

THE STATE OF THE JUDICIARY

A MESSAGE BY

CHIEF JUSTICE DANIEL A. MOORE, JR.

TO THE FIRST SESSION OF THE EIGHTEENTH ALASKA LEGISLATURE

MARCH 2, 1993

ANCHORAGE LAW LIBRARY

STATE OF THE JUDICIARY ADDRESS

President Halford, Speaker Barnes, Senators and Representatives,
Ladies and Gentlemen:

Thank you for your invitation to address this joint session of the 18th Alaska Legislature, first session, on behalf of Alaska's judiciary. I appreciate this opportunity to meet with you and to advise you of our current concerns, as well as to share with you my thoughts about the future of the judiciary.

Each of our three branches of government has a specific and co-equal role to play in our state. In order for our three branches to function efficiently and effectively for the people we serve, it is essential that we develop good working relationships among ourselves. The development and maintenance of this kind of cooperative arrangement is more difficult in times of revenue shortfalls, since it is harder to keep the big picture in mind, to see our governmental system as a cohesive and interdependent whole, when state programs face budget cuts and even possible elimination because of lack of funds. It is my hope that frank, open communications and the sharing of information will continue among our three branches of government, because the people of the state are best served by our honest and candid interchange of ideas and concerns. We all share the common goal of providing the best service possible to all Alaskans.

HISTORICAL REVIEW

This is the first year that I have had the privilege and pleasure of addressing you as chief justice. I know that many of you, too, are new to your positions, so I would like to take a few minutes to give you some

historical information about the Alaska Court System. First, let me give you a few facts about the court's caseload, and how we have seen the caseload change over time.

CASELOAD

Caseload is one statistic we look at as an indicator of the court's workload. It is not the sole indicator. The location and types of cases as well as administrative duties and functions not reflected by caseload statistics are also important, when we are assessing the job that the court does.

In the boom times of the early 1980's, up through 1985, the caseload increased sharply. This was followed by a short period of decline in filings (1986-88), followed then by a period of stabilization (1989-90). It appears that we are now entering another period of growth, it is likely to be a more gradual increase than we experienced in the early '80's.

Many factors affect a court's caseload. Increases in population have the most significant and direct effect. Other factors include changes in economic climate, demographic shifts, changes in the numbers of law enforcement personnel, legislative and executive mandates, and other events outside the control of the courts. As we examine the work of the court, I think it is important to keep in mind that the court has no control over its incoming caseload. The court's role, and in fact its constitutional mandate, is to provide a forum for the adjudication of all disputes which are legitimately brought before it. We are not a branch of government with discretionary functions which can be eliminated in difficult times. We are by nature reactive, not proactive, in our primary function. We look to you to assist us by providing

us with the adequate resources to fulfill our constitutional responsibilities in a manner which serves the interest of the people of Alaska.

Supreme Court

Case filings in the supreme court decreased 7% in FY 92 from the previous fiscal year. However, in the first seven months of FY 93 we have seen a change in this trend: Overall filings have increased by 3% through January 1993, and, most significantly, civil appeals, usually the most complicated and time-consuming cases, have increased by 16%.

In FY 92 the supreme court set a record for number of dispositions since 1980 (the year the court of appeals was created) with 24% more cases closed in FY 92 as compared with FY 91.

Court of Appeals

Case filings in the court of appeals decreased by 13% in FY 92 from the previous fiscal year. However, in the first seven months of FY 93 the filing trend is again upward: Filings have increased 16% through January 1993.

In FY 92 the court of appeals also did an excellent job of increasing dispositions by 14% over the previous fiscal year. The trend of increasing case dispositions continues in FY 93: In the first seven months of FY 93, dispositions are 5% ahead of the comparable period for FY 92.

Superior Court

Overall case filings in the superior courts increased by 3% in FY 92. Case dispositions increased by 4%. Felony case filings increased by 13% from FY 91 as did domestic relations filings, although general civil filings decreased by 9%. Case filings for the first half of this fiscal year (July

through December) show an 8.6% increase over the same period last year, which indicates an upward trend in superior court caseloads.

District Court

Overall case filings in the district courts increased by 8% during FY 92. Non-traffic case filings (misdemeanors, civil and small claims cases) increased by 7%. Filings for all categories of district court cases increased during FY 92. Filings during the first 6 months of this fiscal year indicate continued increases in civil case categories while misdemeanor case filings leveled off.

