

The State of the Tennessee Judiciary
Chief Justice Janice M. Holder, Tennessee Supreme Court
Written Message to the Legislature
2010

To Members of the 106th General Assembly and my fellow Tennesseans:

In an effort to promote better communication and understanding between the legislative and judicial branches of government, I wish to take this opportunity to report on some of the initiatives, accomplishments, and challenges facing the judiciary.

In Tennessee, as in every state, the court system plays a vital role in governance and touches the lives of all its citizens in many ways. Our courts resolve disputes, from the enforcement of contracts to the punishment of those who do not follow the law. Regardless of the nature of the case or the court in which it is heard, Tennessee courts must administer justice fairly and equally to all citizens.

Supreme Court Overview

From 2005 to 2008, four justices retired, and Governor Bredesen appointed four new justices to the Court. The current members of the Tennessee Supreme Court completed their first full year of service together in 2009.

- Justice Cornelia A. Clark was appointed in 2005 following the retirement of Justice Frank Drowota. Justice Clark served as a circuit court judge in Williamson County for nearly ten years. In 1999, the Supreme Court appointed her as Administrative Director of the Court. She served in that capacity for more than six years before being appointed to the Supreme Court.
- Justice Gary R. Wade filled the vacancy created by the retirement of Justice E. Riley Anderson in 2006. Justice Wade served for nineteen years on the Court of Criminal Appeals and was the presiding judge of that court for the last eight years of his service.
- Justice William C. Koch, Jr. was appointed in 2007 following Justice Adolpho A. Birch's retirement in 2006. Justice Koch served for twenty-three years on the Court of Appeals and was presiding judge of the Middle Division of the Court of Appeals for the three years prior to his appointment to the Supreme Court.

- Justice Sharon G. Lee was appointed in 2008 following the retirement of Justice William M. Barker. Prior to her appointment, Justice Lee served on the Court of Appeals for four years.

In 2008, Tennessee became the seventh southern state to have a woman currently serving as chief justice, joining Alabama, Florida, Georgia, Louisiana, North Carolina, and South Carolina. When Governor Bredesen appointed Justice Lee, Tennessee became only the third state in the nation to have a majority of women on its highest court.

Supreme Court Initiatives

The Supreme Court has adopted a strategic plan to address the challenges currently faced by the judicial branch. In its broadest terms, the plan challenges the Court to:

1. Create new and innovative ways to provide equal access to our court system, regardless of income level;
2. Develop in judges the management skills to resolve disputes in a more expeditious manner; and
3. Use available technology in new and innovative ways.

The Tennessee court system has made great strides in each of these areas.

Access to Justice

It is a common misconception that low-income citizens are entitled to legal assistance in civil matters as well as in criminal matters. Only Tennesseans who meet the federal poverty guidelines, however, are eligible for free legal assistance in resolving civil matters. There are eighty-one federally funded, full-time attorneys in Tennessee to provide civil legal services to 1,000,000 qualified low-income Tennesseans. These attorneys can serve only one in five of the income-eligible people who request services. Thousands more fall just outside the income guidelines and are unable to afford representation when faced with a life-altering legal event.

The current economic climate has created a crisis in the need for civil legal services that can be expected to increase as our indigent and working poor face legal problems caused by events such as unemployment, predatory loans, uninsured medical bills, domestic violence, evictions, and foreclosures. Existing services, which have been strained in past years, are unable to meet the current need. There is much to be done if we are to address this problem.

In December 2008, the Supreme Court publicly announced the kickoff of its Access to Justice Initiative to more than 140 attorneys, judges, educators, and other interested citizens. Our announcement was inspired by the work of our legal services organizations and the private attorneys who have provided thousands of hours of pro bono services in response to the growing need for civil legal services of those less fortunate in this state. To coordinate our efforts with those of legal services organizations, law firms, and others committed to equal access to justice in Tennessee, the Supreme Court added an access to justice coordinator. Rebecca Rhodes is the first such coordinator in the nation working in and for the court system.

The Supreme Court also held five public meetings across the state to emphasize the Access to Justice Initiative. Each justice presided over one of the meetings. Nearly 150 people attended these meetings to voice their ideas for helping meet the legal needs of low-income citizens. As a result of these meetings, the Supreme Court created the Tennessee Access to Justice Commission and announced the appointment of its ten commissioners in a formal ceremony on April 3, 2009. The commissioners include attorneys, clergy, and business and community leaders from across the state.

