

STATE OF THE JUDICIARY REPORT

PRESENTED TO THE CONNECTICUT GENERAL ASSEMBLY
BY CHIEF JUSTICE CHASE T. ROGERS

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Madam President, Mister Speaker, distinguished members of the House and Senate, ladies and gentlemen, thank you for allowing me the opportunity to provide this report to you regarding the State of the Judiciary.

It has been several years since I last had the honor of updating you on the Judicial Branch's current status. When I became Chief Justice a decade ago, we concentrated our efforts on providing meaningful access to justice – that is, improving the ability and ease of people to utilize the court system. For example, we enhanced the services that we provide to our limited English proficient individuals, and we established volunteer attorney programs to assist self-represented parties in navigating the court process.

While we continue to refine our efforts to improve access to justice, we have also focused the last five years on finding new ways to best conduct the business of the courts. Simply put, we must continue concentrating our resources on finding ways to not only provide meaningful access *to* justice but also to resolving cases in a manner that is cost-effective, timely and best serves the interest *of* justice. In this regard, I want to outline some of the bold changes we have made that will impact our court system for years to come. I should also note that the changes I will address are occurring despite the budgetary crisis that our state continues to face.

Let me assure you that we are keenly aware that the Judicial Branch needs to contribute its fair share to resolving our current fiscal situation. Having said that, however, I would be remiss in neglecting to mention some of the unavoidable downsizing that has occurred as a direct result of last year's cuts to the Branch when, despite being only 3 percent of the state's budget, the Branch ultimately sustained 9 percent of the overall statewide budget cuts.

As a result, we undertook the very painful task of terminating 300 valued employees, eliminating the 24-hour lockups in Hartford and New Haven, and closing

both the Danbury Juvenile and Windham Judicial District courthouses. We also had to cut \$28 million from programs that provided important treatment and supervision services to adult and juvenile offenders.

Additionally, the combination of terminations, attrition and a hiring freeze now puts us at 600 fewer staff than the 4,300 employees who were working one year ago. Needless to say, these numbers have created a substantial strain on our day-to-day operations.

To give you a sense of the scale of our operations, our trial level courts disposed of over 654,000 cases during FY16. As you know, our judges and staff deal directly on a daily basis with people who are facing some of life's biggest crises involving crime, addiction, financial issues, health problems, divorce and death. In spite of the large cuts we have sustained, we continue to manage this difficult caseload and provide essential services to the people who need our courts.

I must tell you, however, that if our strict hiring freeze remains in place, it will be necessary to close and consolidate a number of courthouses because we simply won't have enough employees to staff our facilities. This in turn will have a direct negative impact on the communities these courts serve. We will also need to continue reviewing everything we do in order to prioritize the services that we can provide to the public if the current financial trend continues. Against this financial backdrop, it is therefore very fortunate that five years ago we looked at the way we handle civil and family cases and subsequently added a restructuring component to our strategic plan.

Part of our review involved re-evaluating the use of the adversarial model, which has been a part of our institution for hundreds of years and will continue to be an appropriate model for certain cases. However, we need to provide litigants and the bar with different options for resolving disputes, and we also need to change some of our pretrial processes for cases that go to trial in order to remain relevant in the 21st century.

The Branch has concentrated on providing these other methods of resolving disputes because we realize that there may be less expensive and more effective ways to assist parties in reaching agreements.

This is especially important as we continue to see an influx of self-represented parties. Now, in approximately 80 percent of family cases, 25 percent of civil cases and 90 percent of housing cases, at least one of the parties is self-represented. Because of these numbers, it is imperative that we look beyond the traditional adversarial model to resolve cases that lend themselves to mediation and collaboration.

As you will see, in all types of cases – family, juvenile, criminal and civil – we are making changes to help achieve our mission of resolving matters in a fair, timely, efficient and open manner.

Family Court

Family court has been an area of great interest to the Legislature, and we have devoted much time and energy to improving the services that we provide. One of our primary goals has been to change the focus within family court to the extent possible away from an adversarial model.

There can be no doubt that families benefit when parents work together to reach agreements as to what is best for their children. As such, we are making available to parties, free of charge, additional services conducted by court staff with expertise in family and custody matters. For example, our Family Services Unit has developed and implemented a statewide alternative dispute resolution program for matters with early indications of conflict regarding parenting. The focus of this Intensive Case Management Program is to provide parents with a structured process aimed at developing vital skills to move toward more lasting parenting agreements. This includes learning enhanced communication strategies, building better co-parenting relationships and resolving parenting concerns together. Additionally, our Family Services staff provides early intervention and coordinates needed services for cases involving custody and access.

One example of this is the statewide Case Management initiative within the Family Civil Court. This new process provides for the early identification of parenting issues and facilitates dispute resolution for families with pending motions. Family

Services gathers important information on an expedited basis with the goal of addressing concerns that could potentially develop into significant ongoing conflict.

