

2022
State of the Judiciary

Kate M. Fox, Chief Justice

Sixty-Sixth Legislature
Budget Session

Mr. President, Mr. Speaker, Governor Gordon and Madame First Lady, members of the 66th Legislature, elected officials, members of the judiciary, guests, and citizens of the Great State of Wyoming. It is an honor for me to speak with you today on behalf of the Wyoming Judicial Branch. Thank you, President Dockstater and Speaker Barlow for the invitation to do so.

A couple was returning home from walking their two dogs when one of the dogs, Rocky, broke loose, ran across the street, and attacked the neighbors' dogs on their front porch. Some kids playing basketball nearby gave chase, and one young man grabbed Rocky and dragged him into the street, while the dogfight continued. The neighbor came out of the house and shot Rocky, who went limp in the young man's hands.

The neighbor was charged with the crimes of cruelty to animals and reckless endangerment. He went to trial and a jury of his peers, guided by the judge, decided the outcome of the case.

What courts do

The courts are there so that people have a place to solve their differences when other avenues aren't available. That's how we do it in America.

Our Wyoming courts are there for a criminal cases, when the State must prove the defendant's guilt beyond a reasonable doubt; for neglect and abuse cases, when the court oversees the reasonable efforts to reunify children with their families; for divorces, when couples can no longer continue their marriages; for multimillion dollar business disputes between corporations. Our courts manage collection and eviction cases, protection orders, probates and guardianships. They handle traffic tickets.

Courts are where you go to establish and defend your constitutional rights.

There are 24 circuit court judges, 24 district court judges, 5 Supreme Court justices, and a few magistrates in the Wyoming judicial branch. There

are at least a couple of judges in each one of your districts. I hope you know them, and if you don't, I invite you to make their acquaintance.

Employee pay

We have only about 265 employees who support the work of those judges. They work incredibly hard, and I must tell you – we are struggling to retain our good people. There are various reasons for that, but one primary reason is that they are underpaid. I speak for the judicial branch employees when I say, they are significantly underpaid.

We have about 120 circuit court clerks across the State. Our court clerks are the workhorses of the judicial branch. They work in the highest-volume courts, where small claims and misdemeanors are filed, often by people who are not represented by lawyers. The clerks are there to help your constituents, the citizens of Wyoming; and to support the work of the judges so the people's legal matters can be addressed timely. That breaks down when we can't keep our good people, and we can't keep them because they

can make more money at Mc Donald's, or even in the same building working for the county.

In our administrative staff, we have a small but powerful team of skilled people who maintain our court IT and who are working on the critical efilings project, which I will tell you more about. We keep losing those talented people to higher-paying jobs in the private sector. What it means is we are challenged to complete our projects with one leg tied up.

We must pay our people a fair wage if the courts are to continue to perform their constitutional functions – that is, to provide the just, speedy, and inexpensive resolution of our citizens' disputes. For that reason we support the Governor's proposal for State employee pay increases.

I've talked to you about the effect of low pay on our ability to serve the people of Wyoming. We have not asked for new positions in this budget, except in our ARPA requests. But the truth is budget cuts have also reduced positions to such an extent that our good people simply cannot perform all the functions that we ought to. In the most recent budget cuts we eliminated 3 positions. We need them back. These positions would be distributed to

the admin staff which supports all the courts, and to circuit courts which have critical staffing shortages. I know that you are reluctant to use short-term money for positions, and I understand that. But if ARPA funds can give us even temporary relief, we'll take it and put it to good use. You've cut them before and you can cut them again, if necessary. We need those 3 positions back to adequately serve the people of Wyoming, and to retain the good people we have who, frankly, are burning out.

We have also requested three temporary time-limited trainers so that we can train our clerks to get the maximum benefit from the new case management system.

We have ever-increasing demands for accurate data from the judicial branch – many of those come from this legislature – and we agree that accurate data is critical to many decisions all three branches make. Sound data starts with reliable and consistent input. We need trained people to do that.

State employee pay

I must add that from what I see, the executive branch agencies we work closely with are suffering from the same dire lack of resources.

For example, the Department of Family Services is involved in most cases that come before our juvenile courts. But it is not unusual to see, in the abuse and neglect cases that are appealed to the Supreme Court, multiple DFS caseworkers testifying. It's never a good thing to have multiple caseworkers in the life of a case that requires establishing rapport with the family and determining what their specific needs are, but that's one of the ways that low pay for State workers impacts the work of the courts and the people of Wyoming.

For another example, we work closely with the Department of Corrections in our treatment court programs – which have been very successful – our judges depend on each member of the treatment court team, not least of which is the probation officer. But because of budget cuts and reduced staffing, probation officers are no longer always able to devote all the time that some of our treatment court judges would prefer.

