

State of the Judiciary
Chief Justice Barbara A. Madsen, Washington Supreme Court
Written Message to the Washington Legislature
January 17, 2012, in Olympia, Washington

Dear Members of the Washington State Legislature, Governor Gregoire, Elected Officials, and Residents of Washington State:

In keeping with tradition, I am delivering this interim report on the state of Washington's judicial branch.

As a branch of government, we derive our mission from the state constitution, which declares that every person of this state has the right to receive timely, open, and impartial justice no matter the nature of the cause.

The people of this state look to the courts for effective and just resolution of civil disputes and depend on the courts to protect public safety through the administration of criminal justice. In order to meet this constitutional promise of justice, there must be a solid infrastructure and an efficient delivery system. This requires stable and adequate resources from state and local government.

When people think about the justice system, they often think of judges working hard in our courtrooms. Indeed, in our appellate and trial courts, there are over 400 judges who serve the public.

But, judges cannot carry out the administration of justice alone. Hundreds of people at the state and local level are directly involved in ensuring that our justice system operates fairly and efficiently.

In this report, I address not only the state of our courtrooms, but also the state of the infrastructure that is charged with providing the justice that our state constitution promises.

First, let me say that 2011 brought many challenges as well as opportunities. As I discussed last year, in these tough economic times, the public's needs are at their highest levels and the courts again face a significant struggle to provide vital court services.

At a celebration of Constitution Day this past fall, I spoke with students about the constitution and its role in American society. As I told the students, one of the hallmarks of a healthy democracy is the meaningful right of access to courts. It is because we live in a democracy that we have rights that must be vindicated and protected-this is the role we assign to our courts.

However, as the New York Times recently said in an editorial discussing our nation's court funding crisis, "Even the most eloquent constitution is worthless with no one to enforce it."

Unlike many other states, Washington does not have a unified court system. Despite recent

efforts, and some successes, the state continues to provide very little of the support necessary to operate our trial courts. We have worked long and hard to increase state funding for our trial courts, which we believe is critical to ensuring equal justice across the state at all court levels. Until the state assumes greater responsibility for its share of trial court operations, the burden of supporting the trial courts continues to fall primarily on local government.

That being said, the state currently has a responsibility to provide centralized administration, fiscal services, and technology support and training for all of the courts- trial and appellate.

Moreover, because our state constitution protects the right to justice "in all cases," the state shares a portion of the responsibility for ensuring some meaningful level of access to the civil justice system for low income people with critical, civil legal problems to seek and secure legal protection in our courts.

Year in Review

Traditionally, this report begins with a look back at the past year. In this report, I will discuss each level of court as well as statewide judicial branch agencies. I will highlight the important innovations and efficiencies we have implemented and briefly discuss the impact of reduced funding on our ability to deliver justice.

Supreme Court

Turning first to our Supreme Court, our core role is to hear and decide critical issues of statewide significance. Today, the Supreme Court operates with fewer employees than it did 20 years ago, and we continue to explore new ways to efficiently process cases and issue opinions without additional staff.

Over the past two years, we have worked hard to reduce the time that parties must wait to find out if the court will accept their case-down from 14 months to 4 months on average. In addition, in 2011 we began development of a long range plan for the court, looking at our core functions and processes to find new efficiencies and to plan for our future.

We are currently working with the Court of Appeals to develop an electronic filing system for our appellate courts, which will reduce costs and provide new efficiencies.

In addition to hearing and deciding cases, the Supreme Court is charged by statute with maintaining the infrastructure of our court system and administering the programs necessary to address systemic challenges to the judicial branch. We meet this responsibility through the Administrative Office of the Courts (AOC).

Administrative Office of the Courts

AOC provides fiscal and administrative services for all of the state courts as well as the judicial branch agencies. Among other duties, AOC develops and maintains essential technology systems, including a statewide criminal justice system database. It develops and implements

essential judicial training and provides staffing to the judicial associations as well as to the judicial boards and commissions. It also coordinates language access and supports licensing and discipline of interpreters and guardians. Without an adequately funded and staffed AOC, the courts and the broader branch cannot perform their core functions. Many of the innovations of our justice system have been encouraged and developed through the efforts and talents of the people at AOC.

State Law Library

As a department of the Supreme Court, the Washington State Law Library is also a resource that serves the critical needs of the judiciary, the legislature, and the public. Despite funding cuts of more than 30 percent this past biennium, the law library has increased services throughout the state, especially to rural and underserved communities by answering questions in person or through on-line chat, e-mail, and phone. This past year, the law library has also created an on-site computer center with recycled state computers to allow the public free access to a wide scope of legal resources.

