

State of the Judiciary
Chief Justice Costa M. Pleicones, South Carolina Supreme Court
Message to the Legislature
February 24, 2016, in Columbia, South Carolina

Preamble

Mr. President, Mr. Speaker, distinguished members of the General Assembly. I appear before you today to present a broad overview of the current state of the least powerful, most vulnerable, co-equal branch of government. Least powerful because we have no purse, no police, and no veto pen. Most vulnerable, because given the aforementioned absence of power, there always exists the possibility of a threat to our independence. The only thing that legitimates the authority of the Judicial Branch is its credibility which I pledge to you will be maintained during my tenure as your Chief Justice, as it should be.

I know that you share my concern that we observe and maintain the constitutionally mandated separation of powers, a doctrine fundamental to our form of government. I look forward to working with you to insure that the judiciary remains an independent coequal branch.

I thank you for bestowing upon me the greatest honor of my professional career, the privilege of serving our great state as Chief Justice, and I begin with the inescapable observation that the Supreme Court is an institution in transition. Less than two months ago we said goodbye to a long-serving member of the Court, and only three weeks ago you elected our newest member. Soon you will elect my successor as well as a justice to fill the vacancy created by my departure. Thus, we will experience a 40% turnover in the composition of the Court in just over the space of one year.

Through it all, the institution abides. The men and women who serve the institution come and go, and it is vital that you continue to elect people of character, possessed of intellectual honesty, not those who may simply pass an ideological purity test.

No less a sage than the late Antonin Scalia observed, "The judge who always likes the result he reaches is a bad judge." Scalia was himself an ideologue, but a brilliant one who knew that a judge must subordinate personal biases to the dictates of the law. I agree. In America, judicial systems are purposefully designed to be the non-political branch and we are committed to insuring that our branch remains an evenhanded, nonpartisan dispenser of justice both in perception and in practice. The turnover on the Court is not a cause for concern because of the stability of the institution itself. That institution, and indeed the entire judicial system of South Carolina, endures and succeeds owing to the commitment to justice on the part of our judges and the staff who support us.

I am extremely proud of the successes achieved by our State's hard working and talented judiciary in the recent past. As we are all aware, our court system remains the most out of balance nationally in terms of ratio of judges to case filings. Since that is a circumstance unlikely to change in the foreseeable future, I have determined to put it aside and stop dwelling on it, and instead redouble our efforts to utilize our existing human and technical resources in the most

efficient manner possible.

In that regard, it has been estimated that thousands of new domestic violence cases will soon be adjudicated in circuit court. I am wholeheartedly committed to supporting Governor Haley's laudable initiative regarding the processing of these cases. This will require the Judicial Department to devote more circuit court resources to these cases, a task we will accomplish in the short-term with or without additional judicial resources. Why? Because that is our job. I will see to it that our courts fully meet the requirements of this new program in a manner that is fair to victim and defendant alike.

Recent Programs and Accomplishments

I would now call to your attention a number of programs and projects that we have implemented in order to deliver justice to the citizens of South Carolina more expeditiously, while maintaining the fairness that undergirds the legitimacy of any court system:

- Alternative Dispute Resolution was recently made mandatory in circuit court civil cases statewide. While this program is not a perfect solution, its expanded reach will serve to further reduce stressors on our adjudicative process.
- The Docket Management Task Force, under the overall direction of Justice Hearn, has made great progress, resulting in significant improvement in the percentage of trial courts which are meeting their case disposition benchmarks. In the Family Courts, whose docketing subcommittee is chaired by Judge Aphrodite Konduros with the assistance of Judge Dottie Mobley Jones, all 16 circuits have achieved a processing time benchmark of disposing of at least 80% of cases within 365 days of filing. This is a phenomenal achievement when one considers how far we had to come. While recognizing this success, we continue to seek refinements that will enhance the quality of justice delivered by our hardworking Family Court judges, compatible with enhanced processing times.
- Improvements have likewise been experienced in general sessions' benchmarks, whose docketing subcommittee is led by Justice Don Beatty. General Sessions continues to be the most problematic area for improving processing times because of complicating systemic components, such as prisoner transport, over which we have no control. Nonetheless, over the past year we have doubled the number of circuits, albeit only from 2 to 4, which are hitting their 80% benchmarks.
- In Common Pleas, processing times continue to improve, with 15 of the 16 circuits at the 80% mark. Credit is due to subcommittee chair Judge Cliff Newman.
- For our part, my colleagues on the Supreme Court gave special emphasis during the past year to reducing pending petitions for review. As a result of the hard work done by the Court and our staff, we were able to reduce pending post-conviction relief petitions by 27% and pending Court of Appeals petitions by 44%. We continue our efforts to further pare down the time between when certiorari petitions are ready to be considered, and their disposition by the Court.