I do not say this to criticize these agencies. The judicial branch has a very good working relationship with its justice partners in DFS, Corrections, Health, and law enforcement. I think they are doing their utmost with the resources they have -- but as then Chief Justice Davis told you last year, you can't keep cutting the soldiers' rations and expect them to keep fighting a great battle.

Cutting government sounds good until you are reducing services to the citizens of Wyoming to such an extent that basic structures fall apart. Left untended the costs down the road will only be greater.

Three new DJs

While I am talking about investment in the people of Wyoming, I want to address a top priority for the judicial branch, that is the matter of additional district court judges. According to our workload studies, we have been short a district court judge in the 3rd, the 6th and the 7th judicial districts for many years.

We must ensure that the people in those three districts – that’s Natrona, Campbell, Crook, Weston, Sweetwater, Lincoln, and Uinta counties – continue to receive the just, speedy, and inexpensive resolution of their legal disputes. And we need to make sure that our judges have a workload that is sustainable.

I am extremely proud of the overall quality of our Wyoming judges, but I see a problem looming. We are getting fewer and fewer applicants for judicial vacancies. I think they are not applying because they see what a difficult and unrelenting grind that job is. To attract and retain good judges, we must ease that grind.

The Joint Judiciary Committee passed a bill to add a district court judge in each of those three districts. For each district court judge with their staff of 3 we budget \$1.2 million per biennium. I wouldn’t ask if I didn’t think it was critical to our ability to continue to deliver justice to the citizens of Wyoming.

What we've accomplished since the last state of the judiciary:

Even though Dave Barry said the only positive thing we can say about 2021 is that it was marginally better than 2020, I can report some impressive accomplishments in the judicial branch since the last state of the judiciary.

- First and foremost our courts continued to dispense justice last year, when many courts throughout the nation were barely limping along. Our Wyoming judges and court staff have done an extraordinary job of keeping the courts open and taking care of the citizen's needs in the face of some very daunting challenges. With the foresight of the legislature and the Governor's office, and the help of CARES money, we made some giant leaps in technology use in all the courts. And now, looking beyond the pandemic, we will embrace a new normal that saves time, travel, and money for litigants as well as for the courts.

But there was more than technology that made it possible to keep cases moving and trials happening – it was hard work and an attitude of finding creative solutions by the folks who work for the courts. If our courtrooms weren't big enough to accommodate social distancing,

they improvised, like Judge Bluemel does by using the Historic Round House in Evanston for jury selection. If it was difficult or unsafe for people to come to the courts to file their papers, the clerks accepted email filing, even though it meant extra steps of printing and scanning for them. Our clerks and judicial assistants and court reporters and law clerks and judges had the attitude that they would get it done, and they did.

The Wyoming judiciary was ahead of most of the nation in conducting its work remotely, and it has been ahead of most of the nation in resuming in-person proceedings.

- Our circuit courts now have a full year with an updated electronic case management system. (It's important to note the difference between case management, which is the system of filing and docketing cases, and efilng, which allows people outside the courts to file electronically. Circuit courts do not have efilng. Our top priority ARPA request, which JAC has approved, is for circuit court efilng.)

- We have begun the rollout of the updated electronic case management system in the district courts. Today, three district courts are on the new case management system. That's a big deal because once we have the case management in place, we can add the efilng piece.
- Chancery Court opened for business December 1st, 2021. It is fully electronic. We anticipate it will take some time for the case volume to pick up enough to justify a full time judge and chamber staff. In the meantime two district court judges are filling in, and the Chancery Court courtroom is being completed in the Casper office building. You will see our budget exception request of \$814,000 for furnishing and equipment, and salary and benefits for judge and chamber staff.

I also report some changes in the judges' ranks:

- Judge **Robert Denhardt**, Circuit Judge in the Ninth Judicial District in Lander, retired in October. He is replaced by Judge **Jefferson Coombs**.
- Judge **Bruce Waters**, Circuit Judge in the Fifth Judicial District in Cody, retired in December. He is replaced by Judge **Joey Darrah**.

- Judge **John Perry**, District Judge in the Sixth Judicial District in Gillette, retired in January. He is replaced by Judge **Mike Causey**.
- Judge **Timothy Day**, District Judge in the Ninth Judicial District in Jackson, also retired in January. He is replaced by Judge **Melissa Owens**.
- Justice **Michael Davis**, who served as Chief for the last three years and who will be sorely missed by the people of Wyoming, and by me in particular, also retired in January. Justice **John Fenn**, who was the District Court Judge in Sheridan, has now joined us on the Supreme Court.
- Judge **Thomas Rumpke**, District Court Judge in the Sixth Judicial District in Gillette, is returning to private practice. He will be replaced by Circuit Court judge **Matt Castano**.
- Judge Fenn's district court seat is now open and Governor Gordon will be announcing the name of the new Sheridan judge soon.

