

## **THE STATE OF THE JUDICIARY**

Report to the First Regular Session of the 31<sup>st</sup> Legislature

February 20, 2019

Chief Justice Joel Bolger

President Giessel, Speaker Edgmon, Honorable Members of the 31<sup>st</sup> Alaska Legislature, and others who join us to hear the condition of Alaska's judicial system, good morning. I thank you for this opportunity to address the joint session of the Senate and the House of Representatives.

First, please allow me to introduce my predecessor. Justice Craig Stowers was appointed to the Alaska Supreme Court in 2009. He served the court as chief justice from 2015 to 2018. Justice Stowers chairs the Alaska Court System Security and Preparedness Committee and the Judicial Conference Planning Committee. He also serves as a commissioner on the National Conference of Commissioners on Uniform State Laws. Please join me in welcoming Justice Stowers.

I would also like to introduce the court system's administrative staff here in Juneau. Most of you know that the court system's perspective is provided through Deputy Administrative Director Doug Wooliver, who presents and explains our budget proposals, and General Counsel Nancy Meade, who provides information on bills and the court's implementation of the statutes you pass. We appreciate the support we've had from the legislature, and especially for the wonderful relationship we've had over many decades. You have been open to helping the court system in concrete ways, whether that's by hearing proposals that may require a statutory change, or by authorizing funding to maintain our operations

and services. For that support, I thank you. Please join me in recognizing Doug Wooliver and Nancy Meade.

I'd like to focus my remarks this morning on two main areas. First, I'll talk about what work we handle. My intent is to provide you with some perspective about what the courts do every day, and how our mission of providing an impartial forum for resolving disputes takes shape in Alaska's courtrooms.

Second, I'll address changes in the judicial branch, including changes in (a) court operations that we've implemented to respond to budget decreases; (b) changes in our judgeships in light of the tremendous turnover we've had in recent years; and (c) changes to come, in terms of innovations we're exploring.

At the trial court level, we have 43 superior court judges statewide, and 22 district court judges. Looking first at the superior court – there were roughly 24,000 cases filed last fiscal year. A very gross average is about 500-650 cases per superior court judge, but the caseload varies depending on the judge's location and the travel required.

Of those 24,000 cases, slightly more than a quarter are felony cases, about a quarter are probate, about a fifth are family cases (divorces and child custody cases, mostly), and about 10% are child in need of aid cases. The superior court also handled about 2500 general civil cases and about 750 delinquency cases.

The 22-member district court has jurisdiction over lower-level crimes and smaller civil cases; the district court received over 98,000 filings last year. There were 23,232 misdemeanor cases and 8,000 domestic violence protective order petitions. Over half of the district court's cases were filed as citations for what are categorized as "minor offenses". The district court also hears a regular docket of other civil cases and small claims.

The Alaska Court of Appeals has three permanent judges who handle only appeals in cases involving criminal charges, juvenile delinquency, and post-

conviction relief. They issued 247 opinions last year. Finally, the Alaska Supreme Court handles primarily civil cases; we hear criminal petitions from the court of appeals on a discretionary basis. The supreme court issued 164 opinions last year as well as dozens of decisions on rule changes and other administrative matters.

I'm tremendously proud of the work of these judges in maintaining the rule of law in the State of Alaska. So I'm going to spend just a moment reflecting on why this work is so important.

In a free market economy, it is important for businesses to be able to consistently forecast their risks in order to make reasonable investment decisions. This means that statutes and regulations have to be interpreted reasonably and that court decisions have to be predictably based on previous decisions.

In a democracy based on majority rule, it is important that laws be interpreted fairly and consistently. The disadvantaged may need protection from the powerful; those in a temporary minority may need protection from ideas that seize momentary popularity.

In a changing society, it is important that the law maintains a fair allocation of the effect of the challenges in our daily lives. When two married people need a divorce, the property must be divided fairly, taking into consideration their income, their children, their future prospects and their health. When an accident happens, the economic impact needs to fall on those who caused the accident or those best positioned to avoid the loss.

In a frontier that cherishes freedom, it is important that judges protect the privacies our constitution guarantees. Courts protect our freedom of speech, our freedom of religion, our right to bear arms, our freedom against unreasonable searches and seizures, and our right to fair procedures in criminal and civil cases.

Now I'd like to tell you about what has been changing, particularly in response to a reduced budget. Over the last three years, former Chief Justice Stowers told you about some of the steps the judicial branch was taking:

- our staff and judges took voluntary leave without pay to reduce personnel costs;
- we encouraged some long-serving employees to retire to save their higher salary expenses;
- we found alternative sources of bandwidth for rural areas that saved tens of thousands of dollars;
- we cut the actual number of judicial branch employees by over 9%; we had 810 employees in 2016, and today we have 742;
- and we reluctantly closed the courts on Friday afternoons. The reduction in hours meant that our non-judge employees all took a four percent pay cut. Our judges continue to work on Fridays and we remain open for emergency proceedings.