The Supreme Court directed the Access to Justice Commission to provide formal recommendations to the Supreme Court, and the Commission delivered its report to the Court on April 1, 2010. The Court will consider the Commission's recommendations and adopt a strategic plan to guide the court system's efforts through the coming years.

In addition to the recommendations of the Access to Justice Commission, the Supreme Court has also amended a number of its rules to encourage private attorneys to participate in pro bono activities offering free legal services to the public. In 2009, the Court amended Supreme Court Rule 8 and Rule 21 to encourage attorneys to provide fifty hours of pro bono service each year. The Court also increased the continuing legal education credit from five hours to eight hours for each hour of pro bono work performed. Additionally, the Court permitted lawyers to provide legal representation on a more limited basis, in effect "unbundling" legal services and making the provision of such services more attractive to those offering their services without charge.

The General Assembly joined the Court in its Access to Justice effort by amending Tennessee Code Annotated Titles 8, 16, and 23 to permit, for the first time, government-employed lawyers to offer pro bono services with certain limitations. In response to that change, the Supreme Court amended its rules to permit judicial research assistants to engage in some types of pro bono work. These changes added significantly to the pool of attorneys whom we ask to assist us in this effort.

In the 2009 Rules package presented to the legislature, the Court also amended the Rules of Civil Procedure to clarify that judges and parties to class actions may enter into settlement decrees

directing that unclaimed class action funds be paid to the Tennessee Voluntary Fund for Indigent Civil Representation. Once the principal balance reaches \$1 million, this fund will provide additional financial support for legal service providers throughout the state. We thank the General Assembly for its approval of the Rules package in 2009.

The Court was also proud to partner with the Tennessee Bar Association and other organizations in Tennessee's first Statewide Public Service Day. On April 4, 2009, forty-five pro bono service projects were conducted throughout the state. In addition to assisting low-income Tennesseans with civil legal issues, these events attracted media attention and public interest and were designed to draw attention to the growing need for civil legal assistance in Tennessee.

In the past year, federal grant programs have enabled the court system to fund a variety of efforts related to access to justice. For instance, the access and visitation grant allowed the Administrative Office of the Courts (AOC) to develop initiatives that assist self-represented divorced or never-married parents with parenting and visitation issues in child support cases.

The AOC also received one-time grant funding from the American Recovery and Reinvestment Act of 2009 to enhance courtroom security and technology throughout the state. In addition, this grant enabled the court system to augment its court interpreter program by offsetting the cost of training and exams for applicants and by funding court interpreters for domestic violence and order of protection hearings.

Grant funds were also allocated to six Victim Offender Reconciliation Program Centers in Tennessee. These Centers provide community education, peer mediation at local schools, and conflict resolution training for at-risk youth and adults. These programs strive to prevent at-risk individuals from entering into the criminal justice system.

While the Supreme Court has focused on the need for access to our court system, there is much more to be done to address the legal needs we have identified. To be successful, the court system needs the support and participation of legislators, members of the executive branch, court clerks, government lawyers, law school, and other groups. We are eager to partner with the General Assembly, the executive branch, and our fellow Tennesseans to find innovative solutions to this growing need.

Productivity and Timeliness

The Court's second strategic priority focuses on examining the performance of the court system and developing more productive and efficient case management methods. The Supreme Court recognizes the importance of moving cases through the system in a timely manner while, at the same time, ensuring that each party receives due process.

With productivity and efficiency in mind, the Supreme Court has renewed its effort to decrease the time for the resolution of disputes in our courts. The AOC partnered with Lipscomb University's Institute for Conflict Management to provide forty hours of mediation training for judges. Approximately sixty Tennessee trial judges attended mediation training to learn to conduct judicial settlement conferences for cases assigned to their colleagues on the trial bench. These judicial settlement conferences are conducted at no cost to the parties and can lead to the settlement of the case or to the narrowing of the issues for trial.

We were also honored that Tennessee was one of four states selected to receive a federal grant through the Bureau of Judicial Assistance to fund an "Effective Caseflow Management" program. In April 2009, the National Judicial College faculty led more than twenty trial judges in a four-day workshop to provide them with the tools to manage their caseloads effectively and to process those cases in a more timely manner. More than fifty judges attended a second case management program conducted during our fall judicial conference.

Enhancing Technology

The efficient use of technology will help the courts meet our goal of increasing equal access to justice while also enhancing the efficiency of our court system. The deployment of the Tennessee Court Information System software ("TNCIS"), a case management system that will be used by state court clerks, represents one of our principal efforts. This court automation project enables us to obtain more accurate case statistics and to provide a better accounting of fees and costs. Additionally, the TNCIS software has made great strides in increasing the efficiency of local clerks' offices by eliminating manual or antiquated systems to manage caseloads, paperwork, accounting, reporting, and recordkeeping. This software also provides the means to report information to other agencies such as the Tennessee Bureau of Investigation, the Department of Safety, and the Department of Correction.

