



## Supreme Court of Kentucky

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### Fall 2013 State of the Judiciary Address: The Changing Face of Kentucky Courts

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Chief Justice John D. Minton Jr.  
Testimony before the Interim Joint Committee on Judiciary  
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Christian County Justice Center  
Hopkinsville, Kentucky

Chairman Westerfield, Chairman Tilley, Members of the Judiciary Committee and Guests,

It's a pleasure to be here with you today and an honor to be visiting Hopkinsville.

Since my early days as chief justice in 2008, I've come before you many times to let you know how things are going with the courts. I'm proud of the partnership we've forged these last few years and I believe we've managed to achieve that elusive balance of good government – maintaining the separation of powers without compromising the power of collaboration.

The people of Kentucky are the winners when we work together to make decisions that are in their best interests. For the important role you play in helping the Judicial Branch meet the needs of our citizens, I want to thank you.

There are several guests who have joined us today and I appreciate them taking time to be here.

Also with me today are AOC Director Laurie Dudgeon, AOC Budget Director Carole Henderson and my Chief of Staff Katie Shepherd, who is a proud Hopkinsville native.

#### **STATE OF THE JUDICIARY**

The last time we discussed the state of the judiciary was in January of this year at the Capitol Annex. While it has only been nine months since we last met, 2013 has been a seminal year in terms of breakthroughs in court technology in Kentucky.

I'm excited about the progress we're making with technology and I'll give you some specifics on that later. But first, I want to talk about something that has been on my mind and is affecting how I do my job – and that is the changing face of the court system in Kentucky.

Several factors are having a profound effect on how we carry out the business of the courts. Changing demographics, the budget crisis and constant leaps in technology are forever altering how courtrooms operate. All of these dynamics are placing new, complex demands on judges, circuit court clerks and court personnel.

Years ago, when I was sitting on the Circuit Court bench, the process was pretty predictable and straightforward. Attorneys represented their clients, cases went to trial and judges presided over the proceedings.

It's not that simple anymore.

### **Mediation on the Rise**

The court model we're familiar with is evolving in a number of ways. For one thing, today's cases might not even make it to court. And if they make it to court, they are not likely to be resolved by a jury trial.

Since 2005, we have seen a significant decline in jury trials, with the number of circuit and district criminal jury trials dropping by more than two-thirds. We've seen a similar drop in civil jury trials, which have declined by half. There are several reasons for this, including the rising cost of discovery, the expense and time involved with going to trial, and the unpredictability of jury verdicts.

Mediation mitigates some of these concerns by giving parties an opportunity to save time and money. While it is historically true that most cases settle, we are finding that more parties are using formal mediation to resolve their disputes.

Since the AOC created a mediation program nearly a decade ago, we've seen an increase in parties using mediators to resolve their conflicts. Whether this is a positive trend for our justice system is very much up for debate, but there is no question that mediation relieves some of the strain on court dockets.

Because many attorneys get their cases mediated before being ordered to by a judge, there's really no way to track the number of cases being mediated. However, it appears that a significant amount of civil cases statewide are being mediated or otherwise settled out of court.

Felony cases are being mediated as well. The Felony Mediation Program has grown steadily since it started in 2008. In just five years, more than 1,300 felony cases have been mediated and 1,100 have settled, for an 81 percent settlement rate.

**Growing Number of Self-Represented Litigants**

While we're seeing fewer cases make it to the courtroom, we're seeing fewer lawyers in the courtroom as well. Although we don't currently track self-represented litigant cases, there has been a surge in people who are foregoing attorneys and choosing to represent themselves in court. This trend has been particularly apparent in Family Court, where the number of self-represented litigants has been on the rise for several years.

We believe the cost of legal representation is one of the factors driving this trend, with fewer people able to afford an attorney. And we continue to see an increase in litigants who decide to represent themselves using forms and legal advice from the Internet.

Loss of funding for civil legal aid programs is also playing a role. Since 2007, funding for legal aid through all revenue sources – including federal funds, state appropriations, filing fees and grants – has decreased by more than \$3 million, which amounts to one-quarter of the statewide legal aid budget.

During that same period, the number of low-income Kentuckians increased by 27 percent. The state's four civil legal aid programs have lost 16 attorneys and closed five offices. In spite of losing ground financially, legal aid managed to assist approximately 68,000 low-income people last year. However, 55 percent of eligible applicants were denied legal service due to a lack of resources.

The increase in self-represented litigants presents an entirely new set of challenges for the court system. Court proceedings take more time because self-represented litigants are often unfamiliar with court procedures and require guidance. The margin for error is higher, which can impact the course and outcome of a case. And self-represented litigants often ask circuit court clerks, who are prohibited from providing legal advice, to help complete legal forms and file motions.

