years of practice requirements for common pleas (8 years) and appellate (10 years) judges, and Supreme Court Justices (12 years).
- Should Ohio increase the number of years required to serve on the bench the basis being more experience before taking the bench makes for a better experience on the bench?

#### 8) Finally, Should Ohio Increase the Length of Judges' Terms?

- This reform recommendation seeks to promote judicial independence while ensuring continued accountability to the public.
- Currently Ohio judges are elected to six year terms. Suggested reforms would keep municipal and county judges terms at this length but increase them for other courts up to 12 year terms for Justices.
- Would lengthening judges' terms be an improvement that would still hold judges directly accountable to the voters but allow them to spend more time concentrating on their jobs and less time campaigning?

Please let me emphasize again that each part of the plan is phrased in a question.

I don't claim to have all the answers. I submit it for public consideration and have established a process for bringing people together to reach consensus on judicial reforms.

In May I asked judges, lawyers, and the general public to read the plan and offer their views on strengthening judicial elections by visiting [www.OhioCourts2013.org](http://www.OhioCourts2013.org).

Each of you received an e-mail outlining the plan and encouraging you to read more at the website. Today, I'm renewing the call for your input.

When you visit the website, you will find a white paper with a thorough analysis of the ideas I have outlined in this speech, a resources section that consolidates the research from past judicial selection conferences with books and journal articles, and a forum for you to share your ideas.

This proposal was not developed in a vacuum. It is based on a careful review of previous statewide efforts to examine judicial elections in the state.

I met with representatives of many interested groups before the announcement to share the plan and solicit their feedback, including a conference call with the leadership of the Ohio Judicial Conference. I also met with the Ohio State Bar Association, League of Women Voters, and the leadership of the General Assembly and the Executive branch. I also presented the plan at the Ohio Constitutional Modernization Commission last month.

I encourage you to join the conversation by visiting the website and commenting on these ideas or bringing your own to the table. A number of you have already done this and I thank you for that.

After four months, here's a sampling of reaction the plan has generated. As you would expect, no consensus has emerged if analyzing just one of the eight points is any indication.

- As for the idea to hold all judicial elections in odd years, which stems from the need to address the voter drop off in judicial elections in even-numbered years, there were diverging thoughts. Some Ohioans oppose the idea reasoning that the more voter involvement the better. On the flip side, some Ohioans think that the more informed and involved voters – while fewer than those who show up at the polls in even years – would achieve better results based on principle and not popularity.

While significant, the plan to strengthen judicial elections is not the only item in front of the judicial branch. Briefly, here are some other issues we've been working on since I last addressed you.

We are continuing to augment services for deaf or limited English proficient litigants in Ohio courts.

Ohio courts accommodate approximately 80 languages and handle more than 25,000 cases per year that require an interpreter.

State and federal laws require that courts ensure the people in these cases can understand the proceedings.

In fact, the U.S. Department of Justice has fashioned several consent decrees with several states for failing to meet this obligation.

Ohio has been active for years in working hard to support the rights of people in our courts whose English ability is limited.

The implementation of Rule 88 was a major step forward in this area. Rule 88 was effective January 1 and now requires that a certified court interpreter be provided when one is available and offers guidelines for the appointment of interpreters.

I want you to know that I recognize this is not easy.

This is why, we are embarking on a major effort to assist you in this area as well as to educate and inform courts and the general public about the issues surrounding court interpretation.

- First, we have produced a bench card that will be distributed to all judges to provide additional guidance in handling these cases. In fact, copies of the bench card are available here today at a table in the lobby.
- Second, we are producing a training video for judges and court personnel that explains Rule 88 and how to achieve compliance. Look for a notice about the availability of the video online in the coming weeks.
- In addition, we are preparing a Web site, brochures, posters and other material that will be made available to you for display in your courthouses to inform litigants and others about rights and responsibilities in the area of language proficiency in the courts.
- Finally, perhaps the most effective tool to assist in this area is a language telephone line that you will be able to connect with live interpreters when needed and appropriate.
  - This free, round-the-clock, over-the-phone interpreting service offers interpreting in more than 200 languages.
  - The remote interpretation service is intended to operate just as though the interpreter is standing in the courtroom by communicating with the litigant about the judge's instructions or relaying questions from and answers to the prosecution or defense.
  - The right to a fair trial requires that all participants are fully involved and fully aware of what's occurring. By providing this service, we are ensuring that every citizen – including those who are limited English proficient – understand fully the court proceedings in which they are involved and truly have their day in court.
  - This new service also supports you in your job to fulfill this important obligation and in complying with the Title VI of the Civil Rights Act of 1964, Rule 88, and other statutory requirements.



I am very excited about these new tools that we have been able to bring together for Ohio to ensure equal access in our courtrooms, and I thank you for your continued help as we work together to address this important issue.

I want to close today by sharing with you a few more updates on important areas of interest.

The work of the Death Penalty Task Force and the Court Funding Task Force continues. Each has required more heavy lifting than anticipated. Consequently, their work will not be complete by the end of 2013.

The Death Penalty Task Force is meeting regularly, and engaged in work that generates passionate debate.

The Court Funding Task Force has been hampered by a lack of comprehensive data about funding sources and amounts in Ohio courts. We are gaining traction to be able to answer this ultimate question through a survey that was distributed at the end of June. So far there is a 75 percent response rate from Ohio courts. Could the judges who are in the room and have not responded please do so?

With each of these task forces, it's more important to be thorough than set an overly optimistic end date and rush to meet it. These issues take time to sort out and we want to do justice to this important work.