We are seeing very positive results. For FY16, the average number of months to resolution of a divorce matter decreased by 25 percent. Regarding supervised visitation, of the over 30,000 filings in the Family Division from October 2015 to October 2016, only 2 percent had an order of supervised visitation.

Regarding guardians ad litem, the number of GALs appointed by judges decreased by 44 percent, and of those cases with a GAL, 83 percent was by agreement of the parties.

With your help, another area where we have made tremendous progress is streamlining the process by which individuals may obtain a divorce. Because of legislation you passed in 2015, divorce may now be expedited in two ways: first, by filing a motion to waive the 90-day waiting period after filing for divorce; and second, using the non-adversarial dissolution process that has been in place since October 2015. From October 2015 to October 2016, 17 percent of divorcing couples chose one of these expedited options, and we expect the number to grow.

Yet, there is more that can be done, and we are recommending legislation to expand who would be eligible for non-adversarial dissolution of marriage. This proposal also would amend state law to allow parties to submit a written agreement to the court for approval without the need for a court appearance. Clearly, this would save litigants time and money and allow them to move on with their lives. We hope that you will approve this legislation.

In addition, we recently posted on our website a resource to better assist people in deciding which divorce option might be best for them. Through the aptly named Divorce Navigator, parties are asked to answer a series of questions and based on their answers are then directed to the divorce process that may work best for them. We have also enhanced the information that is available on the website regarding divorce, custody and visitation.

These are just some of the major changes we have made in family court. As we move forward, we will continue to seek new and creative ways to assist people in need of these services.

Juvenile Matters

Turning to juvenile matters, I know this has also been an area of great interest to all three branches of government. We have been working over the past several years to continue to better understand the needs of juveniles in our care and to reform the juvenile justice system so that it is developmentally appropriate.

One of the biggest changes was the integration of 16- and 17-year-olds into the juvenile justice system. I am pleased to report that the overall transition was – and continues to be – smooth. In fact, the average daily detention population decreased by close to 21 percent and the number of Department of Children and Families' commitments decreased by 23 percent from what it was in 2009. These decreases occurred even with the increased referrals to juvenile court due to the inclusion of 16- and 17-year-olds.

As you know, we provide many services to children involved in the juvenile justice system. As just one example of trying to address the root problems that brought the child into the system in the first place, we have implemented a trauma-informed model in juvenile detention to teach them about the biological effects of trauma, what triggers a trauma reaction, and skills to regulate emotions and responses.

Also, as a result of a memorandum of agreement between the Judicial Branch and the State Department of Education, juvenile probation officers, with parental consent, can now electronically access a student's educational history. Access to the information allows for better identification of learning needs, coordination with the family and school, and the targeting of intervention to address any educational deficiencies or school behavior problems. The Judicial Branch anticipates that these types of programs will help reduce the recidivism rate of older and younger adolescents.

We, and by we, I mean all three branches, should feel good about the progress we have made in juvenile court and of the fact that Connecticut has emerged as a national leader in the area of juvenile justice reform. Nevertheless, we all know that there is more work to be done on behalf of this vulnerable population, and we are constantly reviewing our data and outcomes, the complement of programs we provide, and the quality of providers who interact with children and their families.

Criminal Matters

I now want to shift to criminal matters. As many of you know, our state for the past 20 years has developed, through legislation, a series of alternative to incarceration programs to address individual problems that often reflect larger community issues.

Today, that is no more evident than through the experience of our criminal court judges as they see on a daily basis the wreckage created by Connecticut's opiate crisis. Compounding this epidemic is that it bleeds throughout our court system, into family matters and child abuse and neglect cases. State court systems throughout the United States are being inundated with cases involving opiate addiction, and Connecticut is by no means immune to this crisis.

As one of the many measures to address this problem, we are piloting a very successful diversionary program that is addressing the opiate epidemic our communities face.

The pretrial *Treatment Pathway Program* provides rapid identification, diversion and access to behavioral health treatment before an opiate-dependent defendant is fully booked into jail. These individuals might otherwise not have been released via bond or through another diversion mechanism, as they often have a lengthier criminal history and more complex clinical needs. So a key element of the program is that eligible higher-risk detainees are stabilized with treatment as quickly as possible.

Obviously, no one entity can alone manage this type of program. The Branch, through its judges and Court Support Services Division, is collaborating with the Department of Correction, a community provider, prosecutors and public defenders.

Between April 2015 and December 2016, 176 individuals in Bridgeport were screened and subsequently accepted into the program. Significantly, 77 percent of them were admitted into a program within 24 hours and the majority of them had their cases disposed of within a year, receiving a sentence that carried no time behind bars. We are hopeful that this innovative program will continue producing positive outcomes.

I just want to add that I am extremely proud of Connecticut's role as the leader in embracing and implementing alternative sanctions many years ago. We were the first state to do so and this innovative approach would not have worked without the strong support of all three branches of government. I am grateful for your work in this area.