Trial Court Trends

Based upon case filings during the first half of this fiscal year, the general civil caseload should increase approximately 15% in FY 93 along with an 11% increase in domestic relations cases. Small claims caseloads are expected to remain relatively stable in comparison to last year. Criminal caseloads are expected to remain relatively stable, contingent upon there being no change in prosecutorial resources or policies.

ADMINISTRATIVE CONCERNS AND OBJECTIVES

I would like to turn now to the court system's administrative concerns and objectives. In the last decade our two primary administrative concerns have been reducing the cost and delay of litigation and making the judicial system accessible to the public.

To attain these goals, both the legislature and judiciary have implemented many changes, such as modifications to the structure of the court system, the court's on-going automation efforts, new case management standards and court rules, jury management, and our efforts to improve

service to the public. I would like to talk to you about some of these changes today.

Organic Structure

Through legislative action, a number of structural changes to the courts have been effected which have improved the efficiency of our service and lowered the time-to-disposition of the cases brought before us. The legislature created the criminal court of appeals in 1980 to provide a specialized forum for the handling of criminal appeals and to decrease the burden on the supreme court. In 1985, the legislature increased the jurisdiction of the district and small claims courts. At the supreme court's request, in 1992 the legislature increased the jurisdiction of the district court to allow it to hear claims, other than small claims, brought against the state.

In the early '80's the legislature authorized a number of new judgeships to address the increasing caseload of the courts. Beginning in 1985, the court has utilized an increasingly large number of pro tem judges from our pool of retired judges, in an attempt to cope with temporary or sporadic caseload needs.

Information Systems

The court system, in recent years, has been focused on the development of an automated system for case management, court management and the collection of statistical information. Currently there are a number of committees working to develop and improve computer systems at various levels of the court system. A committee drawn from courts statewide is designing the specifications for a uniform trial court computer system; the Appellate Courts Computer Committee (established in 1992) is

developing design specifications for a new appellate court information system (final design anticipated in 1992; installation in 1994), and another working group is attempting to upgrade the limited computer system currently in place in some rural courts. We believe that the implementation of an integrated, efficient automated system in the courts will be a tremendously valuable tool, not only to the courts but to other state agencies who need information from the courts, and to members of the public. We solicit and appreciate your continued funding support in this most important area.

We have large but attainable goals for our automation project. An automated system will enable our case managers and planners to formulate intelligent plans based on a wider and more accurate range of data for case management and cost control purposes. The statewide computer system should also provide accurate and accessible information for all justice system agencies. Furthermore, we hope that the system will eventually allow lawyers, reporters and other members of the public needing court information to access the non-confidential material electronically, thus avoiding a trip to the courthouse. We should obtain a computer system that has enough capacity and flexibility to serve us well for many years and to meet a host of unexpected contingencies.

Facilities

I offer a brief comment about our court facilities. Because of our service function, our court facilities are visited daily by members of the public. To the extent that they are deteriorating and overcrowded--and many of them are--the public is ill-served. I know that this is not a problem limited to the courts, and I believe that you will agree that more planning and attention need

to be directed to the state of Alaska's public buildings. The passage of the federal Americans with Disabilities Act has shown the extent to which many of our buildings are simply not accessible to a significant segment of our population. We appreciate your funding support for necessary improvements to our physical facilities.

Case Management, Time Standards and Cost Controls

During the past ten years, we have made significant strides toward reducing the cost and delay of litigation by improving our case management systems. In 1982, we adopted case management standards based on recommended standards developed by the National Center for State Courts. In 1991 the Chief Justice appointed two committees to recommend new time standards and to identify appropriate "case milestones" (i.e., what "events" in the life of a case ought to be recorded and used to determine whether a case is being processed in a prompt, efficient manner).

The adoption of the "fast track" rule in Anchorage courts in 1986 significantly affected disposition time. In 1989 superior court fast track cases had an average disposition time of 13 months. Currently the court is considering various modifications of the fast track rule and expanding its application statewide.

