

State of the Judiciary
Chief Justice Donald W. Beatty, South Carolina Supreme Court
Message to the Legislature
February 28, 2018, in Columbia, South Carolina

Thank you very much. Please be seated.

Lieutenant Governor Bryant, Speaker Lucas, President Pro Tempore Leatherman, Speaker Pro Tempore Pope, Members of the Joint Assembly, Members of the Judiciary, Ladies and Gentlemen. Thank you for this opportunity to share with you the State of your Judiciary.

Before I begin the business at hand, I would first like to acknowledge the many contributions of women to the success of this great country of ours. Tomorrow marks the beginning of Women's History Month. A cursory review of our shared history will reveal that women did more than just stand behind their man, often they led him. I submit to you that is still the case even today. Please join me in a salute to women.

Coincidentally, today marks the last day of Black History Month. My undergraduate alma mater, South Carolina State University, is visiting the Capitol with other Historical Black Colleges and Universities. Will you join me in welcoming them today? As you are aware, my beloved alma mater has faced significant financial challenges over the past decade. Although the university still has significant financial needs, I am happy to say that I believe that things have gotten better and the institution is on its way back. I am hopeful that the road back leads to a position of prominence that it once held.

I appear before you today to present my first State of the Judiciary Address as Chief Justice. I must begin by thanking each of you for electing me to this position. I am truly honored to have been given the tremendous privilege to serve our State in this capacity.

Those of you that heard the remarks at my Investiture Ceremony know that it has been "an improbable journey." As part of this journey, I served as a Member of the House of Representatives in the early 1990s. I am now facing the seats that I once sat in many years ago. Drawing on my experience as a former legislator, it is my hope to communicate this address in a way that is beneficial to all branches of our State Government.

Last year, I chose not to address you because I had been Chief Justice for only a few weeks. Having served in this position for a year, I now feel it is appropriate to make this address.

Immediately before assuming the position of Chief Justice, I began an assessment of the Judicial Branch of our government. In doing so, I confirmed my belief that the third branch of government is comprised of hundreds of conscientious and hardworking people. Employees who enjoy serving the people of South Carolina. That observation holds true for the Supreme Court down to your local Clerk of Court's office.

I discovered that the Judicial Branch was doing a lot, notwithstanding its meager resources. Our judges had the highest case filings per judge than anywhere else in the country. I believe that has

been the case for the last decade. I recalled then Chief Justice Toal's Power Point presentations to this Body on multiple occasions where she informed you of this fact. That Power Point presentation was always accompanied by a graph that showed that judicial salaries have been basically stagnant since the early nineties and that our judges were paid less than the Southeastern average. Today, that gap has widen by \$20,000.

My assessment of the Judicial Branch revealed that some employees were using converted coat closets for workspace, file rooms for offices. IT equipment was approaching the end of its life cycle. Morale was at an all-time low. If that wasn't enough, I learned that we were facing a projected budget shortfall of about \$3.5 million. I came to the leadership of this august Body and shared my findings and concerns and you took action. You appropriated sufficient funding to handle our projected deficit and to cover additional operating expenses. We at the Judicial Branch thank you.

Placing our financial status aside for the moment, let me briefly mention some of the activities of the Judicial Department over the past year.

2017 Accomplishments

In December 2015, we implemented Electronic Filing in the Court of Common Pleas. This E-Filing system is designed to receive and store documents in Common Pleas cases that are filed in electronic form by authorized E-Filers with each county's Clerk of Court Office.

The success of this project cannot be overstated. As of this month, E-Filing has been implemented in 30 counties across the State with more scheduled to go "live" in the next 6 months. When it first began, there were 25 registered E-Filers. We now have over 6,500. At last count, there were approximately 490,000 filings. It is projected that by the end of January 2019, all 46 counties will be using E-Filing.

E-Filing has increased the efficiency of our attorneys as they can file, serve, and view documents via the Internet even outside of normal working hours. It also provides them with instant notice whenever the court files a document.