To date, TNCIS software has been installed in 111 locations throughout the state, including twelve sites that previously were not computerized. The AOC technology staff has provided on-site training and support to assist in the transition to this new system. The TNCIS project is scheduled to be completed in November 2011, and, at its completion, the software will have been installed in 212 locations across the state.

Digital court reporting technology can further streamline court operations. Computer-based digital court reporting systems provide clearer recordings and allow key words to be inserted into the recordings to facilitate searches for information. In 2007, digital court reporting equipment was installed in twenty-seven courtrooms for use in state criminal proceedings. As a result of grant funding from the American Recovery and Reinvestment Act, an additional twenty-seven

digital court reporting systems were approved for installation in 2009 and 2010. The judges using this technology have found it to be accurate and reliable. We anticipate that digital court reporting technology will assist us in providing more efficient and reliable transcripts in the future.

The AOC is also developing a new Indigent Claims Entry system that will be launched in a phased roll-out in May 2010. Currently, attorneys who represent indigent litigants pursuant to Tennessee Supreme Court Rule 13 must submit their fee claims on paper through the clerk's office, requiring processing by attorneys, judges, clerks, and AOC staff. Last year, the AOC required eight to twelve weeks, on average, from receipt of the fee claim to payment. While the AOC has worked diligently to reduce the turnaround time to less than four weeks, the manual process remains incredibly inefficient. The new Indigent Claims Entry system will be available online and will significantly streamline the processing of these claims by eliminating more than ninety percent of the 90,000 paper claims the AOC receives each year.

Additionally, the AOC is developing a new Appellate Case Management System, which will replace our outdated Judicial Information Tracking System (JITS) and provide better statistical information and reports. This information will enable us to answer questions concerning the efficiency of the court system and improve the functionality of the appellate courts.

We have also reached out to other court systems in an effort to learn how to duplicate their successes. This past year, we were honored to host the third annual Southern Region High Court Conference in Nashville. This Conference brought together judges and administrators from the courts of last resort of eight states, giving us the unique opportunity to interact with our colleagues in other states and discuss the common concerns and issues facing the judiciary. Governor Phil Bredesen and Mayor Karl Dean were among the distinguished guests who spoke at the conference.

The AOC is also working to develop a new website for our court system, which we will introduce by this summer. The Court recognizes the importance of an online presence that reflects favorably on the judicial branch and provides access to needed services. The new site will offer increased functionality while providing more information in an easy-to-navigate manner. We congratulate the General Assembly on its award-winning website and believe our new website will be an important tool in maintaining the public's trust and confidence in the court system, enhancing the public's access to our courts, and educating Tennesseans about the judicial branch.

Court System Budget

During the past year, the economic downturn has presented a number of challenges in Tennessee. Although the budget of the judicial branch is less than one-half of one percent of the state budget, to do our part to help ease the state's budget deficit, we have had to make difficult decisions while continuing to serve the public effectively and efficiently.

As requested, the court system has reduced its recurring budget for fiscal year 2009-10. Despite those reductions, we have made progress in attaining our strategic priorities and have found ways to continue or increase the level of services available to Tennessee's citizens. We have accomplished this by obtaining federal grants, utilizing available technology to eliminate or reduce expenditures, developing public-private funding partnerships, and identifying expenditures that are no longer essential.

The court system is committed to sharing the responsibility for a balanced state budget. I am proud to say that the members of the judicial family have worked together tirelessly and effectively to maintain the quality of service that Tennesseans have come to expect. While implementing budget reductions has been difficult, we will overcome this challenge by continuing to develop innovative solutions that will allow us to do more with less.

Conclusion

In this report, I have touched on only a handful of the issues facing the judicial branch, but I hope that I have given you a glimpse into the positive work being done by our courts to advance the administration of justice in Tennessee. Although there are many challenges facing the court system, we remain steadfast in our commitment to ensure that our courts continue to operate in a fair, efficient, and effective manner for all Tennesseans.

Tennessee has three separate but equal branches of government united in our responsibility as stewards of the public trust to serve the citizens of Tennessee with honor and integrity. Like the members of the legislative and executive branches, judges are public servants at heart. It has truly been an honor to serve the citizens of Tennessee as a judge for nearly twenty years.

Sincerely,
Janice M. Holder, Chief Justice
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