

**SENATE AND HOUSE
JOINT JOURNAL SUPPLEMENT**

February 7, 2018

Wednesday

No. 14

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State of the Judiciary Address

by

The Honorable Craig Stowers

Chief Justice

Alaska Supreme Court

Before a Joint Session

of the

Second Session of the

Thirtieth Alaska State Legislature

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February 7, 2018

Juneau, Alaska

The following was submitted for publication:

President Kelly, Speaker Edgmon, Senators and Representatives, Honored Guests and Alaskans. Good morning everybody.

My friends, it is a privilege to speak with you again this morning, and to deliver my third State of the Judiciary address.

When I spoke with you two years ago and again last year, I sketched out some of the strategies and innovative ways the Alaska Court System sought to reduce its budget in response to the fiscal crisis enveloping the state. The Court System was gratified with your positive comments and support. This year it is appropriate to give you an accounting of how these changes have worked out.

What is the state of the judiciary in Alaska? The state of the judiciary is strong and resilient.

The Alaska Court System is a team of extraordinary people, who at all levels are doing remarkable work to deliver a high quality of justice services to Alaskans. The work these public servants are accomplishing is all the more remarkable because they are, year by year, doing more with less.

Less, because the Court System has had to significantly reduce its staffing levels in response to the reduced budget it is given in these dire fiscal times. Less, because public demands on the Court System don't decrease just because our resources have been diminished. For example, the jury trial rate in Bethel is increasing significantly, adding large, unbudgeted, and to some extent unpredictable juror costs in the most expensive jury venue in Alaska. The supreme court has asked our Deputy Administrative Director, Doug Wooliver, to seek your help in this regard. Other examples of increased demand on court resources include an increase in involuntary commitment filings, up 11% since FY15; and increases in Child in Need of Aid filings, up 7% since FY15 to FY16, and up 10% since FY16 to FY17; this trend is ominous.

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Court employees are doing more as they have stepped up to the plate to work harder and more efficiently; they continue to do their work; they also have assumed responsibility for the work previously done by the staff no longer with us. Because of their hard work the Court System continues to provide all of the justice services historically accomplished.

The Court System continues to take the initiative to find innovative ways to reduce costs and devise strategies to add efficiencies in what we do. For example, we are restructuring how we provide court services in our rural courts over the next three years. All rural courts will remain operational, but their hours and staffing will be adjusted to correspond with their comparatively smaller case loads. We plan to hire more non-law trained deputy magistrate judges in rural communities, giving opportunity to rural residents to serve as local judicial officers responsible for doing uncomplicated judicial work, and use our law-trained magistrate judges more strategically to handle those proceedings that require legal training. This plan seeks to ensure that rural communities are served by judicial officers and court clerks who are familiar with the community, its residents, and its culture. We anticipate potential savings of approximately \$400,000 as a result of this three-year initiative.

I want to highlight something that is sometimes lost in the debate about downsizing government; something that is real; something that must be accounted for, if we are going to have an honest and fair discussion about reducing the size and cost of government. That something is that there are consequences of our decisions and actions. There is a book somewhere that admonishes us to count the cost. The Court System has undergone challenges of historic proportion in the past several years; many changes have resulted as a consequence; and there have been costs.

When I became Chief Justice in 2015, the Court System employed about 750 employees, not counting its 70 judges. We now employ about 690 employees. This 11% loss in court staff affects all court departments: the trial courts, the appellate courts, and court administration. The positions lost include clerical employees, supervisors, and administrative staff.

I will give you a few specific examples of the impact of these reductions. With fewer staff employees, there is some inevitable delay in docketing cases; there is some delay in the distribution of notices and orders. There are some delays processing jury expense claims and payments; there are also delays in data entry into Courtview. All of these delays are unfortunate, to be sure; all of it is entirely expected, and unavoidable.

On the operational level, we aren't able to train our new and existing employees to the degree best practices would suggest; one natural consequence of less training is some loss of quality control. We are required to provide reports and analyses of much that we do to other state and federal agencies, to the public, and to you, the Legislature. With the loss of administrative and clerical staff, the court is unable to analyze data and produce reports for court users and non-court agencies as quickly or as freely as we did previously. Again, unfortunate, but a foreseeable consequence of downsizing.