In 2010, the Supreme Court created the Kentucky Access to Justice Commission in part to improve civil legal aid to low-income citizens. As part of its work, the commission is providing information on legal resources through public libraries and circuit court clerks' offices statewide.

The commission is comprised of diverse members from across the state and includes two of your own, Rep. Kelly Flood and Sen. Brandon Smith.

**Escalating Demand for Court Interpreters**

Another challenge involves the parties and defendants who enter the court system without the ability to communicate in English. The court system is required by statute to provide court interpreters in any case in which a party, juror or witness is deaf or hard of hearing, cannot communicate in English or has another type of disability that prevents him or her from properly understanding the nature of the proceedings.

The U.S. Department of Justice has also placed strict requirements on court interpreting for any state that receives federal funds.

When I was on the circuit bench, there was the occasional need for a Spanish interpreter. Today there's a huge demand for Spanish interpreters along with requests statewide for dozens of other, less common languages. Recently we're seeing a trend for Burmese, Nepali and Karen in addition to a number of indigenous Latin American languages such as Akateko.

More than a decade ago, the AOC enhanced its court interpreting program to accommodate the state's changing demographics. We adopted national standards for training and certifying court interpreters and developed Supreme Court Rules to govern our language access program. Our primary goals are to provide access to justice for the deaf and hard of hearing and limited English-proficient individuals, and to comply with the standards and requirements set forth by state law and the Department of Justice.

Today the court system employs or contracts with interpreters to provide access to all court programs and services. We also provide interpreting services for court proceedings to parties, witnesses, certain non-parties, deaf jurors and deaf attorneys.

The AOC recruits and trains interpreters from Kentucky and neighboring states to address the growing need for language access. We have more than 90 certified and registered interpreters – representing 31 different languages – listed on the AOC Interpreter Directory. In addition, there are 50 provisional interpreters available to assist with rare language assignments. In the past year, the AOC received interpreting services requests for 48 different languages.

In 2013 alone, the court system spent more than \$2 million on court interpreting. Given the increase in the volume of requests and the number of languages, the court system faces a tremendous challenge to fund, recruit and train court interpreters.

### **Growth of Problem-Solving Courts**

Along with other states, Kentucky is embracing the role of problem-solving courts to deal with specific types of problems or cases. Trial court judges are devoting time and energy to problem-solving roles that were unknown to their predecessors on the bench.

**Family Court.** Although technically a division of Circuit Court, Family Court was the state's first true problem-solving court. Kentucky launched a Family Court pilot project in Jefferson County in 1991. This became the commonwealth's first court to focus solely on the needs of families and children. Its unique structure allowed one judge to provide continuity by hearing all of a family's legal problems and issues.

Family Court became a permanent part of the Kentucky Constitution when voters overwhelmingly passed an amendment in 2002. Today Family Court serves 3.2 million citizens in 71 counties and is considered a national model.

Family Court handles family law matters that would otherwise be heard in Circuit Court and District Court, which includes everything from dissolution of marriage to status offenses.

I mentioned earlier that we are seeing a decline in the civil and criminal cases in Circuit and District courts. The opposite is true in Family Court, where the case filings have increased. Frankly, the number of cases handled by Family Court judges in some jurisdictions is simply unmanageable. In Fiscal Year 2012, the one Family Court judge in Lincoln, Pulaski and

Rockcastle counties was faced with 2,700 new cases. The numbers were similarly high for the Family Court judges in Boone and Gallatin counties and Floyd, Knott and Magoffin counties.

Family Court is also seeing the highest percentage of self-represented litigants, which adds to the workload of the Family Court judge.

**Drug Court.** Drug Court, which most people associate with the term “problem-solving court,” is an example of our success in combining treatment with court supervision. Instead of spending time in jail, eligible participants complete a substance abuse program supervised by a judge. Drug Court graduates are more likely to return to productive lives and stay gainfully employed, pay child support and meet other obligations.

What began as a pilot project by the AOC in Fayette County in 1996 has now expanded to 115 counties. Circuit and district judges volunteer as Drug Court judges. These judges devote a considerable amount of time consulting with Drug Court staff and meeting with Drug Court participants, filling essential roles as members of the Drug Court treatment team.

Since the program’s inception, 6,000 people have graduated, saving the state more than \$80 million in prison costs. During that time, 865 drug-free babies have been born and defendants have paid more than \$4.5 million in court obligations and performed more than 1.1 million community service hours.

**Veterans Treatment Court.** We’re faced with another type of social pressure from our lengthy conflicts in Iraq and Afghanistan. As our military personnel return home from these wars, the number of veterans entering the court system continues to grow.