In 1992, we promulgated several significant court rules to accomplish additional cost reduction and savings. Some of these were:

Telephonic Testimony at Grand Jury

In the area of criminal law, the court has relaxed the rules on telephonic testimony at grand jury proceedings. Under the new rule, most witnesses who live more than 50 miles from the location of the grand jury or

who would have to travel to that location by plane can now testify before the grand jury by telephone. This will make it less burdensome for witnesses to testify and will result in a significant cost savings to the state.

Civil Rule 82

In Alaska, the prevailing party in a civil case is allowed to recover part of his or her attorney's fees under Civil Rule 82, in addition to any other relief the party may be awarded. This year the supreme court appointed a special committee of judges and lawyers from all parts of the state to consider a troubling question, which is whether the cost of litigation has increased to such an extent that the prospect of having to pay Rule 82 fees actually discourages moderate income people from pursuing valid claims. Based on the committee's work, the supreme court has revised Rule 82 effective July 15, 1993. These changes are intended to make the rule more equitable and to allow adjustment an award when the judge believes the award would deter similarly-situated litigants from bringing claims to court.

Court-Ordered Mediation

In 1988 the court appointed a Task Force on Mediation pursuant to a legislative directive. Based on the Task Force's final 1990 report, the court formed the Standing Committee on Mediation in 1991. This committee has recommended the adoption of a new civil rule (allowing the court to order mediation on motion by a party or sua sponte when it determines that mediation may result in an equitable settlement). The court has adopted a new rule on mediation which will go into effect on July 15, 1993.

The supreme court will be closely monitoring the effect of this rule. Other states have been using alternative dispute resolution techniques

such as mediation for some time. Studies of these programs have shown that mediation can save parties money, that disputes are often resolved more quickly, and that parties are frequently more satisfied with a mediated result.

Jury Management

In 1988 the Jury Standards Committee was established. Based on its recommendations, you passed legislation which designates the Permanent Fund Dividend list as the source list for juries. This procedure greatly reduced an administrative burden on the courts. It has also established a consistent and fair method of allocating the responsibility for performing this public service among eligible Alaskans.

Customer Service

In the past two years, we also have devoted a significant amount of attention and effort to insure that all court employees recognize that the court is a service organization which should be readily accessible to the members of the public. Additionally, through our Public Information Project and our efforts to increase the number of legally-trained sign language interpreters in Alaska, we are attempting to make the court system and its functions understood by all Alaskans.

The Customer Service Program was established in 1991 to encourage court staff to provide courteous and efficient service to the public. During 1991-92 project staff developed service standards and used a customer service questionnaire to identify problem areas. Customer service training is planned for 1993.

To promote public understanding of court functions, the court has created a number of public information pamphlets explaining court rules and

procedures (e.g., child support guidelines and appeals to the superior court). The chief justice established a Public Information Task Force in 1991 with the goal of examining the court's role in such areas as school programs, public education programs, and assistance to litigants. As part of the task force's work, a "Meet Your Judges" public forum, based on a national model, was held in Kenai in 1992. The program was extremely well-received, and a second program was recently held in Juneau. Similar forums are planned in other locations. In 1993 I hope to have court programs for public education of Alaska citizens in all areas of the state.

In order to address the needs of persons with hearing impairments, the court system obtained a grant from the State Justice Institute in 1992 to fund the attendance of Alaskan American Sign Language interpreters for intensive legal interpretation courses in California. Through the court's efforts, two students attended the program last summer, and have returned to Alaska with the requisite skills to interpret in justice settings.

INTERDEPENDENCE OF THE JUSTICE SYSTEM

I would like to talk to you about the justice system as a whole. The judicial system is just what it purports to be -- a SYSTEM. The components of the system are housed in various places: in the judiciary itself; elsewhere in the government, such as law enforcement, prosecution and corrections; or within the private sector. When additional resources are applied to only one component of the system, or when one component of the system lacks adequate resources, logjams and bottlenecks are created which overburden the entire system.

We are aware, for example, of the plan proposed by Governor Hickel which would increase the number of assistant district attorneys and make other changes in law enforcement. I personally agree with the governor that efforts should be made to curtail crime in this state. However, in order to avoid any disruption of the justice system, you in the legislature must balance the prosecutorial increases with corresponding increases in the judiciary's operational and capital improvement budgets and in the offices of the Alaska Public Defender Agency and the Office of Public Advocacy. Otherwise, the purpose of such legislation can be defeated.