Also, Clerks of Court deal with less paperwork and mail, and spend less time searching for paper documents and files. Employees in these offices are now able to "catch up" on other administrative tasks. The public has also benefitted from this project as it may view, with limited restrictions, most case documents online.

Due to the success of E-Filing, it is our goal to continue this project in the Family and Appellate Courts.

E-Citations

Similar to E-Filing, our IT Department is working to implement Electronic Transmission of Tickets ("E- Citations"). This project includes: (1) the E-Filing of Tickets and Citation Enhancements to the Case Management System ("CMS"); (2) the electronic reporting of dispositions from courts to the South Carolina Department of Motor Vehicles; (3) the importing

of E-Tickets into CMS; and (4) establishing a web portal for small municipal courts that do not have access to a Court Case Management System so that they can electronically report case dispositions.

Once this program is fully operational in late 2018, it will eliminate the paperwork in summary courts and the time-consuming process of entering this information manually.

Business Continuity / Disaster Recovery Plan

Our IT Department is also working on a Disaster Recovery/Business Continuity Plan. A proposed Business Continuity Plan has been drafted and a "Crisis Team," which is comprised of representatives from all departments, is actively training.

IT is also partnering with Clemson University as a remote site to ensure that court data is preserved and that the Judicial Branch can continue to operate the statewide court system in the event of a disaster, either natural or manmade.

As of this month, the IT Department is nearing Phase 5 of this seven-phase project. With this plan, it is our goal to avoid such devastation as that experienced by the Texas court system following Hurricane Harvey.

Bar Applications / Uniform Bar Examination ("UBE")

In February 2017, we began using the Uniform Bar Examination prepared by the National Conference of Bar Examiners. With its adoption, we completely revised the website for the Office of Bar Admissions and are now accepting and processing Bar Applications online.

Our adoption of the UBE has been extremely successful as the standardized questions of the UBE have alleviated previous problems concerning the grading of Bar Exams. Further, the use of the UBE is tremendously beneficial to our attorneys as their law licenses are now portable to other states.

As part of this process, we have also adopted a Course of Study on South Carolina law to replace the costly, week-long, Bridge-the-Gap Program. The Course of Study is more efficient because it is an online course that can be completed in less than eight hours.

Digital Audio Recorder Project

In keeping with new technology, we are pursuing a pilot project to utilize digital recorders on a limited basis in five counties throughout the State. On January 9th of this year, digital recording went "Live" in a family court proceeding in Anderson County. As of this month, Dorchester, Greenville, Richland and Sumter counties have also gone "Live" in a select number of courtrooms.

I am hopeful that this technology will combat the significant shortage of court reporters. As recently reported in local news media, we have been forced to cancel terms of court and delay hearings solely because there was no available court reporter.

Digital recorders are not intended to replace court reporters. Instead, they will provide "relief" for the current shortage. The significance of this project cannot be overstated as the number of court reporters continues to dwindle due to retirement and the lack of any training programs in South Carolina.

The shortage of court reporters is not a problem unique to South Carolina. There is a nationwide shortage and the shortage seems to grow each year. We are trying to take a proactive approach to this problem with our digital recording project. Additionally, we believe that this will assist with the morale problem of our current court reporters. No longer will they be routinely required to travel long distances on short notice to prevent the cancellation of a term of court.

Docket Management Task Force

Despite this set back, I am able to report significant progress in the resolution of cases in a timely manner due, in part, to the help of our task forces and docket committees. The Docket Management Task Force, under the leadership of Justice Kaye Hearn, continues to guide our trial courts toward achieving case disposition benchmarks.

General Sessions Docket Committee

Relatively soon, the General Sessions Docket Committee will resume meeting and will be chaired by Justice Hearn. The committee, which is comprised of judges, solicitors, public defenders, Clerks of court, and private attorneys, previously met for approximately one year. Although much work needs to be done, I believe the committee has a strong foundation to build upon.

We are currently evaluating judge-run dockets in two circuits. This method of docket management has been in place in the Seventh Circuit for some time now with outstanding results. This method involves a collaborative effort of the chief judge and the solicitor. The other pilot program is ongoing in the Ninth Circuit and being led by Judge Dennis.