Some of these changes resulted in true challenges. A clerk's office in a busier court with 10% fewer staff members may be slower to distribute court documents to parties, or to route files or documents to the right judges, or to update case activity in CourtView. In some locations, clerks are struggling to keep up with the caseload with fewer staff. Some clerks are now telling judges not to schedule court proceedings at certain times because we don't have enough staff to cover the proceedings. Some rural court locations have lost a magistrate judge and are now served instead primarily by a resident deputy magistrate.

When we submitted our initial budget request this year, we did not include an increment to open on Friday afternoons as we were mindful of the state's continuing fiscal climate. We focused on only asking for increments that would reflect our direct cost increases. But based on Governor Dunleavy's public support

for having courts open on Friday afternoons, and after conversations with the Office of Management and Budget, we have amended our request to ask for the funds necessary to reopen on Friday afternoons.

I want to turn next to a second change that I mentioned earlier, and that is the unprecedented turnover in our judge positions statewide. We have installed 30 new judges in the past five years, the Alaska Judicial Council just finished interviewing for five positions, and we have five additional vacancies to fill over the next few months. It has been a challenge to provide the appropriate training and mentoring for these new judges, but it's valuable to bring in new faces, with new ideas, and with new experiences.

I do want to mention two district court positions that are currently open. The Valdez district judge was recently appointed to the superior court in Juneau, and the Homer district judge has announced her retirement. The Valdez and Homer positions are the only district court judge positions in the state in communities that have single-judge courts. We have found it is inefficient to use a district court judge with limited jurisdiction in these rural communities. We need a superior court judge who can handle all the matters that arise in the local area without the delay and expense of sending in a judge from another location. We are therefore taking advantage of these vacancies to ask the legislature to upgrade these two positions to superior court positions.

The administrative director and I have very carefully studied the case patterns and the coverage in these courts, and we have explored potential alternatives and the various consequences of other solutions. But we feel certain that this statutory change and the reclassification of these judgeships will be the most effective and the most fiscally responsible way to serve the judicial needs of the citizens in the Third Judicial District. I thank you very much for considering our request.

I've talked about changes to our budget and adaptations to the decreases, and I've talked about the many changes to our judicial staff. The final category of change I'd like to tell you about is forward-looking. Just as we constantly review our budget and expenditures, we also continuously review and update our overall operations.

We are currently very concerned about cybersecurity. Recently the computers in the Nome courthouse were unable to operate for several days due to the same type of computer virus that infected the Mat-Su Borough offices last year. Our staff was able to contain the problem quickly and we narrowly avoided huge statewide losses. Even though our security software was state-of-the-art when we purchased it, we now know that it needs to be updated to the standards now used in other state agencies. Our technology has to be current to prevent losing records, breaches of privacy, delays in case processing, and other disruptions in our services.

Other innovations we are currently exploring may be more visible to the public. A growing number of people with legal problems are not represented by an attorney, and we have an obligation to help those people get appropriate assistance and achieve fair outcomes. Last year we received technical assistance that allowed us to partner with Microsoft Corporation, Legal Services Corporation and others to develop a web-based tool that uses clear, simple language to help people understand their civil legal problems and identify legal and other resources. This project brings together three key elements --- technology, content, and community --- to provide better legal information for regular people, and better referrals to service providers that can help. We call this tool the Legal Navigator. We expect to be testing this application later this year. We hope this tool will help regular people to overcome Alaska's financial and geographical barriers to appropriate assistance.

Another concern is the time that can pass in a criminal case between the defendant's first court appearance and when the case gets finally resolved. It's clear that a longer pretrial time period benefits no one in the system – not the victims who bear the continual stress of repeated continuances, not the police officers whose cases wait years for adjudication, not the criminal defendants who may be sitting in jail until their guilt or innocence is decided, and not the lawyers and judges who need to juggle the larger caseloads produced by this delay. A focus of mine, as the Chief Justice, is to make every effort to shorten this time period. To that end, the Anchorage court has just begun a pilot program aimed at streamlining processes and eliminating unnecessary hearings in felony cases. It will take time to change current systems and habits, but I'm encouraged that we're taking this on, and I'm hopeful that we will ultimately shorten these pretrial delays.

My goal for this morning was to provide an introduction to the good work that the judicial branch does. We are making progress in areas such as technology projects and improved criminal case processing. Yet we still have challenges stemming from the decreased number of employees and a demanding caseload. On balance, I am immensely proud of the court system's work, excited about our future, and personally committed to constantly reviewing what we've done, what to change, and how to enhance and improve as many areas as possible.

I appreciate your patience as I spoke today. Thank you for the work that you are now undertaking, and best wishes from the entire judicial branch for a productive legislative session.