- Another initiative, which helps to deliver justice more efficiently, is our business court program. We have expanded that program statewide. Further, I issued an order on January 1, which appointed Judge Roger Young of Charleston as CJAP of the business court, and which named 7 additional judges on a regional basis to hear business court cases. Notably, one of those judges, Clifton Newman, is president-elect of the American Congress and Business Court Judges, by virtue of which our State will host the annual meeting of that organization in 2017. My order also streamlined the processing of requests for business court designation. Business courts are a key consideration to the location and expansion of economic development in our state. The more confidence business has in a state's court system, the more likely they are to locate there.

In addition to these concrete achievements, we have instituted a number of pilot programs. I would like to emphasize the pilot nature of these programs, as it is my intent to conduct a thorough review of each pilot program before expanding it beyond the original impact area. While this review may slow "progress," I hope it will also give us time to reflect on the value of the project, and to consider changes to address issues exposed during pilot status.

- In October 2015, a Civil Motions Pilot Program began in the 3rd and 15th Circuits. This pilot requires that parties file and serve supporting memoranda contemporaneous with written motions, and authorizes the resolution of motions in civil actions without a hearing. We are in the process of gathering data to assess the merits of this pilot.
- In order to expedite consideration of post-conviction relief cases, we have instituted a pilot docket management program in the 5th and 11th Circuits aimed at establishing a streamlined process for dealing with PCR applications. These PCR applications are of the type that increases exponentially every year. We anticipate that the current pilot program will allow us to assess ways in which to process this growing caseload.

Turning from docket management successes and pilot programs, I wish to recognize a number of significant achievements during the past year beginning with several attributable to the work of the Chief Justice's Commission on the Profession, led by Justice John Kittredge. Most relevant to my own situation as I approach the age of presumptive senility, is the Court's adoption of Rule 428, SCACR, which is intended to achieve more sensitive handling of cases in which cognitive impairment of attorneys or judges may be at issue. It provides for interventions not unlike those currently in place for substance abuse issues. The desired end is to keep cases out of the disciplinary process if assistance to the impaired person can be brought about in a more compassionate manner.

- Also adopted on recommendation of the Commission is Rule 429, SCACR, which establishes a certification program for paralegals. Last month I signed an order establishing the first Board of Paralegal Certification, which will administer the program, with support from the South Carolina Bar. The Board is composed of five attorneys and four paralegals, all of whom are currently certified by national organizations. This program will recognize the professional status of paralegals and the important work they do.

- The Commission of the Profession has also had a significant impact on the quality of legal services received by the citizens of South Carolina, owing to the success story of our mentoring program. I was initially skeptical about this program, conceived by the legendary Dewey Oxner, but I am now a believer. You will be pleased to learn that disciplinary sanctions imposed upon lawyers admitted to practice for 5 years or less have been reduced from an average of 29 in the five years preceding implementation of the program, to one per year from 2012-2014. I am happy to announce that figure was reduced to zero in 2015! A remarkable result!
- On another front, we are all aware of the pervasive and insidious evil that human trafficking presents in our society. We applaud Attorney General Wilson's efforts to combat this blight, and our Court Administration will convene a human trafficking summit in August 2016 for judges, prosecutors, social workers, and other stakeholders with interest in combatting this problem area.

Technical Accomplishments

Turning from the human side to the technical, our IT department continues its exemplary performance. Just before her retirement, Chief Justice Toal saw her career-long goal of e-filing reach fruition in December 2015, when Clarendon County's pilot program was initiated. Since then, the other counties of the Third Circuit, Lee, Sumter, and Williamsburg have come on line. And just last Friday, our IT team appeared before an audience of well over a hundred attorneys, paralegals, and court personnel to announce the roll out on March 22, of e-filing in Greenville County, our first large county endeavor.

I emphasize the pilot nature of this e-filing program which presents an enormous learning curve for lawyers, judges, clerks of court and their staffs, as well as significant technological challenges. E-filing is finally here, and it is here to stay, but it will be years before it is expanded statewide.

- As for future technical programs, we are planning to expand public access to our appellate case management system. Of course, this expansion carries with it a requirement for security measures to restrict access to sensitive family court and other confidential matters. We are working diligently on this balance between transparency and privacy.

New Initiative

A major initiative undertaken by our Court is our adoption in January, of the Uniform Bar Exam, components of which are already used in all 54 American jurisdictions, including South Carolina.

Under the UBE:

- We maintain strict control over who takes our exam, and how many times that person may take it.

- We maintain our own character and fitness requirements.
- We set our own passing score.
- We will have our own state -specific component, which is currently under development, to insure familiarity with South Carolina specific legal concepts.
- Our law schools will have an additional recruiting tool, in that . . .
- The UBE allows greater portability of a certificate -- not reciprocity -- for persons who take the UBE in South Carolina, and we may restrict the time limits for those seeking to transfer into South Carolina. In short, we protect our borders while expanding opportunities for our lawyers.

