

State of the Judiciary
Chief Justice Elliot E. Maynard, West Virginia Supreme Court
Message to the State Bar meeting
Spring 2004

As Chief Justice of the Supreme Court of Appeals, I am pleased to have this opportunity to deliver the annual State of the Judiciary address at the West Virginia State Bar's Annual Meeting.

West Virginia's state government, like state governments throughout the nation, continues to cut back. In response to Governor Wise's request, the West Virginia Supreme Court submitted a revised budget for the West Virginia court system for fiscal year 2005 that cuts about \$5.57 million from our initial budget proposal. The judiciary's requested budget for fiscal year 2005 is \$74.1 million, instead of the \$82.3 million originally proposed. Our budget request for fiscal year 2005 is slightly less than our fiscal year 2004 appropriation. This is not the first time the Court has voluntarily reduced its budget. We also reduced our budget requests in fiscal years 2004 and 2003.

We are very proud of the way we handle the people's money. We run our Supreme Court and our magistrate, family, and circuit courts on a budget that in recent years has hovered around 2% of West Virginia's general revenue budget. Think of that. We operate one of the three branches of state government on about 2% of the total state government budget in my home county we would call that "stingy."

I'll give you an example of how tightly we run our judicial budget. You may have heard accounts of some state agencies having entire fleets of vehicles. The entire West Virginia court system, with almost 1,200 employees, has only three state vehicles. One of our three vehicles, a 1995 Ford Taurus, has over 140,000 miles.

Also, the court system pays almost all of its operational costs out of money generated by its activities and operations. Along with providing excellent public service, our magistrate, circuit, and family courts also generate money. In fiscal year 2003, these courts collected about \$53 million through filing fees, forfeitures, court costs, and fines.

Given how efficiently we run our judicial budget and the salaries of judges in other states, the state of our judicial compensation package is disheartening. It is a delicate and frankly unpleasant subject. I mention it because the folks in this room appreciate and understand that it is the most pressing issue facing the judiciary today.

On behalf of the entire court system, we would like to say thank you to the officers, staff and members of the Bar for your support of the effort to improve judicial compensation in West Virginia. We also had very strong support from Governor Bob Wise and his staff, particularly Alex Maciat and others. As you know, with Governor Wise's support, the pay package which Governor Wise sponsored passed the House of Delegates, but unfortunately it died in the Senate Finance Committee where we were unable to even have it placed on the committee agenda.

Circuit judges in West Virginia are now 49th in the nation in pay rank, Supreme Court justices are 50th in the nation, and our family court judges at \$62,500.00 are not only 50th in the nation, they make less than judges in Ecuador and Colombia. ECUADOR! And I remind you these are judges who make the most dramatic and awesome decisions affecting West Virginians today. i.e., who gets custody of your children or your client's children in a divorce. They also decide such important issues as child support, separable maintenance, paternity and grandparent visitation.

We are all doing our life's work in the judicial system and we all have a stake in attracting and keeping the best people we can as judges at all levels. The erosion of judicial pay has reached such levels of inadequacy that it threatens to impair the quality and independence of the bench.

Despite the state's financial crisis, I am proud to report that the Supreme Court, as the administrator of the West Virginia court system, is going strong. The West Virginia court system employs about 1,200 elected officials and trained personnel who provide an outstanding level of services to citizens across West Virginia. Our statewide court system has improved services to the Bar, litigants, and members of the public in several key areas.

We are improving services to self-represented litigants, many of whom are involved in family court proceedings. In 2003, about 31,000 people represented themselves in circuit or family court cases. We don't know precisely how many people represented themselves in magistrate court, but our best estimate is that about half of the 347,094 cases in magistrate court last year involved at least one self-represented litigant, which would increase the number of reported self-represented litigants significantly. The majority of the reported self-represented litigants, 26,000, were involved in cases which involved divorce, domestic violence, or other family court issues.

To help self-represented litigants, this past fall the Supreme Court used a \$45,000 grant from the State Justice Institute to open 10 pilot legal research centers in six public libraries, three circuit law libraries, and the Supreme Court Law Library. The Court partnered with the West Virginia Library Commission on this project

As part of the legal research centers' services, trained librarians assist the public with legal research questions. Patrons can use LexisNexis for up to one hour at a time free of charge and have access to written legal research materials. An informational video and brochure for self represented litigants also is available.

The legal research centers are located in the: Clarksburg Harrison County Public Library; Hampshire County Public Library; the Martinsburg-Berkeley County Public Library; the McClintic Public Library in Marlinton; the McDowell County Public Library; circuit court law libraries in Cabell, Ohio, and Wood counties; and in the Supreme Court Law Library. If the project is successful, the Court may apply for more funding from the State Justice Institute to continue and expand the project.

We also have improved court services for the mentally disabled. In both the 2001 and 2002 Legislative Sessions, the Legislature adopted many of the recommendations of our Supreme Court Commission on Mental Hygiene Reform. West Virginia's mental health law moves away

from an adversarial system to a medical model, allowing medical and social service systems to provide more proactive and preventive services.

In the fall of 2003, the Supreme Court used a two-year \$150,000 grant from the Bureau of Justice Assistance to partially fund a pilot Mental Health Court Diversion Program. The circuit and magistrate courts of Hancock, Brooke, Ohio, and Marshall counties sponsor this voluntary program for criminal defendants with serious mental illness.

The program participants must be charged with misdemeanor and/or non-violent felonies, excluding crimes against children or sex crimes. The participants' mental illness must have contributed to the crime or must be a factor in sentencing. Magistrates work with the misdemeanor offense cases and a circuit judge works with the felony offense cases. Offenders who successfully complete the program have a significant reduction in jail time.