We expect that the committee will ultimately submit a proposed order that will satisfy all stakeholders. It will also seek solutions to reduce the number of criminal cases that remain on the docket for more than 365 days.

Family Court Docket Committee

Led by Judge Aphrodite Konduros and Judge Ronald Norton, the Family Court Docket Committee is working to address several issues, including: (1) the increase of self-represented litigants in family court; (2) the need to reduce delays in DSS cases; and (3) the appointment and payment of Guardians ad Litem.

Also, as several of you have requested, this committee is working toward implementing the "one judge/one case" method. It is our goal to ultimately assign one judge to follow a custody case, and possibly TPR cases, all the way through to conclusion. Additionally, with potential input from this committee, we are reviewing a project (the "CFS" Project) between DSS and Xerox to

establish a Family Court Case Management System in 2019 that will receive and disburse child support payments.

As a final note on family court matters, it was my great pleasure to authorize and schedule special terms of court for "Adoption Days" last August and December. During these terms, judges were able to finalize numerous, uncontested adoption cases initiated by DSS as well as private cases. Given its success, I intend to authorize these terms periodically each year.

Common Pleas Docket Committee

The continued success in Common Pleas Court is due, in part, to the work of the Common Pleas Docket Committee which is chaired by Circuit Court Judge William Seals. All but one circuit met the benchmark of resolving at least 80% of civil cases in 365 days or less. I would add that all circuits have met this benchmark for family court cases.

Chief Justice's Commissions

Our commissions have also been influential.

Commission on the Profession

Under the leadership of Justice John Kittredge, the commission on the Profession has been responsible for many innovations in the legal profession. Most recently, the commission devised and implemented mentoring programs for young lawyers and new magistrates. As a result, we have seen a noticeable decline in ethical complaints for both groups.

The commission is currently studying several significant issues, including the funding of the Judiciary. As part of this effort, several members of the commission have been in contact with key members of the state's business community. I must thank the business community for being so receptive. Not only have they listened, but they have offered their help as well as ideas for a solution to the Judiciary's lack of funding.

For more on this commission, I would direct you to the recently created website that is linked through the Judicial Department's website.

Commission on Continuing Legal Education and Specialization

The Commission on Continuing Legal Education and Specialization, which is now under the watchful eye of Justice "Buck" James, is actively researching the creation of a centralized department for judicial education and the electronic filing of CLE reports.

Access to Justice Commission

Another instrumental commission is the Access to Justice Commission, which is chaired by Justice John Few. The commission is currently working to create a pro bono program that will use a new software program, like a digital marketplace, which will readily connect lawyers with lower-income individuals who are in need of legal services. This software program has had a

trial rollout with promising results. Once it is fully tested, we anticipate using it statewide.

Pilot Programs

We also have several pilot programs, for example, Business Court.

Business Court

Business Court continues to yield positive results. What began as a pilot program in limited counties, has now been expanded to cover all counties in South Carolina. Circuit Court Judge Roger Young continues to serve as the Chief Business Court Judge for Administrative Purposes.

Evaluation (Vision / Strategic Goals)

I am grateful for these successes and intend to build upon them. However, we cannot simply remain "status quo."

Vision

With a change in leadership comes the opportunity to pursue new ideas and innovations. As President John F. Kennedy stated, "Change is the law of life. And those who look only to the past or present are certain to miss the future."

I believe change is needed as my vision for the future is to:

Establish an effective, financially stable, independent branch of government. In order to achieve this vision, significant reform must be made.

Strategic Goals

While it is still early, I have so far identified the following strategic goals needed to make this vision a reality:

1. foster a cooperative (not subservient) relationship between the Judicial Branch, the General Assembly, and the Governor's Office while maintaining a focus on the constitutional separation of powers;
2. restructure the organization of departments within the Judicial Branch;
3. facilitate the efficient resolution of cases in all courts through improved docket management, revitalized case management systems, and enhanced infrastructure;
4. ensure access to justice for all regardless of income, disability, or language barriers; and
5. foster a legal profession that is innovative in providing legal services to the public.