In listening to several legislative committee hearings last week, there were questions about how our Friday afternoon court closures were going. As I explained in my prior addresses to you, to achieve substantial savings, we close all courts in the state every Friday at noon, except for emergency proceedings like domestic violence and stalking protective order applications, emergency child in need of aid petitions, involuntary commitment proceedings, police requests for search warrants, bail hearings, and the like. Closing courts on Friday afternoons reduced Court System operating costs by \$2 million annually. This savings is realized because Court System staff employees are placed on furlough status on Friday afternoons, translating to a 4% reduction in their pay.

In developing this strategy, my main concern was the effect this 4% pay reduction might have on employee morale. The alternative was to simply lay off however many employees it took to achieve a \$2 million budget reduction. There would be a cost associated with this alternative, too.

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Widespread layoffs are morale killers. The constant fear that more layoffs are coming and "I could be next" are bigger morale killers, of a higher order of magnitude. If employees suffer from fear and low morale at work, they will not be able to make the extra efforts necessary to do more and think innovatively to accomplish the Court's mission.

My hope was that employees would understand and accept that by asking all employees to share in this \$2 million annual reduction in our budget, and by reducing our staffing levels through normal attrition, we could avoid having to lay off any employees. Since this strategy was adopted, many judges have voluntarily reduced their pay by 4% in solidarity with our employees, resulting in additional savings.

I am pleased to report that court employees' morale and support for the Court System's mission have remained high, notwithstanding that receiving less money has been a real hardship for some, and notwithstanding that, with fewer employees available, they have to work harder, doing more with less. I again thank all Court System employees for their understanding, their personal and financial sacrifice, and their support in doing their part to meet Alaska's budget challenges. All Alaskans should be very proud of this extraordinary team of civil servants.

I also acknowledge that with Friday afternoon closures there have been some minor delays in trial court proceedings as some hearings have needed to be continued into the next week. This delay was expected and has proven acceptable. Not ideal, certainly, but the courts' cases are proceeding in a reasonably timely fashion. While trial judges unquestionably feel the loss of a few hours of hearing time on Friday afternoons, because their salaries are not affected by the court closures - our Constitution won't permit a reduction to judges' pay during their term of office - judges are required to continue to work Friday afternoons. They use these afternoons to research and prepare their written decisions, to rule on motions, to prepare for the next week's trials and hearings, to participate in court committee meetings, and the like.

Please do not misunderstand me: I am not complaining. I and the Court System are willing to take all necessary actions to do our fair part in downsizing government consistent with your budget and policy direction. But when one downsizes a branch of government that already is operating at or near the margin, there are costs. The costs were expected, and predicted. This is a simple function of economics and basic math. This said, the Court System has spent a lot of time and thought reengineering our processes so that we can successfully do our important work with fewer resources.

I have come full circle: I am pleased to report to you that the Third Branch of state government - the Alaska Court System - remains strong and is providing Alaska with a vibrant and proactive justice system.

I wish to highlight one enormous change that is occurring in the Court System. The Court System employs a total of 70 judges. Using as a measure my three-year term as Chief Justice, by the time I pass the baton to my successor next July 1, the Alaska Judicial Council will have nominated candidates for 24 judicial vacancies, one-third of Alaska's judges. This historic sea change in the judiciary means several things. On the downside, Alaska is losing a vast amount of institutional knowledge. I thank these judges who have recently retired or soon will for their selfless service. On the upside, Alaska is gaining an astonishing cadre of extraordinarily bright, hardworking judges from a wide diversity of professional and life experience. In the balance, the judiciary will be stronger, and this next generation of judicial leadership will ably power the Court System into the future.

Speaking of a change in judges, there is one critically needed change to the Juneau court that the Supreme Court is asking you to make: the Juneau court needs another superior court judge. For years the case loads in Juneau have been very large, consistently ranking among the busiest courts in the state. We had considered previously asking the Legislature to add a new superior court judge and a new courtroom and judge's chambers in the Dimond Courthouse; this would be the optimal solution, resulting in three Juneau superior court judges, two district court judges, and a magistrate judge to better serve Juneau and the Southeast. But given the limited space in that courthouse and the budget restrictions the state faces, this has not become a feasible path.

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To compensate, we have used judges from other Southeast courts to cover Juneau's heavy caseload, and this works to a limited extent. But when we have a Ketchikan or Sitka based judicial officer try cases and conduct hearings in Juneau, this creates a backlog for the traveling judge in the home court, not to mention the attendant transportation and lodging costs.