Fiscal Matters

Turning now to the absence of the purse I mentioned at the beginning of this talk, I have submitted a budget for the upcoming fiscal year which is in keeping with the responsible fiscal stewardship traditionally observed by our branch.

With regard to the future, I respectfully commend to your thoughtful consideration, the proposition that the court system be funded by a more stable mechanism than is currently the case. I'll be gone soon, but I am deeply concerned about our heavy dependence upon fines and fees, and though a greater dollar amount, relatively modest general fund revenues. I realize this is a condition that will not change this year, but I again respectfully suggest that you begin the dialogue on a formula-based method of funding the judiciary that reduces our heavy dependency on fines and fees.

Regarding fines and fees, and to illustrate the disparate impact of the court system upon the fisc of the state, *vis a vis* its funding level; the most recent figures reported by the Treasurer's Office reveal that in 2015, fines and fees collected by all levels of the court system was \$96.1 million, of which the Judicial Branch received \$14.5 million, while \$12.1 million went to the general fund, and \$69.5 million was distributed to other state agencies. Please note that collections were down year over year, in 2015, demonstrating the unstable financial foundation upon which the budgetary needs of your court system in part rests. In short, I am suggesting exploration into the desirability of formula-based funding from general fund revenues.

- Anyone looking at our budget will quickly understand that our system is labor intensive with more than 80% of our expenditures being consumed by personnel costs. Thus if fees and fines do not generate sufficient funds, we have little capacity in our budget to absorb such a downturn.

With regard to personnel costs, in fiscal 2015, our Finance and Personnel Department conducted a comprehensive review of salaries of our non-judicial staff, comparing their work to that of other employees in the state system with similar responsibilities. This study resulted in a

significant, long overdue, and much deserved pay raise for 400 employees. With that accomplished, I have included a proposal -- modest in relative terms -- for a fair increase in judicial compensation. I respectfully submit to you that the evidence is irrefutable that, as with our staff, the time for such a readjustment is merited and overdue.

A comprehensive review of judicial salaries in South Carolina has not been undertaken since 1995. While there have been minor incremental increases in the ensuing twenty years, judicial salaries have not kept pace with the economy, and pale in comparison percentage wise to the respective, and I would hasten to add, well-deserved, raises given to teachers, police, and general state employees. Think of our compensation request as a matter of deferred maintenance, to remedy years of gradual deterioration.

Why should you, as representatives of the citizens of our great state, be concerned about the low level of judicial compensation? Substantial financial rewards have always been more available to seasoned practitioners - the pool from which we traditionally attracted judicial candidates, and the pool from which we should continue to attract judicial candidates. The disparity in compensation between that pool and current judicial compensation is perilously close to being so great as to discourage the highest caliber of candidates. While no one believes that judicial pay should be on par with the compensation earned by private practitioners, it should be sufficient to encourage an experienced, civic-minded practitioner to opt for public service. Please keep in mind that unlike members of the two political branches of government, judicial officials may not, with limited exceptions, have outside sources of compensation. Further, and importantly, judges typically do not have careers following their judicial service.

As I mentioned earlier, the only thing the judicial branch has to legitimate its authority is its credibility. The better the candidate pool, the greater the confidence of the business community and the person on the street. The business community, as you know, considers a state's court system -- a core function of government -- a key component of location and expansion. The competence level engendered by fair compensation will lift the confidence in our court system in both the loftiest industrial giants, and that of the ordinary citizen. I urge your thoughtful consideration of my proposal and I am happy to provide any detailed information you may require as you weigh the merits of this proposal.

Judicial Selection

Before I end my first and last address to you, I feel compelled to address the method we use to select judicial candidates. With regard to the composition of the judiciary, I have long been on record as favoring the current legislative election of judges. To paraphrase Winston Churchill, it is the worst of all methods of judicial selection . . . except for all the others.

One of the primary virtues of our system is the absence of the influence of money, and the unseemly media campaigns that attend popular election of judges. Thank you for maintaining it, and thank you too for considering refinements that could improve the system. Thanks too for continuing measures designed to maintain a judiciary independent of political influence, by not countenancing pledge or promise requirements which poison the process in those states that popularly elect judges.

Conclusion

Finally, let me again thank the General Assembly for the opportunity you have given me to serve our state. I know you join me and our court in steadfast adherence to the separation of powers which the framers of our national constitution provided as a template for our own system. As long as we each continue to observe that wholly salutary dichotomy, we will continue to have a system in which all of our citizens may be confident.

My heartfelt thanks to the members of this honorable body for affording me the privilege of addressing you. God bless our state and all of you.