

THE STATE OF THE JUDICIARY

Report to the Second Regular Session of the 31st Legislature

February 12, 2020

Chief Justice Joel H. Bolger

President Giessel, Speaker Edgmon, Honorable Members of the 31st Alaska Legislature, and others who are joining us today, good morning. I very much appreciate this opportunity to address the Joint Session of the Senate and the House of Representatives for today's State of the Judiciary address.

First, please allow me to introduce my colleagues on the Alaska Supreme Court who are here with me today. Justice Daniel Winfree is a third-generation Alaskan from Fairbanks. He has served on the court since 2008. Justice Winfree chairs the Alaska Court System Appellate Rules Committee and he is the Court's Liaison to the National Conference of Bar Examiners. Justice Winfree recently agreed to chair a Special Committee on the Code of Judicial Conduct.

Justice Craig Stowers served the Court as Chief Justice from 2015 to 2018. He chairs the Alaska Court System Security and Preparedness Committee and also serves as a Commissioner on the National Conference of Commissioners on Uniform State Laws. But I'm saddened to report that Justice Stowers recently announced his retirement as of June this year. Please join me in extending to Justice Stowers our warm congratulations for a job well done.

Justice Peter Maassen joined the court in 2012. Justice Maassen chairs the Court's Access to Civil Justice Committee and the Judicial Conference Planning Committee. Justice Maassen recently agreed to lead a team to a Regional Summit on Regulatory Reform and New Ways to Deliver Legal Services.

Justice Susan Carney was appointed to the court in 2016. Justice Carney serves as chair of the Court's Child in Need of Aid and Juvenile Delinquency Rules Committee and the Court's Fairness, Diversity, and Equality Committee. Justice Carney has also been active as a judge and coach of the We the People Civics Competition for the past several years.

I would also like to introduce the new Administrative Director of the Alaska Court System, Stacey Marz. Ms. Marz previously served for 16 years as the Statewide Director of our Family Law Self-Help Center. She developed a triage approach for divorce and custody cases that has become a national model and has expanded our ability to provide language access services, alternative dispute resolution, and access to justice. Please join me in welcoming Stacey Marz.

I also want to recognize two people you are already familiar with, the court system's excellent administrative staff here in Juneau for the legislative session: Deputy Administrative Director Doug Wooliver, who presents and explains our budget proposals, and General Counsel Nancy Meade, who provides information on bills and statutes.

Finally, I would like to introduce Susanne DiPietro, the Executive Director of the Alaska Judicial Council. As you know, this council nominates judicial candidates for appointment by the governor. Over the past five years, the council has helped fill 40 judicial positions, well over half of the judicial positions statewide. And as usual, the council will also evaluate the 22 candidates who will be standing for retention election next fall. Please help me thank Susanne DiPietro and the Alaska Judicial Council for their hard work.

I begin my presentation by announcing that the state of the judicial branch is strong. Our branch is made up of about 700 hard-working Alaskans, united in our mission to provide an accessible and impartial forum for resolving cases brought to it in accordance with the rule of law. We have an outstanding collection of hardworking employees – those who image document after document in a closed case file to create a permanent record, those who sit in a courtroom each day to properly handle the exhibits and files and official recordings of hearings and trials, those judicial officers who travel to a jail twice a day to arraign criminal defendants so that the system can save the costs and avoid the safety issues that attend prisoner transports, and those members of our accounting staff who handle jurors' paychecks, collect restitution for crime victims, and account for bail payments. I am very proud to say to you that we are all dedicated to resolving the legal conflicts that Alaskans encounter and ensuring that they are adjudicated fairly and efficiently in a neutral forum in accordance with the rule of law.

We have a number of challenges as well. The principal challenge, as I'm sure you would expect, is the tight budget environment. And here I would like to sincerely thank the legislature for its consistent support of the judiciary. When we were cutting our budget for a total of almost 11 million dollars over a three-year period, you funded us at the reduced levels we proposed and did not cut more. And over the past two years you have funded the modest increments that we have requested. We come to you for only the things we need, and you have always responded. We are grateful for our long-standing good relationship with the legislature.

But we are all part of the same state, and we have all had to get by with less. Courts do not have optional programs that can be cut, and we've had to accommodate every decrement to our budget by adjusting some of our core functions. We have cut our spending on personnel by decreasing the number of staff and by cutting hours and salaries, but those changes have absolutely resulted in a reduction of services to the public. Unlike some other parts of state government, where a unique program can be eliminated or a project can be halted when the budget is reduced, our tasks did not change and our workload and responsibilities did not correspondingly decrease.

In fact, the court system has seen unprecedented increases in our workload:

- In fiscal year 2019, the number of felony case filings was the highest ever – we received over 7,300 new felony filings,

which is over 1,000 more than just two years ago. And data from early this fiscal year shows that upward trend continuing.

- The number of new child in need of aid cases has similarly reached new highs in recent years – it has grown from about 1,500 ten years ago to over 2,500 in FY 19. Again, the most recent data from this fiscal year indicates the number of these cases is also continuing to grow.
- A recent count of all cases open and active at the trial court level showed a nearly 20% increase over the number of open cases on the same day five years ago. Looking at felonies only, we have 40% more open active felony cases now than we had five years ago. So we have a 20% increase in all open trial court cases and a 40% increase for the felony cases while the number of court staff has been decreased by about 9% and our overall budget has been reduced.