With the assistance of judges from courts all across the state, the Ohio Courts Network – a statewide justice information exchange system – has reached a milestone with more than 80 percent of local courts' case volume searchable online.

The centralized warehouse of case-related data enables courts and justice system partners to share information and to support functions such as criminal history reviews, protection order searches, pre-sentencing investigations, background checks, and pre-custody reviews.

In addition, some of the most recent data added to the OCN includes booking information about inmates incarcerated in Ohio jails and criminal, civil, and temporary protection orders.

Another newsworthy event for Ohio's judges is that there will soon be a new Disciplinary Counsel in Ohio for the first time in 16 years.

The Supreme Court announced last month that it had approved the appointment by the Board of Commissioners on Grievances & Discipline of Scott Drexel, a California attorney and former head of the equivalent office in that state.

Coming to Ohio is a bit of a 'downsize' for Scott. In California, there are nearly 180,000 attorneys and more than 2,000 judges. In Ohio there are 40,000 plus attorneys and 700 plus judges.

Scott will renew the commitment of the Office of Disciplinary Counsel to work with and train local bar grievance counsel to advance their investigative efforts.

Enhanced training for some of your court personnel is also an area where we've progressed since 2012.

The Ohio Judicial College has been hard at work assisting adult probation officers in meeting their new requirement for 20 hours of continuing education that went into effect January first this year.

As you are well aware, a second set of standards, for new officers, will go into effect January first next year that will require them to complete 18 modules on topics designed to give them foundational information for their new profession.

Developed by the Ohio Department of Rehabilitation and Correction in partnership with the Supreme Court and the Ohio Chief Probation Officers Association, the minimum training standards were a requirement of House Bill 86 with goals of standardizing training, reducing recidivism, and increasing public safety.

H.B. 86 has been in the news recently for another reason, and we judges have an important role to play in trying to solve the related prison overcrowding problem.

Late last month Ohio Department of Rehabilitation and Corrections Director Gary Mohr addressed the need to reduce the prison population and what sentencing and probation reforms could be instituted.

Some of the overcrowding initiatives included in H.B. 86 have not been as successful as hoped.

One thing is for certain, any attempt to stem the tide of growth is directly tied to sentencing. That's where you come in.

We as judges must be part of the solution because we are certainly part of the problem. We cannot take an attitude of out of sight, out of mind once offenders leave the courtroom.

We must be committed to working with DRC to see what improvements can be made. I welcome your input and ideas as I continue to meet and discuss judicial remedies to overcrowding with Director Mohr.

To keep up with news about this initiative and others I've mentioned, more and more of you are turning to the Court News Ohio program on the web, on TV, and in print to

digest news about the Supreme Court, the Ohio Judicial Conference, individual courts, and the judicial branch as a whole.

The news program turned a year old in July, and the number of people visiting the website and reading individual stories continues to climb.

I'm mindful that this annual address can be viewed as tooting our horn at the Supreme Court. While not intended to come across that way, I think it's important to give the state's judiciary an update of significant programs and initiatives under way at the statewide level.

But I will end these remarks by pointing to a few programs at the local level brought about by you, Ohio's innovative and invested judges. Here are just a few examples of many.

- Williams County Probate/Juvenile Court Judge Steven Bird is just one of many judges who put the goals of the 2008 Ohio Summit on Children on his agenda and they never left. Each quarter more than 60 professionals and concerned people from across the county meet at Summit Breakfasts to discuss challenges and obstacles to the safety, well-being, and permanent home environments of children in the county. Because of this constant communication about the local services on hand, Williams County is serving children and families more effectively. Several other counties folded this work into their Family and Children First Councils and those collaborations are also moving their counties forward in this important area
- There's a collaborative venture in Lucas County involving juvenile court Judges Denise Navarre Cubbon and Connie Zimmelman, the child welfare system, and schools. It's called "Pathways to Success" and it received a \$500,000 grant in May to improve the educational outcomes of youth in foster care. Research shows that children who change schools frequently make less academic progress than their peers, and children in foster care experience more school transfers. The court is one of 10 sites across the U.S. that received one of these grants.
  - Foster kids' academic progress also received a boost from a bill signed by the governor in July to speed up records transfers in cases of abuse or neglect when foster kids move to a different foster home and consequently enroll in a new school. After a complaint is filed, it authorizes juvenile court judges to order the immediate transfer of student records from the old school to the new school. Because of this closer collaboration between the courts and the schools, students won't be sitting at home waiting to be registered in a new district when they could be attending school.
- The judges of the Cuyahoga, Hamilton, and Lucas county common pleas courts also have earned a shout-out for voting to take their commercial dockets one step further from pilot stage to permanent program. Your work to provide a stable, predictable environment for Ohio businesses to operate has not gone unnoticed.

- One last shout-out concerns all the visiting judges who take assignments whether those assignments are next door or across the state. Often times these turn out to be difficult cases necessitated by a conflict of interest or the appearance of a conflict. I appreciate your taking Diane Hayes's call and Thank you for your service.

There are many, many more examples I could share, but please know that all your efforts are appreciated.

Before I conclude, there's one last item to mention.

Despite our best efforts, language reinstating the acting judge reimbursement was pulled from this year's budget bill. That's the bad news.

Here's the good news. When the General Assembly returns in mid-October, we are working with key legislators and have a promise that stand-alone legislation will be introduced. I have made this my priority with the legislature in the next few months. Stay tuned.

Thank you for allowing me the time to speak with you today. Congratulations again to the Conference on its golden anniversary. I look forward to mingling a little more tonight. Most importantly, however, thank you to all of Ohio's judges for all you do each day to further the cause of justice in the state. God bless.