We are asking the legislature this session to authorize a study that will assist the law library as it continues to dramatically redesign its business model.

Court of Appeals

At the appellate court level, in addition to the Supreme Court, we have our three divisions of the Court of Appeals. The Court of Appeals is the court of first resort, and it has no control over its caseload. It must take every case and fairly consider it and decide it.

For the Court of Appeals, the constitutional duty is to provide justice without "unnecessary delay." This means that, with limited exceptions, cases should be processed, heard, and resolved within 12 months after an appeal is filed. Cuts to this court's budget have been deep.

Any additional cuts threaten to push the Court of Appeals beyond its capacity to meet this constitutional standard. The consequences are that business activity stands in limbo, families are faced with unnecessary uncertainty with respect to matters such as termination of parental rights, adoption, custody, support, and the like, and victims of crimes face delayed criminal appeals, which delays closure for the victims.

Trial Courts

As I mentioned earlier, the trial courts of this state, with some exceptions, are primarily funded at the local level. Local budget pressures continue to cause great challenges to the administration of justice in these courts. In addition, the gains we have made in securing state funding for trial courts are being eroded.

Superior Courts

In the face of funding challenges and the growing number of unrepresented litigants, our trial courts have used innovative and evidence-based practices to stretch limited resources. For

example, both state and federal laws mandate that all children in dependency cases have a guardian ad litem to represent their best interests in court.

In Washington, this requirement is being met at a fraction of the cost to the state by Court Appointed Special Advocates (CASA). With the aid of these citizen volunteers, children in Washington have fewer foster care placements, are able to find a permanent home sooner, and spend less time in the social service system.

It is important to note that the state-funded, court-based programs, such as language access and interpreter services, integrated family and juvenile court initiatives, and CASA volunteer supervisors are evidence-based practices. These programs make a difference in the quality and effectiveness of justice in our courts. We have made critically important investments in these programs, which we have worked hard to protect.

Despite our best efforts, however, courts are being forced to significantly reduce all types of assistance to Washington residents. The most significant impacts from continuing cuts include:

- Growing delays, sometimes beyond legal limits;
- Loss of public access to the courts, including closed court locations, fewer open hours during weekdays, higher filing fees, and far fewer staff to answer phones or help with questions, records, and forms;
- Lack of accountability for offenders who are not being monitored due to probation staff cuts;
- Loss of family and juvenile court programs that identify problem youth earlier and reduce the severity of juvenile crime and recidivism; and
- Strains on judicial decision-making due to loss of judicial officers, staff, and CASA supervisors.

Among other developments, there is a growing need for interpreters, both in the number of interpreters being used and the variety of languages requested. Although there are currently 39 languages that are registered with the state, only 15 languages are currently certified by AOC, leaving a gap between need and availability.

We are asking the legislature to continue to meet its responsibility to help fund the trial courts of this state to ensure fair and equal justice in every courtroom of this state.

Limited Jurisdiction Courts

State and local government cuts are also deeply felt in our courts of limited jurisdiction.

In the face of budget cuts, many courts have stopped answering their telephones. Many are closed during the noon hour (when most working families have time to visit the court). All this limits the public's access to these courts and their ability to get answers to simple questions.

In many court, judges are performing a multitude of secretarial tasks, spending a substantial amount of time on these duties rather than performing judicial services or preparing for hearings.

Nevertheless, the judges of our district and municipal courts continue to tackle the challenges. In our long-range planning, we have identified regional courts as a key to making our limited jurisdiction courts more efficient, professional, and accessible to the public they serve. We are currently engaging with the cities, counties, and the legislature to design a more efficient and cohesive system of limited jurisdiction courts.

Office of Civil Legal Aid

This is a year of unprecedented challenges, and we know how much work lies ahead. No one can envy the job facing our elected leaders this session.

Thousands of people are unemployed, poverty rates have jumped, foreclosures are at record levels, and people and families across Washington State are facing significant life challenges, the gravity of which they have never experienced before.

Not surprisingly, many low income people and families have turned to the state- funded civil legal aid system for help.

Currently, through a nationally recognized collaboration, the Office of Civil Legal Aid (OCLA) coordinates an integrated public/private partnership between the Legal Services Corporation, volunteer county bar programs, IOLTA (Interest on Lawyers Trust Accounts) and the Campaign for Equal Justice. This coordinated response maximizes the use of limited public funds and leverages more than 50,000 hours of private volunteer services (valued in excess of \$9.5 million per year) and ensures some level of access to the justice system in all corners of the state.