Civil Matters

Turning to civil litigation, as you know, the efficient and expeditious processing of civil cases is vitally important, as a slow and inefficient civil court system not only impacts litigants but the overall economic health of the state. As part of our review of how we do business, we have recognized that one size does not fit all.

We have, therefore, developed separate "pathways" for distinguishing simple cases that require primarily staff oversight from those that require more judicial intervention. Moreover, for those cases that require more judicial involvement, we have created a statewide system, whereby a case is assigned to a single judge who can handle the case from initiation through disposition, thus avoiding the delays and the cost of re-educating a new judge about the issues. The judge is involved with the attorneys and parties from the outset of the case to assist in developing a schedule and plan that will result in a timely and cost-effective resolution of the matter.

In other words, we are institutionalizing a new and better way to manage cases as soon as they are filed. We are confident that this program will reduce the cost of litigation, provide predictability of procedures and scheduling, increase the possibility for an earlier settlement, and greatly enhance the overall efficiency and consistency of the civil litigation process.

We have also been working to provide parties in civil matters with different options to resolve their disputes in a non-adversarial environment. One such initiative has been to enhance our already successful alternative dispute resolution program to include the opening of mediation centers in Hartford and Waterbury, where parties can get off the path of litigation and attempt to get their cases resolved by a judge with excellent mediation skills. In addition, these centers have the latest technology, so that adjusters, experts and parties may be conferenced into a mediation by video, and documents can be exchanged remotely.

This is a significant step forward in terms of enhancing alternative dispute resolution options, as we will have judges dedicated specifically to a mediation docket in facilities specifically designed for that purpose. This initiative makes particular sense when you consider that 90 percent of all civil cases settle before a trial.

Looking toward the future, we will also rely on technology to provide online dispute resolution services for collection cases. The program, to be piloted in two judicial districts, will be voluntary and will allow parties to submit evidence electronically and then meet with a mediator in person, by telephone or via videoconference. The goal is to assist the parties in resolving the dispute without requiring them to appear in court.

Finally, we continue to look at ways to improve the process of resolving complex commercial disputes that impact those doing business in the state. We are considering changes to rules and processes that will make it clear that our court system should be viewed as an asset, not an impediment, to doing business in Connecticut.

Appellate System

I would like to close by turning from what is happening in the trial courts and provide you with an update regarding our appellate system, which encompasses both the Supreme and Appellate Courts.

First, our numbers demonstrate that we are moving our large caseloads efficiently. In FY16, the Supreme Court issued 128 written opinions, and for this year,

we are on track to hear 122 cases despite being down a justice for most of this court year. The Appellate Court issued 523 written decisions in FY16, and has already issued over 400 written opinions in the current fiscal year.

As you can imagine, you simply cannot resolve over 120 complex cases per year on an appellate level unless there is respect, collegiality and a commitment to excellence among the very intelligent, very skilled and very strong-willed individuals who serve on the Supreme Court. I am pleased to unequivocally tell you that we maintain respect for each other even when we passionately disagree on occasion, which is bound to happen when you deal with some of the complicated legal issues that we face on a daily basis.

Conclusion

In closing, my message is that even with severely cut resources, the judiciary remains steadfast in its goal to best serve the people and to incorporate systemic changes when it is beneficial to do so. This is primarily due to the efforts and talent of our judges and staff who understand that when it is your divorce, your child, your home, your health or your livelihood, how you were treated, whether you had the opportunity to be heard and ultimately the outcome of your case, matters greatly.

In fulfilling their obligations, our judges recognize and take very seriously their responsibility to make decisions based on the rule of law, even when those decisions may be unpopular or controversial. Our judges need to know that their decisions, when based on the rule of law as opposed to popular opinion, will be respected as fundamental to preserving our democratic society. We truly appreciate your speaking out on and having a clear understanding of this concept when judges are up for reappointment.

We also recognize that it is vitally important that our staff reflect the community we serve, and in that regard, we have worked hard to increase diversity among our employees, from 10 percent in the 1980s to over 30 percent today. As important, along with the gains we have made to increase diversity within the Branch, we have developed a robust, ongoing cultural competency training program for judges and staff.

The purpose of the training is to increase communication, understanding and respect among diverse groups and to address critical issues of inclusion facing our society. Being culturally competent is essential in the court system because it directly impacts the interaction among judges, staff and members of the public, and makes it far less likely that erroneous conclusions will be drawn based on implicit bias. This is critically important in our courthouses, which represent a microcosm of our society.

Finally, on a personal note, I am extremely grateful for the opportunity to have served as Chief Justice of the State of Connecticut for the past 10 years and for the opportunity to continue to serve. There are simply not enough words to describe how much of an honor this has been.

A handwritten signature in black ink that reads "Chan T. Rogier". The signature is written in a cursive style with a long, sweeping underline.