These goals may appear overly ambitious. However, my vision is not entirely new. In fact, it has been stated for decades.

I believe that only through innovation and sustainable funding can we hope to pursue our mission which requires becoming a co-equal, independent branch of government.

While I cannot control the funding of the Judiciary, I have worked during this year to ensure the efficiency of our court operations.

Innovation

To achieve the identified goals, I have begun implementing change in several key areas.

Summary Court System

As many of you are aware, there is a critical need for reform in our summary court system. I receive complaints about our summary courts on a routine basis. In fact, the deficiencies in this system are so great that they have been the subject of state and national news articles and lawsuits.

The issues range from mismanagement of funds to flagrant violations of the Sixth Amendment right to counsel. This cannot and will not continue.

Although it is only the beginning of addressing these problems, I have so far taken the following corrective action:

1. I completely overhauled the assignment of the Chief and Associate Chief Judges in all summary courts. In the past, a judge assigned to one of these positions would serve for many years without challenge. I now intend to rotate the assignment of these positions. This was done not just for the sake of change. I believe that systematic rotation will lead to more accountability and transparency in these courts.
2. I now require regular audits of summary court financial records. If, after reviewing the audits, I perceive financial mismanagement, I require the Chief Judge in that county to submit monthly or quarterly reports. Hopefully, this oversight will prevent financial mismanagement in the future.
3. I have personally addressed the summary court judges at their mandatory conferences and in email correspondence. I believe that such direct involvement will ensure that all summary court judges are aware of the current problems in their courts.
4. I approved procedures and policies created by Court Administration to address the treatment of unrepresented defendants in summary courts. Routinely, summary court judges have sentenced these defendants, who are often indigent, to jail time without the benefit of a lawyer. This is a clear violation of the Sixth Amendment right to counsel. Although I cannot force counties to hire much-needed public defenders for these courts, I can and will ensure that judges comply with the Sixth Amendment.
5. To combat this problem, summary court judges will be required to go through a "check list" on a bench card with each defendant that appears in court. This check list includes instructing the defendant about the right to counsel, the waiver of this right, and the right to a jury trial. I have also instructed judges to take into consideration a defendant's ability to pay before sentencing a

defendant to a fine.

In response to these directives, several counties took the initiative to recall and evaluate outstanding bench warrants. Although I did NOT direct this action, I must commend those counties and summary court judges that worked tirelessly to ensure that all bench warrants were properly issued. I believe this is the first step toward constitutional compliance.

Judicial Education

Finally, I have begun working on a plan to better educate and train our judges, particularly those who are new to the bench. As you are well aware, our new judges are younger and less experienced than judges elected in the past.

In order to effectively educate our judiciary, both new and seasoned judges, I believe we must: (1) create a centralized education department; (2) establish an educational structure specific to each level of our judiciary; and (3) utilize new technology to efficiently and effectively communicate the most current information and provide training.

With the assistance of the Commission on Continuing Legal Education and Specialization, we are in the process of researching how other state and federal judicial education systems operate. Using this information, we intend to tailor a program for our South Carolina Judiciary.

Current Finances

However, without sustainable funding, we will never be able to achieve these goals nor will we be able to efficiently operate the statewide court system.

Last year, we were fortunate that the General Assembly provided funding for a minimal level of service for court operations. But, this amount is inadequate to fully fund the current and future needs of the Judicial Branch.

We provide core government functions to the citizens of South Carolina. Yet, we receive less than 0.75% of State Recurring General Appropriations. In the past, in order to supplement this amount, we have been forced to depend on fines and fees. We cannot continue to do so. It is an unstable source of revenue with yearly amounts moving in a downward trajectory.

I am appreciative that Senator Malloy introduced Senate Bill 69, which would authorize a referendum to amend the Constitution to require that the Judicial Branch's budget be 1% of the previous general fund.

This would give the Judicial Branch a "flat", recurring percentage of general appropriations. A recurring percentage would not only provide sustainable funding, but would provide a significant measure of independence as a separate branch of government.

