STATE OF NORTH DAKOTA
COURTS

2021 State of the Judiciary Address

Monday, January 11, 2021

Chief Justice Jon Jensen presented the State of the Judiciary address on Jan. 5. Here is a transcript of his remarks:

Thank you for the invitation to report on the state of the judiciary and appear before a Joint Session of the 67th Legislative Assembly of the State of North Dakota. Speaker Koppelman, Lieutenant Governor Sanford, Governor Burgum, members of the House and Senate, elected officials and colleagues on the trial and Supreme Court bench.

This room has special significance to a lot of people. It has special significance to me as well. This room was the location of several significant events in my life. In the fall of 1990, along with my spouse Linda Bata, I was sworn in as a lawyer in these chambers. In the winter of 1991, while working for former Chief Justice Ralph Erickstad, I listened to the state of the judiciary presentation in this room. In 2017, it was the location of my investiture to the North Dakota Supreme Court. Today, I am honored to stand in this room and report on the state of the judiciary.

The judicial branch mission is to provide the people, through an independent judiciary, equal access to fair and timely resolution of disputes under the law. Not only do I believe the judicial branch is meeting this stated mission, I firmly believe we are meeting that mission in an exceptional manner.

I hold that belief for three reasons: the people that are in our judicial system, the partnership we have with the executive branch, and the funding that is provided by this legislature.

I would like to start with the people who are in the judicial system and are performing in an exceptional manner. We have 53 trial court judges in North Dakota, we have five judicial referees, eight judicial districts and 53 clerk of court offices.

In most years we handle approximately 180,000 new cases or reopened cases. Our trial judges are elected, with vacancies filled by temporary appointments until the next general election.

We expect a lot from our district court judges. They are judges of general jurisdiction. What that means is our district court judges will handle family law cases, they will handle criminal cases, car accidents, and contract disputes. Although it's a separate court, they're the same judges who staff our juvenile court system.

On any given day our trial court judges may handle criminal appearances in the morning, later in the morning they may handle a family law matter, and in the afternoon maybe work on juvenile court matters. While it's not unique, it is unusual. Many states have specialist judges that handle either criminal dockets or civil dockets, family law dockets or probate dockets. We expect our judges to know all those subject areas. Our judges work hard. In an average year they are assigned approximately 2,900 new cases and 500 reopened files.

Each of our judicial districts have different challenges. The larger populations in the Northeast Central Judicial District, the East Central Judicial District, the South Central Judicial District and the North Central Judicial District require us to maximize efficiencies in scheduling.

The increase in commercial activity as a result of oil production has imposed significant demands in the Southwest Judicial District and the Northwest Judicial District. Those demands are often lagging: as economic activity increased people were happy and there were fewer disputes; as productivity decreased people became less satisfied and disputes actually increased. Our caseloads in the Southwest Judicial District and the Northwest Judicial District are increasing rather than decreasing.

The Southeast Judicial District and the Northeast Judicial District provide challenges of geography. The Northeast Judicial District has six judges covering 11 counties. Those counties include Pembina County in the east all the way over

to Renville County on that district's western border. The Southeast Judicial District has seven judges covering 14 counties. They travel from Richland County in the southeast to Wells County in the center of the state.

The pandemic has raised significant challenges to all our district court judges but I am proud to stand here and say that all 53 of our district court judges as well as all five of our judicial referees continue to provide essential services to your constituents and to all of the State of North Dakota.

In mid-March the North Dakota Supreme Court suspended jury trials statewide and provided guidelines on court operations in response to the pandemic. Our presiding judges were given authority to suspend hearings and trials at the district court level after July. Presiding judges have been considering several factors, including the health and safety of our participants, when deciding whether to suspend court hearings or trials.

Our courts have remained open both in person and using reliable electronic means. Many of our judges excelled at using reliable electronic means. Our reliable electronic means workgroup led by Justice Daniel Crothers included many judges, clerks of court, and administrative personnel. Judge McCullough and Stiel in the East Central Judicial District, Judge McCarthy in the Northeast Central Judicial District and Judge Clark in the Southeast Judicial District, just to name a few, were very adapted to using live electronic means, holding dozens of hearings in single court sessions.

Judge Robin Schimdt, who is the presiding judge in the Northwest Judicial District and has an office in Watford City, explained the need to remain open as follows, and I believe it is a great summary of why the courts needed to remain open. She said that suspending jury trials and trials in general is detrimental to our system. It erodes faith and trust in the judiciary. People depend on governmental functions, especially during challenging times. Precautions can be taken to alleviate risk, however courts are pivotal to protecting citizens and their property and must remain open and accessible in a format that has been tested by time and experience.