The program follows mental health court models in other states with early intervention and stable release into the community with a minimum year of a court supervised treatment plan and frequent court appearances. The program works with the First Judicial Circuit's Community Corrections Program and the Lee Day Reporting Center, along with a variety of organizations in the Northern Panhandle to help participants with housing, education, and employment.

The Mental Health Court Diversion Program will hear as many as 40 cases the first year of the two-year grant period. If the program is successful, the Supreme Court may seek funding from additional sources to continue the program.

As we learn more about treatment for mental illness and as our jails and prisons become more crowded, the courts must learn how to use community sentencing alternatives to provide therapeutic and restorative justice.

Your Supreme Court is making the improvement of services to the public and State Bar members a high priority. Technology has been an important vehicle in better serving you. The West Virginia court system is a nationally recognized leader in court technology.

Many of you probably log on to our constantly expanding Supreme Court Web site at www.state.wv.us/wvsca. Our Web site is very popular and contains a wide variety of court system information. Without leaving your computer, you can receive timely summaries of Supreme Court opinions by e-mail and access the full text of opinions; check our Supreme Court calendar and docket; and watch and listen to Supreme Court arguments over our Web site. Over the past year, we have begun to add more information about your local circuit, family, and magistrate courts.

The Supreme Court also is working on providing all of our state courts with Internet access. We are working on creating a single database application that will allow any West Virginia judicial official instant access to all records, statistics, and contacts in the West Virginia court system. The database will be compatible with systems used by the West Virginia Division of Corrections and other state agencies. Portions of the database will be accessible to the public.

Many of you may have seen our videoconferencing system that provides a simultaneous video, audio, and data link between parties in different locations. We currently are using videoconferencing to allow prisoners in regional jails to appear in magistrate court for initial appearance hearings. Virtually every magistrate court served by a regional jail is now connected.

We also are using or working on using videoconferencing for many other court purposes, such as educational conferences, mental competency hearings, and proceedings in circuit and family court.

Those of you who practice in magistrate court should give your clients some good advice. Tell them, "Don't leave home without it." Without a credit card, I mean.

The Supreme Court has started a new project that allows magistrate court defendants to pay court costs, fines, forfeitures, and fees by credit card. We tested the program in Kanawha and Monongalia counties last summer. By the end of March, magistrate courts in 18 counties will have the capability to accept credit cards. We plan to complete the magistrate court credit card project in all 55 counties by this August.

Allowing magistrate court defendants to pay by credit card is a win-win situation. The magistrate courts will have increased collection rates and defendants will have increased convenience.

Technology is a wonderful way to bring the court to citizens, but nothing can replace human contact. One of the best things about being on the Supreme Court is having the opportunity to meet so many people from across West Virginia. The Court continues to travel to other areas of our beautiful state to hold Supreme Court proceedings.

Since the fall of 2003, the Supreme Court has held proceedings in Philippi and Morgantown at the West Virginia University College of Law, where we also judged the Moot Court Baker Cup Competition. Next month, we will hear cases in Martinsburg at the Berkeley County Courthouse as part of our sixth annual LAWS educational program for high school students. As part of LAWS, high school students study the judicial system and real Supreme Court cases in advance of the Court hearing the cases in the students' home circuit. With help from the bar, the schools, and the community, the court system has educated about 2,200 students through LAWS since 1999.

I enjoy staying in touch with you through my monthly column in the West Virginia Lawyer magazine, which the Supreme Court also distributes to newspapers across West Virginia. Several newspapers carry a version of this monthly State Bar magazine column.

Since 1999, the Supreme Court has produced annual report outlining the West Virginia court system's budget, case statistics, challenges, and accomplishments. Our annual reports have been well received. We expect to release an annual report for 2003 by this summer, after case statistics for all of the courts in the West Virginia court system are available.

Our 2003 Supreme Court Statistical Report will be finalized soon. The number of cases rose in 2003 over the previous year to 2,865, an increase of 212. A slight increase in workers'

compensation filings was largely responsible for the increase. Also last year, the Court disposed of 2,353 cases, reflecting our 82% clearance rate. Since late October, the Court has held workers' compensation cases in abeyance, pending final decision in a case called Charles Thompson v. WCC and Gregory A, Burton that challenges the application of a recent statutory amendment. This action had the effect of lowering the clearance rate, which is typically much closer to 100%.

The Supreme Court's successful Workers' Compensation Mediation Program also is on hold pending final decision in the Thompson case. Since the Workers' Compensation Mediation Program began in 1998, 1,450 cases have been selected for mediation. Of those cases, 672, or 46%, were settled and removed from the Court's docket.

Unfortunately, while the Workers' Compensation Mediation Program has helped the workers' compensation crisis at the Court, it has not solved the real problem of a severely underfunded system. In an attempt to address the growing number of workers' compensation appeals, in 2003, the Legislature created the Workers' Compensation Board of Review. The Court hopes the new Board of Review can help limit the number of workers' compensation appeals to the Supreme Court.

The Supreme Court is lucky to have a good working relationship with our superb Bar. Many of you have been active in joint bench-bar projects, such as our LAWS program or Law Day celebrations. In recent years, West Virginia's court system and legal community have dramatically increased sponsorship of Law Day activities to educate the public.

Many of you also serve on Supreme Court and State Bar committees that are helping improve the court system. For example, Bar members are serving on Supreme Court committees that are working to eliminate all types of unlawful bias in the courts and that are studying perceived racial disparity in the juvenile justice system.

Without our dedicated Bar, the success of the Supreme Court's many court improvement and public outreach projects would not be a reality.

I appreciate this opportunity to address you on the State of the West Virginia Judiciary. Despite the challenges of the past year and the challenges that we will continue to face, we have been able to serve our citizens well, and have found ways to serve them better. I am proud to say that the State of the West Virginia Judiciary is strong.