Although this Bill is now before the Senate Finance Committee, its success is uncertain. Until such amendment becomes effective, we will have to pursue funding through the normal procedure.

Financial Future

In January, I presented the Judicial Branch's 2018-2019 budget request to the House Ways & Means Law Enforcement and Criminal Justice Subcommittee and the Criminal Justice Subcommittee of the Senate Finance Committee. In the budget, I identified the following priorities:

In terms of Urgent Needs for Recurring Appropriations:

- an increase in support staff in various areas that support statewide administrative and court functions;
- a judicial salary increase that provides comparable salaries for those with similar executive decision-making responsibilities in our State and other judges within the Southeast; and
- the development of an in-house court education program that will fulfill mandates and requirements for justices, judges of all courts, Clerks of Court, Registers of Deeds, interpreters, and other judicial staff.

In terms of Urgent Needs for Non-Recurring Appropriations:

- renovations for the Calhoun and Brown Buildings to reconfigure the much needed office space;
- improvements for Security within the Supreme Court Building;
- the modernization of the antiquated/vulnerable statewide Case Management System;
- the expansion of the Digital Courtroom Recording Project. •

As you can see, this is a "NEED" list not a "WISH" list. All of these budget items are crucial and must be fully funded for the Judiciary to operate efficiently. Inadequate funding threatens our success.

Inadequate Funding Threatens Our Success Judicial Salaries

Quite simply, we are in a financial crisis. As all of you know, my request for an increase in judges' salaries has received the most attention and has spawned four Bills [S.107 (amendment); S.725; S.910; H.4801]. These Bills have generated much debate and created tension between members of the House and Senate.

The issue of an increase in judges' salaries has been the subject of news articles and social media attacks. In fact, the request has been characterized as "greedy" and "unwarranted." A review of the facts reveals that is not the case.

Judges' salaries have remained at the same level since the 1990s and are well below those of comparable positions in state agencies and those in other Southeastern states.

For example, the salary for the Chief Justice, who is responsible for an entire branch of state government, is significantly less than: {Identify Positions}

The Chief Justice's salary is also nearly \$20,000 less than the average salary of a Chief Justice in the Southeast.

In 2007, the Hay Study was commissioned to evaluate judicial salaries. Based on that study, the Chief Justice's salary was to be set at \$171,063. This amount was not adopted and no increase was implemented. Accounting for inflation, this amount is now projected to be \$202,403.

As you can see, I am not making an unreasonable request. Instead, it is a request to create a salary structure that is equitable.

I continually hear that you want qualified judicial candidates. But, without providing just and competitive levels of compensation, you cannot expect to attract and retain qualified individuals for judgeships. There are several Bills pending that would address this long-neglected problem. I request that they receive due consideration and are passed. It appears that the sides are close to resolution and I strongly urge them to continue their frank and open discussions.

Court Operations Will Be Detrimentially Affected

Although my request for an increase in judges' salaries has received the most attention, it is not my sole concern. I am genuinely concerned about how the lack of funding will detrimentally affect the State of South Carolina.

Right now, we are paying full-time employees who operate core functions in the Judicial Branch with fines and fees. These positions include human resources, procurement, finance, appellate court staffing, and court administration.

Unfortunately, these fines and fees have steadily declined. At their peak in Fiscal Year 2008-2009, these fines totaled close to \$17 million. For the Fiscal Year 2017-2018, the projected amount is just under \$14 million.

Some of you have suggested increasing the amount of fines and fees to compensate for our budget shortfall. However, any increase would yield negligible results for us since these fines and fees are apportioned to all agencies within our state's government. More importantly, these fees cannot be set so high that access to the courts is cost prohibitive.

If the decline in fines and fees continues at this accelerated rate, we will have to either furlough court employees or reduce our workforce. If this happens, the number of court terms will be reduced, case progress will stall, and the increasing backlog of cases will continue.

In turn, our state's business climate will be detrimentally affected. Specifically, cases involving businesses, which represent approximately 70% of all civil cases, will be significantly delayed.