Reliable electronic means is not a replacement for in person proceedings, but used in conjunction with in person proceedings it is a fantastic tool for ensuring the prompt and fair resolution of cases. Our judges have used reliable electronic means to complete their essential court functions.

What our judges did during the past year has been truly amazing. An additional group of people within our judicial system, and the largest group of people within the judicial branch, are our clerk of court staff. Those clerk of court staff work in 53 different county offices, one in each county. They are responsible for all of our recording and record keeping and processing filings.

In 2019 former Chief Justice Gerald VandeWalle expressed his concern in his state of the judiciary address that our clerk of court staff is understaffed. When we were previously asked to reduce our budget we set a goal of 82 percent staffing in our clerk of court offices.

Because of increased filings in Grand Forks County and in Cass County, Grand Forks County was operating at 70 percent staff and Cass County was operating at 60 percent staffing. Funding for Cass County and Grand Forks County was addressed in the 2019 legislative session by adding an additional clerk of court staff person to each of those counties. Thank you. We appreciate the additional staffing. It has improved docket currency in both of those districts.

We remain understaffed in our clerk of court offices. As we will discuss later regarding future legislative priorities, we believe we can resolve this issue primarily internally. In addition we will be proposing legislation in 2023 that will continue our growth.

During the pandemic the majority of our clerk of court staff transitioned to working at home and they have been remarkable. We have experienced very minimal initial delays in filings and no delays currently in filing. We continue to meet out benchmarks in our clerk of court offices and we continue to process filings in a timely manner.

In our district courts we have juvenile court staff. Our juvenile court staff is a model for other states. Where other states see 80 percent of their juvenile case being resolved by a judicial officer, we see 80 percent of ours being resolved before the necessity of court intervention. Interaction with juveniles is essential. Working with our court administration staff and our information technology staff, our juvenile court officers were able to make contact with both juveniles and their

families during the pandemic

Later in my remarks with regards to the legislature partnership we have we will discuss House Bill 1036 and I believe it is an important bill for you to consider, although it is not one of our pending bills

People are one of the three keys to our exceptional judicial system here in North Dakota. Our employees are dedicated, they are essential, and they are truly the engine of what runs the judicial system. We also have executive branch partners and I believe that is the second key to the foundation of our exceptional judicial system – it would not be possible without the executive branch partnership.

A prime example occurred during the previous year. Correctional centers have a continuous flow of individuals into detention, either awaiting trial or serving a sentence of less than one year. All of that is continuous, it does not stop because of a pandemic. That is usually balanced by an outflow of individuals who have gone to trial and are acquitted, or gone to trial and are convicted and are either being sent to the state penitentiary or some other form of release.

During the pandemic, the state penitentiary stopped admitting new inmates in order to control its COVID issues. Correctional centers did not have that luxury. When someone is arrested for a violent crime and poses a risk to society they are detained. When we suspended jury trials until July, which further compounded the problem because now there was no outflow from our regional correctional centers. Working with the regional correctional centers, the county commissioners, as well as the state penitentiary, we were able to restore balance before there were any significant outbreaks within our regional correctional centers.

Our juvenile courts also have many connections to the executive branch. Our juvenile courts are most effective when there are placement options for juveniles at risk, either because of deprivation, neglect or abuse or in instances where a juvenile is in need of treatment. Using treatment as an example – judges and juvenile court officers often determine treatment is the best course of action for a juvenile, but the judicial system does not and should not operate treatment facilities. The judicial branch does not and should not have treatment providers. Those are executive branch functions.

Over the past biennium the lack of treatment options has become substantially deficient. Working with Chris Jones and his staff at the Department of Human Services as well as the Department of Juvenile Services we were able to secure a small number of additional placement options for juveniles. Unfortunately, even those small gains were eliminated when additional private providers elected not to continue juvenile treatment.

Our juvenile courts cannot function as intended without adequate placement options. While providing treatment services is not a judicial branch function, the juvenile court depends on adequate placement options. I encourage the legislature to look closely at the executive branch's requests in regard to funding juvenile court placement options.

We also have a relationship with counties. As most of you know our facilities for our trial courts are county facilities. County commissions have been outstanding partners with our trial courts and were outstanding partners during the pandemic. We are thankful for all of the resources that our counties have provided.

The judicial branch has an endless interaction with the executive branch we are proud of the cooperation that we have with state agencies, the governor's office and other state departments. Those partnerships are the second key in our exceptional judicial system.