And yet, just as the civil legal needs of poor and vulnerable people have hit unprecedented levels, federal support for civil legal aid was cut by 4 percent in 2011 and another 15 percent is expected for 2012. OCLA has experienced cumulative reductions of nearly \$1.4 million in legislative appropriations over the past two years. IOLTA funding has dropped by more than \$5 million per year from historical average levels. As a result, the civil legal aid system stands threadbare, struggles to maintain skeletal presence in rural communities across the state, and struggles to perform its role in supporting the ability of our courts to administer justice effectively in cases involving those unable to pay for legal representation.

Office of Public Defense

Like the Office of Civil Legal Aid, the Office of Public Defense is a judicial branch agency that has gained national prominence with its innovative approach to service.

Through the Parents Representation Program (PRP), we have reduced the amount of time Washington children spend in foster care. To date, the office has been able to provide direct services to clients facing dependency and termination through the PRP in 25 counties.

Evaluations show the amazing effectiveness of this program. One study showed a 36 percent increase in the rate of family reunifications when parents are represented by PRP attorneys.

The most recent independent study through the University of Washington School of Social Work showed children in foster care reunited with their parents an average of one month earlier than without the program or were adopted into new families a full year earlier.

A recent budget reduction document suggested eliminating the PRP. We believe cutting the approximately \$12 million annual budget of this program would only shift the funding from reunification and permanency to higher foster care costs and increase the burden on our already over-burdened trial courts.

Minority and Justice

In the midst of this economic crisis, it is also important to remember that merely keeping the courthouse doors open is not enough. Equally important is the way business is actually conducted within those courtrooms and how the broader community perceives our courts.

In March 2011, the Supreme Court invited leaders from the justice system and other stakeholders to discuss questions about race and justice.

The perception of disparate treatment or differential outcomes is a threat to the very legitimacy of our court system, especially at a time when the demographics of our state are changing dramatically. We must identify things that need to be changed and work through court system improvements, such as judicial education, and with the legislature to ensure that the integrity of our judicial system is not compromised.

For example, research presented to us has suggested that:

- Similarly situated minority juveniles face harsher sentencing outcomes in our juvenile justice system.
- Defendants of color are significantly less likely than similarly situated white defendants to receive sentences that fall below the standard range.
- Among felony drug offenders, black defendants are 62 percent more likely to be sentenced to prison than similarly situated white defendants.
- With regard to legal financial obligations, similarly situated Latino defendants receive significantly greater legal financial obligations as part of their sentences than their white counterparts.
- Disparate treatment disfavoring minority defendants has been discovered in the context of pretrial release decisions.

But, improvements are already underway. As a result of the March 2011 meeting, the Washington State Minority and Justice Commission submitted specific recommendations to the Supreme Court. Together with our various partners in the criminal justice system, we are committed to maintaining a system of justice that is not only perceived as fair for all people but that actually dispenses justice that is free of bias and discrimination.

Gender and Justice

Another important initiative of the courts has been to provide easier access for victims of domestic violence who need court services. Constructing a coordinated response among the courts and other justice partners has made access easier for victims.

For example, protection orders are sometimes issued in several different courts. This has caused confusion for the parties, as well as for law enforcement who must enforce these orders. In addition, sometimes after a protection order is issued, the victim needs to have the order modified or even rescinded. Many courts lacked a process or clear procedure for victims to follow.

Over the last two years, the Washington State Gender and Justice Commission has taken the lead in tackling these challenges. Twenty-two regional meetings were held with over 1,000 justice system representatives. Based on this input, the commission drafted and presented statewide protocols for reducing conflicting orders and protocols for modifying or rescinding no-contact orders issued by courts.

We believe these policies will enhance victim safety when contact is necessary and ensure that the accused is clear on expectations for lawful behavior.

Plain Language Forms Project

Finally, another challenge to making our courts more accessible is to find ways to assist people without attorneys (pro se litigants). Current court forms tend to be complicated and difficult to understand. In 2011, we began Washington's Plain Language Forms Project. To date, the courts, legal aid providers, the private bar, the court's Mandatory Pattern Forms Committee, and 31 other organizations have been involved in the project.

The initial goal is to "translate" Washington's 211 family law firms into plain language. The long-term goal is to translate all of Washington's mandatory court forms into plain language. Eventually, we want to create interactive computer-based, plain language forms.

Closing

While there is much more to tell, please know that the judicial branch has been very busy this past year.

My colleagues and I are grateful for the opportunity to report on the state of Washington's judicial branch. As in years past, we look forward to working with other elected officials this legislative session to protect and preserve Washington's court system.

If you should have any questions regarding the initiatives outlined in this letter, I invite you to contact me directly, or our state court administrator. I wish you all the best in the year ahead.

Sincerely,

Barbara A. Madsen
Chief Justice