Kentucky is joining other states that are implementing Veterans Treatment Courts to provide treatment and support services to help veterans stabilize their mental health and recover from addiction. The team includes judges, prosecutors, defense attorneys, treatment providers and Veterans Justice Outreach staff. Circuit and district judges volunteer as Veterans Treatment Court judges.

Kentucky’s first Veterans Treatment Court began operating in Jefferson County in November 2012. It was funded by a three-year, \$350,000 grant from the U.S. Department of Justice. Hardin County recently received the same \$350,000 grant to start a court and we are applying for grants to fund courts in Fayette and Christian counties. These four counties are home to the majority of veterans in Kentucky.

**Mental Health Courts.** The other emerging problem-solving court in Kentucky deals with mental health issues. Mental Health Courts use judicial oversight and mental health assessments and treatment to reduce the recidivism rate of mentally ill offenders while protecting public safety.

There are currently two Mental Health Courts operating in the state. One court serves Boone, Campbell and Kenton counties and the other serves Hardin County. The judges who operate Mental Health Courts also volunteer their time. As with Veterans Treatment Courts, the court

system does not provide any funding or staffing for Mental Health Courts. Funding is secured through outside sources, such as community corrections grants.

To be successful, Mental Health Courts require a significant commitment from the judges and community partners, including law enforcement, prosecutors, defense counsel and treatment providers. Since 2010, the Northern Kentucky Regional Mental Health Court has diverted 219 participants from more than 36,000 jail days and achieved a recidivism rate of only 16 percent for those active in the program.

### **Expanding Role of Pretrial Services**

Another adjustment we're making has to do with the expanding role of Pretrial Services. House Bill 463, which was passed in 2011 to stem the cost of incarceration in Kentucky, has affected the culture of the court system, with Pretrial Services on the front lines of those changes.

Pretrial officers interview and investigate most individuals who have been arrested and make recommendations to a judge regarding their pretrial release. HB 463 created the Deferred Prosecution Program, which allows defendants charged with certain drug-related offenses to avoid a guilty plea and conviction through supervision by Pretrial Services or Drug Court.

House Bill 463 also increased the number of defendants that pretrial officers supervise through the Monitored Conditional Release Program. Since the legislation went into effect in 2011, pretrial officers have made more than 327,000 defendant contacts, ranging from call-ins and in-person check-ins to curfew checks and drug tests.

These programs have produced a higher rate of pretrial release for moderate- and high-risk defendants, but they have also dramatically increased the workload of our pretrial officers, who already operate under heavy demands.

These programs are also relieving the budgets of state and county governments, which is the intended effect of House Bill 463. However, the court system is absorbing the cost of adding and training personnel who can handle this level and volume of supervision.

### **End of Senior Judges Program**

As the lawyers on this committee likely know, the Senior Status Program for Special Judges is quickly nearing its end. The program began in 2000 when the General Assembly passed House Bill 439, allowing retiring judges to commit to five years of additional service in exchange for an enhanced retirement benefit. The law prevented judges from entering the program after January 31, 2009.

Seventy-seven judges have completed their service since the Senior Judges Program began. Of the 14 remaining judges, most will complete their service before January 31, 2014.

I realize that this program has had its critics, but I also recognize how valuable it has been to the efficient operation of the courts. Senior judges covered for sitting judges when they were absent because of illness, recusals, continuing judicial education and other matters. The court system saved money by allowing senior judges to fill in for judicial vacancies, delaying the

cost of a new sitting judge. And people got access to justice more quickly when there were experienced senior judges to keep cases moving through the court system.

We will soon be reverting back to the system of requiring sitting judges to cover for each other when there are absences. It's hard to predict how this change will affect the court system, but I suspect that lawyers and litigants will begin to notice longer delays when there are no senior judges to fill vacancies and alleviate heavy dockets.

### **Reduced Judicial Pensions**

While I'm on the topic of retired judges, another troubling matter is how recent legislative changes to the state pension system will have a detrimental effect on Kentucky's ability to attract experienced, competent attorneys to become judges. Kentucky's judicial salaries have stagnated and fallen behind other states in the past decade, but our judicial retirement plan helped entice attorneys to leave lucrative law practices in spite of earning less money on the bench.

However, judges who come into the system after January 1, 2014, will find a retirement plan that provides only a fraction of the benefits previously available. An early estimate from the Judicial Form Retirement System indicates that judges coming in under the new guidelines will receive one-third of the benefits upon retirement than their colleagues who took the bench prior to the changes. This scenario concerns me and it should concern anyone who is interested in maintaining a highly qualified judiciary.

### **Purchase of New AOC Office Building**

The changing face of the court system also includes a physical move for the Administrative Office of the Courts. When the AOC moves from Millcreek Park to the former Home Depot building on Vandalay Drive in November 2013, it will be the first time the AOC has owned its building since the agency was formed in 1976.