The third key in our exceptional judicial system is legislative funding. We would not be an exceptional judicial system without the funding provided by this legislature.

First I want to thank you for the funding provided in the previous legislative session. The additional juvenile court officer, the additional recorder, the additional judicial officer, the staff for the North Dakota Judicial Conduct Commission and Attorney Disciplinary Board, the additional clerk of court and deputy clerks were appreciated. We believe we have been good stewards of those funds and we believe we will be good stewards of the funds we are provided in the future.

One example of our stewardship of these public funds was demonstrated by our response to social distancing requirements in the pandemic. The district courts needed a solution to allow staff to maintain an official recording of

public proceedings while also being efficient and safe. However, the current network configuration and software was not going to provide a good long-term and cost effective solution to meet the need. The court used CARES funds to upgrade sound mixers and then purchased new recording software. That software solution provides the ability to record official court records from anywhere the staff has internet connectivity, including their home or their office, thus keeping them safe by minimizing close contact and maintaining social distancing.

In December, an electronic court recorder in the Northeast Central Judicial District piloted the new software. The judge, electronic court recorder, clerk of court, and all of the parties appeared electronically from different locations without a single person being in the courtroom. The electronic court recorder was able to utilize the interactive television system along with our new software and the recording software to operate both systems remotely.

There are additional features of the software that will make the staff more efficient, including the ability to create tags within the records. The additional capabilities of the software will also be explored with regard to efficiency. We currently expect that we can now do artificial transcription with accuracy close to 90 percent. Staff across the state are being trained on new software as it is being rolled out to the districts with the goal of statewide use by early spring of 2021. Our information technology staff and Justice Jerod Tufte have been instrumental in our technology changes.

During the upcoming legislative session, Sally Holewa, our state court administrator, and others will provide you with the specifics of our budget request. I have a few highlights I would like to discuss today.

When considering our current funding budget request there are three concepts that the judicial branch will keep in mind. Our funding should be driven by looking forward through the windshield not backwards through a rear view mirror. It is unlikely that yesterday's needs will be the same as our needs 5 to 10 years from now. It's much easier to change how we operate in anticipation of changes rather than as a reaction to change.

In December we provided a report to legislative management regarding court reporters. There were many people involved but I would like to extend a special thank you to Senator David Hogue. The report accurately reflects where the judicial system is at and it also provide us an opportunity to look forward to assess our future needs and to anticipate change.

That study provided us with the knowledge of how little support our trial judges are provided and how the recording function is better suited for the clerk of court's office. Fifty-nine percent of our reporter recorder time is actually in the courtroom, 25 percent of their time is transcript related and only 16 percent is spent supporting judges. Internally we have begun a pilot program to reorganize our allocation of resources, moving the recording duties to the clerk of court's office, ultimately eliminating manual transcription through artificial transcription and adopting the electronic record as our official record rather than a paper copy of the record, leveraging our new recording equipment, and reallocating support staff to roles directly supporting judges with research.

At the end of our reallocation it is our anticipation, without any request to this legislature for additional FTEs, we will be able to increase the staffing in our clerk of courts offices by a minimum of 10 FTEs. When fully automated transcription is available we anticipate that there will be an additional equivalent of 10-12 FTEs. At the same time as we increase direct support to judges, we will increase public access to our courts by providing low or no cost transcripts for appeal and we will be closer to meeting our fully funded and staffed clerk of court offices. All of this will be accomplished internally and again without the need for additional legislative funding.

I would like to talk about one of the other legislative initiatives and that is the child support initiative that will be heard in the judiciary committee tomorrow. In partnership with North Dakota Child Support Enforcement, we have begun removing our clerks of court from child support functions. This is a process that actually began several years ago. Those functions are properly an executive branch function.

The courts have previously initiated orders to show cause on behalf of a party, but that is not appropriate for the judicial branch. We do not issue similar orders without a motion by a party in any other civil proceeding. The judicial branch is the appropriate forum for resolving child support issues and in enforcement of child support issues, but we should not be acting as an extension of one of the parties or acting as an extension of the executive branch.

The child support computer system is also not compatible with our computer system. Despite valiant efforts we cannot make our computer system compatible. This session we are asking the legislature to remove the courts from that process.

I also want to discuss electronic filing. While it is not our request, the courts support the current initiative by the Attorney General's Office to bring our county state's attorney's offices into electronic filing of initial criminal proceedings. Our state's attorney's offices are the only parties that are exempt from electronic filing requirements. In some counties this accounts for up to 20 percent of our deputy clerk of court's time. We have started the project of converting the state's attorney's offices to electronic filing, but it needs funding to continue and sufficient funding to complete it within a reasonable amount of time.