Simply put, we have fewer resources than we used to, but there has unfortunately been no corresponding moratorium on crimes being committed, no decrease in the rate of child abuse and neglect, no lowered divorce rate, and no decline in the need for justice to be dispensed in other important areas.

However, I am proud to report that over that same period that our funding has declined, we have found efficiencies and opportunities:

- We are covering a number of rural court locations with traveling circuit-style magistrate judges, which allows us to

have fewer staff but cover the caseload in the rural areas effectively.

- We have a program in most of the courts to review every single divorce and custody case very soon after it's been filed to see if it seems to be one that could be handled with volunteer attorneys, mediators, or a settlement judge who can help the parties find a resolution by agreement. This program impacts a significant number of families. Since the program began ten years ago, well over 2,200 cases have gone through the one-day settlements, with over 80% fully settling in that day. It's a time and money saver for both the family and the court, and because it's a negotiated settlement, fewer of these cases come back to the court for later revision.

- We've been staffing a committee that provides practical training to attorneys and others involved in child in need of aid cases, which ensures that agency staff who deal in this area all have the same baseline of knowledge. This also benefits the court by helping to streamline court hearings in those cases.

- We have centralized our handling of mental competency proceedings in criminal cases; now whenever feasible, one designated judge handles them all. These cases can be processed much more efficiently when one judge can control this entire docket.

- And I am particularly proud to say that, at the trial level, we have absolutely prioritized criminal cases and children's cases, with the goal that we will have a judge available if the parties are ready to have a trial on any particular day. That may

mean moving other matters around the calendar, or hiring pro tem retired judges when funds are available, but in the court system's view, it is part of our constitutional responsibility.

So we've been doing our part: We've cut our employees and our costs, we've handled a higher workload, and we've been able to achieve results beyond what you might expect. Now though, to ensure that our staff and our judges are able to continue to do their jobs effectively, we must seek some limited additional resources this year.

I'd like to highlight a few of those areas where we need funds. Last year, the governor negotiated and the legislature funded three-year contracts with several executive-branch unions. Those contracts included cost-of-living increases of 3% for FY 20, and 1% for both FY 21 and FY 22. Last year, the legislature approved the same cost-of-living adjustment for the non-judicial employees in the court system. For FY 21, we are requesting a 1% cost-of-living adjustment for these non-judicial employees, to match the adjustment for the executive-branch union employees.

Second, we have a backlog in the Court of Appeals, where appeals of criminal cases are resolved. The three judges on that court are working grueling schedules to reduce this backlog. But because the number of felony cases filed in 2019 was the highest ever, it does not appear that the workload for the Court of Appeals will decline soon. We have been able to hire some temporary retired judges to

help when funds are available, and have instituted a number of other efficiencies. For example, the Court of Appeals is now issuing more summary dispositions of cases that do not present any novel legal theories. But we cannot continue to address the problem without additional resources.

Because of this backlog, the court system is supporting a bill already introduced and heard last year – Senate Bill 55 sponsored by Senator Wilson – which would allow a temporary fourth Court of Appeals judge to be appointed. The fourth judge would be tremendously valuable in our efforts to keep pace with new filings and chip away at the backlog. Along with supporting the fourth temporary judge provided for in SB 55, the court system has a budget request for a permanent court of appeals staff attorney, a position that can handle straightforward motions and prepare draft opinions for the judges to consider. We believe that these two approaches, the temporary judge and the permanent attorney, will be the most constructive and cost-effective way to help us bring these criminal cases to a timely resolution for the benefit of victims, the parties, and the public at large. Thank you for considering our request.

Third, the therapeutic courts that we operate have been shown to truly help Alaskans who are involved in the justice system and have underlying addiction or mental health issues. When defendants are able to adhere to the strict rules and requirements of the program and finally graduate, they are less likely to commit another crime. These successful courts are very resource-intensive though – the team sets

up social services for the participants, helps them with housing and finding jobs, meets with them consistently and often, and uses a number of tools to ensure they can succeed. The number of therapeutic courts has doubled, from six to twelve over the last decade, and our statewide coordinator is in dire need of help.

To keep these therapeutic courts thriving, we are seeking a deputy coordinator position. That person could explore options for expanding the courts if there are sufficient treatment, housing, and job opportunities in the community, and could work with the agency attorneys and social workers involved to make all the therapeutic court cases flow more smoothly. If you see the importance of these programs as much as we do, I hope you provide the funding for this position this year.

You will, of course, hear more about these requests and the other needs of the judiciary in the coming weeks as Deputy Director Doug Wooliver has the opportunity to explain the background and answer all your questions about these requests.

As we move forward, I must also mention the important ideal that the judicial branch must continue to decide cases in accordance with the facts determined by impartial judges and the rule of law based on the constitution, the statutes you provide, and the common law developed through prior decisions. The court system will continue to do our work independently of any outside political interests or financial influences, so that the public can continue to be

certain that each court decision is fair and impartial. I can also assure you that the court system maintains an unbreakable commitment to continue to deliver equal justice for all, no matter the obstacles we face. Despite the growing workloads and decreased staffing, we are determined to fulfill our obligation to decide all matters brought before us fairly and efficiently, with respect for the parties involved, the interests of the public, and the rule of law.

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.

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