In our judicial system, each component is essential. Everyone appreciates the contributions of some participants in the system, such as law enforcement and prosecution, because those contributions are highly visible. However, we sometimes are unaware of the contributions of the lesser-known participants. I want to take this opportunity to bring to your attention the essential contributions of some of those less visible organizations. Specifically, I will be discussing the Alaska Judicial Council, the Alaska Public Defender Agency, and the Office of Public Advocacy. I would also like to briefly discuss the participation of members of the Alaska Bar Association in the voluntary Alaska Pro Bono program.

ALASKA JUDICIAL COUNCIL

The first organization I will discuss is the Alaska Judicial Council. The Judicial Council is an independent, constitutionally-created agency within the judicial branch. The Council has three major responsibilities:

Selection of Judges

The first is to assist with the selection of new judges. The Council must interview applicants and forward at least two names to the Governor who makes the final selection from those names. Since the beginning of this fiscal year in July 1992, the Council has sent names to the Governor to fill 3 judicial vacancies in Fairbanks and Ketchikan. The Council is currently working on two Anchorage vacancies.

Retention

The Council's second responsibility is to evaluate judges who will appear on the ballot at retention elections and make recommendations to the public on whether to vote for or against those judges. The Council bases its evaluation on numerous sources of information including peace officer and correction officer surveys, attorney surveys, juror surveys, information from litigants, extensive public comments, and checks of public and private files on judges.

The Council recommended that all fifteen judges standing for retention in 1992 be retained, and the voters concurred, with more than 60% voting yes to retain each of the judges.

Studies for the Administration of Justice

The Council's third responsibility is to make recommendations to the legislature and court system to improve the administration of justice. Four areas in which the Council has recently been working are: rural justice; alternative punishments; document imaging; and criminal justice data collection.

Rural Justice

In 1991 the Council obtained a federal grant to evaluate the tribal courts in Minto and Sitka and a conciliation program in Barrow. The Council found that all three organizations provided much-needed alternative methods of resolving disputes in their areas. The Council will provide you a report before the end of the session describing tribal court and traditional village council activity throughout the state.

Alternative Punishments

The Council assisted the Alaska Sentencing Commission in its work on alternative punishments. The Commission's final report to the legislature recommends strongly that the state make far greater use of punishments other than incarceration or probation for many offenders.

Document Imaging

The third area the Judicial Council has studied is document imaging. The Council has instituted a document imaging system with the help of federal funds. The system allows staff to file and retrieve documents electronically on its computers. This saves storage space and will increase the Council's efficiency. Staff is now working with executive branch agencies to share its experiences.

Criminal Justice Data Collection

The final area of Judicial Council studies that I would like to mention is criminal justice data collection. The Judicial Council has worked with the Sentencing Commission to improve the state's criminal justice data collection efforts. These improvements are essential for the state to effectively utilize our diminishing resources. Approval by the legislature of a

relatively small increment of under \$90,000 will allow this work to continue by adding the Sentencing Commission's research analyst position to the staff of the Judicial Council.

PUBLIC DEFENDER AGENCY AND OFFICE OF PUBLIC ADVOCACY

Now that I have discussed the Judicial Council, I would like to discuss two other important participants in the judicial system -- the Public Defender Agency and the Office of Public Advocacy. These agencies provide representation for people who have a right to counsel under either the Alaska Constitution or the federal Constitution, but cannot afford to hire a private attorney.

For 24 years the Alaska Public Defender Agency has provided competent legal representation not only for people accused of crimes, but also for the mentally ill, for juveniles and for adults engaged in certain kinds of family law litigation. The Office of Public Advocacy provides this representation when the Public Defender is unable to take a case because of a conflict of interest. Through its guardian ad litem program, the Office of Public Advocacy also represents the best interests of abused and neglected children in court proceedings. The agency also acts as the "public guardian" for elderly people and others who cannot manage their affairs.

Both the Public Defender and the Office of Public Advocacy have tremendous caseloads. This year the supreme court took an important step to preserve the resources of these agencies for people who are truly indigent. The supreme court amended Administrative Rule 12 to clarify that a public attorney's ethical duties to a client do not prohibit the attorney from disclosing to the court that a client's financial situation has changed and the client can

afford a private attorney, or from withdrawing from a case if the attorney discovers that the client lied about assets at the outset in order to receive a court-appointed lawyer. These changes to Rule 12 will make it possible for the Public Defender Agency and the Office of Public Advocacy to eliminate clients who are not entitled to their services and devote their time to the truly indigent.