A rare opportunity now offers a solution, but as the radio ads say, this opportunity is available for only a limited time. A Juneau district court judge is retiring this summer. We propose that you amend the statute which authorizes the number of superior court judges, to convert the Juneau district court judge position to a superior court judge position.

Superior court judges are judges of general jurisdiction, meaning that they have the authority to handle all trial court cases, including district court cases. What we ask is not unusual: in some courts in Alaska where there is no district court judge, the resident superior court judge handles both superior court cases and district court cases. We are convinced that with a third Juneau superior court judge, the Juneau court as a whole can well manage the district court case load and better attend to the superior court case needs that Juneau has.

The Court System is not asking you to increase our budget to pay the incremental cost of the difference between a district court judge's salary and a superior court judge's salary. As another innovative act of fiscal stewardship, the Court System is willing to absorb this incremental cost because, in our judgment, the strategic importance of converting this judicial position outweighs the possibility that you might decide not to do so if you are concerned about adding money to our budget.

We also do not ask you to fund a new judicial assistant and law clerk for the new superior court judge. We will provide these supportive services within our existing staff and budget as well. These incremental costs to the Court System are relatively small and doable; the benefits to Juneau, Southeast Alaska, and the Court System will be substantial.

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I emphasize that this opportunity only arises when a district court judge retires. If you do not grant our request, we will fill the upcoming district court vacancy with another district court judge. It may be several decades before this opportunity arises again. We respectfully ask that you amend the statute early in this session, which will enable the Alaska Judicial Council to initiate the process of recruiting for judicial applicants for this new position and conduct the bar survey of applicants. The Council has already scheduled a meeting in November of this year to interview for the upcoming vacancy on the Juneau district court. If you approve our request expeditiously, the Council will have time to recruit for the new superior court vacancy instead. Nancy Meade and I are available to speak with you about this important request. I thank you in advance for your consideration.

Changing subjects, I want to advise you of a project I am initiating concerning a subject of much media coverage over the last year: this is the sad reality that sexual harassment in the workplace remains a scourge in all parts of our national and state public life. The Alaska Court System has had an anti-Sexual Harassment policy for years. It is a zero tolerance policy, and prohibits all forms of sexual harassment. When new employees, including judges, are appointed, they are provided with this policy.

But in the light of the grim evidence of pervasive sexual harassment and assault we have seen in the last year, including that widely reported occurring in the federal courts, I am not so naive as to think it can't happen here. I hasten to say that I am unaware of any instance of sexual harassment committed by any sitting judge or other court employee.

Nevertheless, I conclude that the Court System must do more proactively to ensure that no court employee will be subjected to sexual harassment of any kind. The Court System will begin immediately to undertake a careful evaluation of whether its standards of conduct and its procedures for investigating and correcting inappropriate behavior are adequate to ensure an exemplary workplace for every judge and every court employee. To this end I am assembling a working group of judges, retired judges, law clerks, court staff, and court administrators to examine what changes are needed in

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the Court System's anti-Sexual Harassment policy and procedures, and to make recommendations to ensure that the Court System's policy and procedures reflect best practices. There is no place for sexual harassment or misconduct in the Alaska Court System, and we will not tolerate it.

This is my final State of the Judiciary address to you, and it is fitting that I use this opportunity to give thanks to those who have contributed so much to the success of the Court System, and who have made my term as Chief Justice such a joy and privilege.

First, I thank God for giving me His favor and wisdom.

I thank my wife and best friend, Monique, for her unflagging support and patience and wisdom. She is truly the wife of noble character described in Proverbs 31.

I again thank the wonderful, dedicated people with whom I work and who I care for so much: my Court System family who daily give their best efforts in service of justice for all Alaskans.

I want to recognize a group of extraordinary individuals who exemplify what it means to be servant leaders: Alaska's judges. Alaska is blessed with the finest judiciary of any in the country. The first principle for a successful judge is that the judge must care deeply for the people whom the judge serves, and our judges exemplify this principle.

Our judges work enormous caseloads and long hours, and notwithstanding the pressures of fewer court staff and less time and resources, they are accomplishing substantial justice for Alaskans. I thank every one of them for their extraordinary service during difficult times in Alaska's history.