I also believe South Carolina will no longer be able to recruit, create, or retain businesses if our legal system is in crisis. The ripple effect will be a loss of jobs and revenue in our State. Clearly, this will impact all economic development in South Carolina.

The effect of the lack funding for the Judicial Branch will also be felt in each county. With fewer workers employed for core operating functions, cases in General Sessions court may cease to be resolved in a timely fashion. With this delay comes overcrowding in jails and costly maintenance of these defendants. My research reveals that it costs approximately \$55 a day to house each defendant. These increased expenses will require counties to divert funds from other areas of need.

Further, because of the constitutional mandate for "speedy trials," criminal cases will have to be given scheduling priority over civil cases. If this is done, all civil litigants, including private individuals and state agencies, will experience years of delay at trial and on the appellate level.

My fears from a lack of funding for the Judicial Branch are not purely a matter of economics. Because a significant portion of our budget is spent on informational technology, I fear the repercussions of inadequate funding to this department.

Currently, we are operating with a Case Management System that is quickly becoming obsolete. Using federal grants totaling approximately \$53 million, CMS was implemented in 2005. As identified in our budget request, we will need to modernize the existing CMS over a five-year period.

Without funding, we risk inefficient court operations as the Judicial Branch retains the exclusive responsibility for maintaining 46 independent, county database configurations as well as supporting and enhancing the CMS application. If any of our technology-based systems fail, we risk the potential loss of crucial court data, the inability to share data with the Executive and Legislative Branches, as well as the inability to complete the E- Filing rollout for the Court of Common Pleas in all counties.

Additionally, without adequate funding, we will not be able to retain and recruit quality IT personnel who provide much needed technical support to Clerks of Court, judges, and law clerks in all counties.

Finally, we need additional funding to update the Judicial Branch's infrastructure. Last year, we contracted to renovate the Brown Building to alleviate some of our need for additional office space. However, the "bureaucratic" delays and lack of financing have effectively stalled any forward progress.

Until this problem is solved, we will continue to have employees working in "closets" and converted hallways in the Calhoun Building. I would also add that the Calhoun and Supreme Court Buildings need significant work done to repair water damage due to leaking roofs and windows.

History of Insufficient Funding

I emphasize that this financial crisis is not due to poor stewardship of our resources. Chief Justices Toal and Pleicones were both fiscally responsible in managing these resources.

However, the reality is that the resources have always been insufficient. Now, with the ever-increasing needs of the Judicial Branch, we are faced with a shortfall unless you provide not just adequate, but sustainable funding.

Encouraged By Recent Discussions with Legislators

Over the past year, I have spoken with several of you regarding this financial crisis. I have been so encouraged by these discussions. You graciously allowed me to explain this critical issue and seemed to share my concerns.

But, equally important, these meetings presented an opportunity to have an open and honest dialogue about fostering a working relationship between all branches of government. We all recognized the need to work together but, also, the need to "stay in our own lanes."

In 1788, James Madison eloquently explained this principle in the Federalist Number 48, stating:

It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it.

As you can see, putting this into practice is an age-old problem. However, solving this problem is necessary to avoid the danger of a constitutional crisis.

I recognize that each branch is unique in its function and should retain its independence. Yet, for South Carolina to be successful, the branches of government must be equal in power and work together in synergy.

So, I respectfully ask that you work with me, and those in the Judicial Branch, toward the ultimate goal of establishing three separate, but equally powerful, branches of government.

The first step toward achieving this goal is not just the "adequate" funding of the Judicial Branch of government, but the "sustainable" funding. Only then will the Judicial Branch gain any measure of autonomy.

Conclusion

I want to thank you for allowing me the opportunity to present this address. I know that you have many pressing issues to tackle during this legislative session. So, I truly appreciate you taking time from your schedule today. As I continue my tenure as Chief Justice, I look forward to working with you for the betterment of South Carolina.

Question / Answer Period

As a first step toward working together, I would like to take this opportunity to do something a

little different. At this time, I would invite you to ask questions.

Although this is not the usual format for the "State of the Judiciary," I would like to foster an open dialogue. So, with the time remaining, I intend to answer your questions and address your concerns.