The court system has taken other steps to improve the efficiency of the public appointment system. The court system continues to work on standards for determining indigence and income verification procedures. In addition to amending Administrative Rule 12 as I have already described, the supreme court adopted other rule changes in July 1992 which allow the State to obtain a civil judgment against most people who receive counsel at public expense in order to recoup a portion of this cost. The rules establish a simplified method of assigning Permanent Fund Dividend checks to the State to satisfy these judgments. Since the inception of the new rules, more than 1,000 judgments totaling over \$200,000 have been entered in favor of the State of Alaska.

ALASKA PRO BONO PROGRAM

The final "participant" I will mention is the Alaska Pro Bono Program. It is not a formal organization. Rather, it is a statewide volunteer legal assistance program. It has been a joint program under the sponsorship of Alaska Legal Services Corporation and the Alaska Bar Association since 1983. It is staffed by a full-time coordinator.

The Alaska Pro Bono Program consists of a panel of 935 volunteer attorneys throughout Alaska, or 59.3% of the State Bar Association's available

membership (no other state can boast a higher percentage of participating attorneys). More attorneys are joining the Program every day. In addition, the Alaska Pro Bono Program is one of the very few volunteer legal assistance programs to also use non-attorney volunteers.

The Alaska Pro Bono Program volunteer attorneys assist low-income Alaskans in crises: family law cases where there is abuse against a child or a spouse; cases for people facing denial of housing or denial of benefits through public entitlement programs; death-bed wills are examples of the types of emergency cases handled by the volunteer attorneys. Its 255 volunteer non-attorney professionals (doctors, court reporters, certified public accountants, process servers, private investigators) provide expert assistance for the volunteer attorneys.

The Alaska Pro Bono Program has more than 350 - 400 open cases at any one time and assigns approximately 3-5 new cases to volunteers each day. Additionally, the Alaska Pro Bono Program sponsors over 25 free advice-only legal clinics, do-it-yourself legal clinics, and Elderlaw Projects in numerous cities throughout Alaska. The Alaska Pro Bono Program also assists the U.S. District Court by helping to coordinate an appointments project for low-income parties in civil cases. In the Anchorage area alone, more than 250 elderly received assistance through the Alaska Pro Bono Program's Elderlaw Project last year.

In 1992, the Alaska Pro Bono volunteers donated 8,508 hours of their time to the Program (an equivalent of \$1,020,960 worth of free legal services!) and they were able to help more than 1,350 indigent people in

crisis. During the first decade, the Alaska Pro Bono Program volunteers have spent over 40,000 hours helping more than 8,000 low-income Alaskans.

The tremendous work being done by the hundreds of volunteers helped earn national recognition for the Alaska Pro Bono Program. Thanks to them, the Program was the recipient of the Legal Services Corporation's first annual PAI/Pro Bono Award for Rural Private Attorney Involvement Program of the Year for 1992.

BUDGET

The final topic I wish to discuss is the budget. Although the justice system is not the only governmental entity hurt by revenue shortfalls, the demands on the various elements of the justice system are driven by outside forces and can not adapt easily to revenue fluctuations. In addition, demographic shifts, legislative or executive mandates and other uncontrollable events can contribute significantly to increased caseloads for the courts and the justice system across America. These forces have aligned to drive the workload of the courts and justice system to record levels while funding for the system has failed to keep pace or has even been cut.

Since 1985, our court system budget has grown only 1.5% annually. Excluding mandatory cost-of-living pay increases, the growth rate is just 0.2% per year. The Court has the lowest paid employees of the three branches of government. 63% of court personnel are classified at range 14 or below. Yet, over 79% of the court's budget is devoted to personnel costs. Nearly 95% of the court system's operating costs are fixed or case related.

I believe that the judiciary has exercised great fiscal restraint in its requests to you over the years, and this year is no exception. I solicit your

support for the approval of a budget which recognizes both our fiscally conservative approach and our need to receive a balanced and adequate level of funding to support our constitutionally mandated functions.

CONCLUSION

Thank you again for inviting me to speak to you. I wish you well during this legislative session.