The move is part of the AOC's efforts to reduce costs wherever possible in light of ongoing state budget cuts. Since 1987, the AOC has spent \$16.7 million in rent and renovations on the Millcreek campus without gaining any equity in the property. The payments for the lease-purchase of the building are within the rental amount the AOC pays for Millcreek Park. The AOC will save more than \$1 million a year when the building is paid off.

The AOC currently operates out of five buildings at Millcreek Park and the new office space will bring staff together under one roof, which will improve work flow and promote staff interaction.

The facility's large conference room and smaller meeting rooms will let us host a variety of events, including educational programs for judges, circuit court clerks and court personnel. We also look forward to offering the use of our meeting space to other government agencies.

This move is positive for all involved. The AOC will acquire much improved office space at a reduced cost, Frankfort will benefit from the occupation of a vacant building and the state will own valuable property in a desirable location.

I look forward to inviting each of you to the building's dedication in early 2014.

### **Breakthroughs in Court Technology**

I referred to breakthroughs in court technology at the beginning of my remarks and I want to elaborate on that now.

By far, our biggest challenge in terms of sheer scope is harnessing the rapid changes in technology for use by the courts. Technology is the key to a more cost-effective, more efficient court system and basically everything we do now is either facilitated by the technology that we do have or hindered by the technology that we need.

I spoke to you this spring about our obsolete case management system and how we've lagged behind the federal courts and other state courts in offering electronic filing. While laying the groundwork for a sophisticated new case management system, we've also been planning in earnest to bring eFiling to Kentucky courts.

We cleared a major hurdle on both projects in March 2013 when we got legislative approval to issue bonds to fund a new case management system. Resolving the funding issue jump-started our progress and I appreciate your support of that legislation. We're moving quickly on the new system, which will make it possible for us to test eFiling in Franklin County by the end of 2013.

We are already forming committees to oversee the eCourts initiative and to address the changes to court rules, guidelines and business processes that the advent of court technology requires. The committees are comprised of a diverse group of stakeholders in the justice system, including judges, circuit court clerks, legislators, prosecutors, defense counsel, private attorneys and AOC personnel.

There's other good news as well. The AOC is installing a new accounts receivable program that will automate bookkeeping functions in circuit court clerks' offices statewide. And this spring, the AOC launched CourtNet 2.0, a vastly improved application that will replace the older CourtNet and let judges, attorneys and other members of the legal system access civil and criminal court cases online in real time.

There are also advances taking place behind the scenes to make our internal processes work better through technology. For example, we are paving the way for our eCourts projects by updating networks and hardware across the state.

### **Pay Equity for the Judicial Branch**

While technology is our biggest challenge in terms of scope, pay equity for court employees is our greatest need. Investing in our human resources is my top priority and an issue that must be addressed.



Judicial Branch salaries have historically trailed those of the Executive and Legislative branches, severely compromising our ability to recruit and retain the caliber of employees who can handle the complex work of the courts. More than 600 of our 3,300 non-elected employees fall under federal poverty guidelines for a family of four. An even larger number qualify for food stamps based on their current salaries.

Experienced employees and new hires alike are leaving for higher wages in the other branches of government and in the private sector. In many cases, we train employees only to have them get better-paying jobs elsewhere in state government. This brain drain reduces the quality of service we provide and makes it more difficult to handle the increasing demands on the courts.

In 2010, I formed a Compensation Commission to review the Judicial Branch's salary structure and recommend ways to make it more fair and competitive. This group of judges, circuit court clerks and court personnel recommended that we must make our entry-level salaries more competitive, restructure our salary scale to be equitable at all levels and bring key positions into parity with their peers in the public sector.

During the upcoming legislative session, I will be requesting an appropriation to increase the wages of the lowest-paid positions within the court system and bring the Judicial Branch salaries in line with the other branches of government. Pay equity for the Judicial Branch will be my top legislative priority and a proposal that I hope you will consider and support.

### **Conclusion**

I've given you a lot of information this morning and I appreciate your interest and your time.

In closing, I want to emphasize that Kentucky's judiciary is resourceful and resilient. We're mustering every bit of our creativity and drive to deliver justice at a high level in this daring new era of change.

I will admit that there are times when change comes too fast and we are stretched by too many needs and too few resources. That's when we regroup and figure out how to keep making progress in spite of our limitations.

As you know, standing still is not an option. Wishing things would stay the same is not an option. Our only option is to adopt a mindset of expectation, a mindset that believes if we work hard enough and if we work together enough, we can keep improving the experience that people have when they come before Kentucky courts.

That's my vision for the Judicial Branch and I'm counting on your support to help us make that happen.

That concludes my prepared remarks and now I will be happy to take your questions.

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