We also have two major technology projects that we are asking the legislature to fund – both are long overdue. One is a document management system for our juvenile courts. Providing service to juveniles should not be impaired by deficiencies in our processing of documentation. The second is a docket management system for the Supreme Court. Our current system was designed as a unique system in 1994. The designer of that system is no longer working and is no longer providing service. The current system cannot be integrated into the same system used by our district courts.

As I mentioned earlier, also pending before the legislature is House Bill 1036, a rewrite of our juvenile justice process. I want to thank Representative Klemin and Justice Lisa Fair McEvers for their work on this project as well as the work of others on this project. It is an important step in reforming our juvenile laws. While not a judicial branch request, we support House Bill 1036.

We are also looking forward to the 2023 legislative session. I realize you have a lot on your plates now, but sometimes it's helpful to discuss into the future what the judicial branch will be looking at in coming years. We are attempting to plan 5-10 years ahead. In the 2023 legislative session we will be asking for complete integration of the county clerk of court offices into the state judicial system.

Currently, the judicial system works and operate with 35 contract counties and the rest of the counties are state counties. We contract with the counties for services by their clerk of court offices. The judicial system is committed to providing service in every county in the State of North Dakota. During the pandemic we confirmed this by having clerks located in every county. We have confirmed that that's beneficial and it does not impede our ability to allocate those resources statewide.

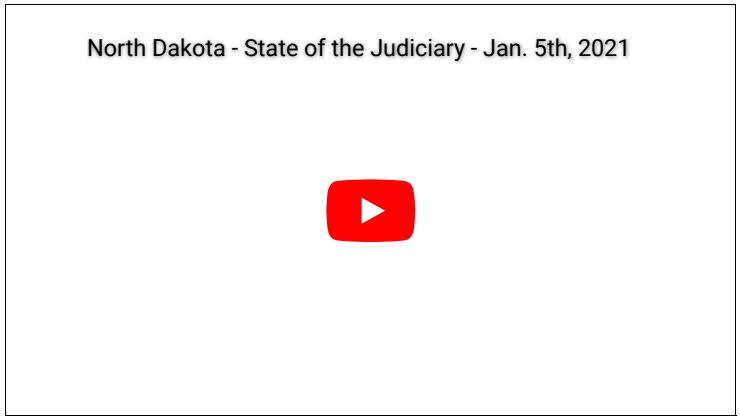
However, because the majority of our clerks are contract clerks, it is hard to integrate them with the rest of our system and it is difficult to properly allocate our resources. We can better allocate services and employee time if we have a uniform workforce. I want to repeat the goal is not to eliminate clerk of court offices in individual counties where deputy clerks are located, the goal is not to relocate clerks of court. The courts will remain open in every county and we are committed to a personal presence in every county. As I mentioned we'll save this topic for 2023

Several sessions ago the legislature allocated funding to restore and expand the Liberty Memorial Building into a judicial center. Following that legislative session the budget forecast changed dramatically and the judicial branch voluntarily agreed to forgo and return to general funds the funding that was allocated to restore and expand the Liberty Memorial Building.

Each year the legislature meets, space to perform legislative functions is at a premium. During the interim the lack of permanent legislative rooms complicates your legislative function. We are providing space within the judicial branch this legislative session and will continue to do so if asked to accommodate committee chairs. When considering a bonding bill it is my request that you consider restoration and expansion of the Liberty Memorial Building to provide the judicial branch with much needed space and provide the legislature with space within the capitol itself

When I began today I told you that one of the events in this room that was special to me was the 1991 state of the judiciary address given by my former boss and former Chief Justice Ralph Erickstad. The year before I arrived, Chief Justice Erickstad and the Court had been involved in budget cuts. While he and I did not speak at length about the budget issues, one thing is memorable. He told me his budget philosophy was to ask the legislature only for what was

needed, without exaggeration and without extras. His intention was to build credibility through good stewardship of taxpayer dollars. I believe he followed that philosophy, just as I believe former Chief Justice Gerald VandeWalle in subsequent legislative sessions has followed that philosophy. I intend to protect that credibility. The judicial branch will continue to be good stewards of taxpayer dollars.

We have an exceptional judicial system. It is built on good people, executive branch partnerships, and legislative funding. Thank you for the opportunity to be here today during a joint session of the legislature. It is an honor, and please accept my best wishes for a productive legislative session.

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