I thank another group of unsung heroes, people who are not judges, but without whom Alaska would not have the highest quality judiciary possible. I am referring to the members of the Alaska Judicial Council, who labor long and hard to identify and nominate the best qualified judicial candidates for the Governor's consideration and appointment.

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The citizen and attorney members of the Council volunteer their time in service of the people of Alaska. Over the past three years they gave three months of their personal time, on average four full weeks each year, interviewing and nominating candidates. They gave considerably more time prior to each meeting studying the many volumes of information and data collected and organized by the Council's staff.

As I mentioned earlier, by the time my term ends this coming summer, the Judicial Council will have nominated candidates for 24 judicial vacancies, one-third of all Alaska judges: a supreme court justice; a court of appeals judge; superior court judges in Anchorage, Fairbanks, Palmer, Kenai, Bethel, Nome, Dillingham, and Sitka; and district court judges in Juneau, Bethel, and Anchorage. Never in our state's history has the Judicial Council been called upon to volunteer so much effort and time.

I thank the Councils' executive director, Susanne DiPietro and her staff. I thank the Council members I have proudly served with: public members Ken Kreitzer of Juneau, Dave Parker of Palmer, Loretta Bullard of Nome, and Lynne Gallant of Anchorage; and attorney members Julie Willoughby of Juneau, Aimee Oravec of Fairbanks, Jim Torgerson of Anchorage, and Galen Paine of Sitka.

I also welcome the Judicial Council's newest attorney member, Geri Simon, from Fairbanks. As Geri joins public member Loretta Bullard on the Council, the Council is strengthened with the experience and wisdom of two powerful and accomplished Alaska Native professionals. Please join me in thanking all of the members and staff of the Alaska Judicial Council for their extraordinary and selfless service to Alaska and the Alaska Court System.

I thank you, my esteemed friends in the Legislature, for your strong and continuing support of the Alaska Court System. I also thank you for your leadership. True leadership emerges from those whose primary motivation is a deep desire to help and serve others. I believe that every legislator in this chamber has this desire. I believe that you have the capacity to think anew about the fiscal crisis ensnaring Alaska; its government; its businesses; its institutions; its people.

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Some cynically say that nothing will happen this session because it's an election year. I say, "Not true." Because it is an election year, and because Alaskans are looking and longing for true and effective leadership, you can choose to act collaboratively and devise solutions that serve all Alaskans. The operative idea is that, notwithstanding your differences, you must act. "Do. Or do not. There is no try." [Yoda.] I wish you well as you do your important work on behalf of all Alaskans.

And finally, I thank my friends and colleagues on the Alaska Supreme Court, who entrusted me with the responsibility and privilege to serve and lead the Court System these last three years.

Please allow me to introduce my colleagues on the Court.

Justice Daniel Winfree is a lifelong, third generation Alaskan from Fairbanks. He has served on the court since 2008. Justice Winfree chairs the supreme court task force on elder law, developing processes to protect the growing population of aging Alaskans from financial and physical abuse and neglect. He is a member of the Appellate Rules Committee and is the court's liaison to the National Conference of Bar Examiners.

Justice Peter Maassen joined the court in 2012 after a long and distinguished private practice, much of which focused on appellate matters. Justice Maassen chairs the court's Judicial Education Committee and the court's Access to Civil Justice Committee. He also chairs the Civil Justice Improvement Project, which is implementing the recent recommendations of the Conference of Chief Justices' Civil Justice Improvement initiative.

Justice Joel Bolger was appointed to the court in 2013. He has the unique distinction of being the only supreme court justice to have served as a judge at every court level: he was a district court judge in Valdez; a superior court judge in Kodiak; and a court of appeals judge, before being elevated to the supreme court. Justice Bolger is a Commissioner on the Alaska Criminal Justice Commission, and he co-chairs the Criminal Justice Working Group.

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Justice Sue Carney was appointed to the court in 2016. Prior to her appointment Justice Carney worked in the Fairbanks office of the Office of Public Advocacy, eventually becoming the supervising attorney there. Justice Carney serves as co-chair of the supreme court's Child in Need of Aid and Juvenile Delinquency Rules Committee.

I thank you again for inviting me here to speak with you this morning; it's been a real honor. I look forward to continuing to work together with you for the good of the State of Alaska. Good morning.

Please report corrections to the Senate Secretary's office.