As you can see our Judicial Nominating Commission has been very busy.

It's been an honor and a pleasure for me to chair that committee of

thoughtful and conscientious people, and to be part of Wyoming's merit selection system. There is no better system for selecting qualified people to serve as judges with their eye on the ball – that is to apply the rule of law.

We have an important transition in the Judicial Branch administrative staff. Deputy Court Administrator Ronda Munger, who many of you know because she has been an essential part of almost every aspect of court administration for 20 years, will be taking a different job with the Supreme Court, as judicial assistant to Justice Fenn.

We thank Ronda, and all of the judges who have served, for their many years of faithful service, and we thank those who have stepped up to take over these important roles.

What we'll accomplish in the coming year:

In the coming year we will be accomplishing more great things.

We will have Efiling in our first district court this summer! That rollout will continue until all district courts are efilng in 2025. Here I must thank all the judges and lawyers who do the work of our committees to sort out the complicated procedures, rules, and protocols that go into the shift to efilng. It's a lot of work, and we depend very much on these volunteer committtes to get it done.

I hope that we will have an upgrade to our appellate case management system for the Supreme Court. That electronic system has passed end of life. You authorized the funds for the upgrade two years ago, and then took them away in last year's budget cuts. We can't go on with duct tape any longer, so I hope you will approve our exception request, as the JAC has done.

I also hope that we can get a new baseline workload study done for the circuit courts. This is how we determine the right number of judges and circuit court clerks to handle their caseloads. Because of the new case management system, the old baseline study is no longer valid. We are requesting \$250,000 to complete that study for the circuit courts. And yes,

when the district courts are all on the new system we will come back to ask for the funds to conduct a workload study on the district courts.

Our Access to Justice Commission and Equal Justice Wyoming will continue their work to find more opportunities for self-represented litigants – people who can't afford a lawyer but still must try to navigate the courts in civil cases. Thanks to the funds the legislature provided from filing fees in the 2010 Civil Legal Services Act, and grants, including a significant grant last year from the Hughes Foundation, Equal Justice Wyoming has been able to enhance its support of civil legal services toward the goal of "liberty and justice for all."

We have made it a judicial branch priority to support, enhance, and build on the State's treatment courts this year. Treatment courts are the most successful intervention for leading people with substance use and mental health disorders out of the justice system and into lives of recovery and stability. We're working closely with the Department of Health and Department of Corrections, and we're focusing on training and taking stock so that we can see what works, and do more of that in Wyoming.

I want to mention a new project, lead by former Attorney General Pat Crank, to evaluate Wyoming's Juvenile Justice system and find better ways to address juvenile delinquency, mental health, and substance abuse. That initiative is just getting off the ground – I'm excited to see what the work group can accomplish, with your help, for juvenile justice.

Talking about treatment courts and juvenile justice, it is apparent that all roads lead to mental health and substance abuse. That's true of the criminal cases as well. Our trial judges across the State will tell you that we need more mental health resources, and local resources are better than out-of-town resources.

And of course our courts will continue to be open to the citizens of Wyoming so that their legal disputes – from dog fights to corporate dissolution – can be timely and fairly resolved. But we are constantly looking for ways to continue to deliver on fulfilling our constitutional promises as effectively as possible. Toward that end, our Board of Judicial Policy and Administration has just embarked this month on a project to look at reform and modernization of the judicial branch.

Our combined budget request for the 23-24 biennium is about \$91.9 million dollars, constituting about 3% of the State's General Fund budget.

You may have noticed this state of the judiciary does not include many facts and figures. That's because, although I know you rely on accurate information, I do not think the place for facts and figures is in this speech after you've been listening patiently for so long. I want to paint the big picture of the judicial branch for you, and to address our most pressing issues.

We do have a great deal of information on the Wyoming Judicial Branch website. There you will find updates on efilings, the chancery court, past workload reports, the operating plans of every district and circuit court, most of the Judicial Learning Center exhibits, and much more. We've also provided each of you with a fact sheet that is full of numbers.

Justice Keith Kautz has a continuing invitation to put on a law school for legislators.

And of course, our excellent administrative staff and I are available to answer any questions you may have.

At some point in the State of the Judiciary it's customary to say the State of Judiciary is strong. I say that this year with special conviction. In the past year or two, Wyoming's judiciary has demonstrated its strength, its resilience, and its determination to accomplish its mission – and it has done so with flying colors. That's because of our excellent people. And it's also thanks to the strong and steadfast support we've received from the legislature and the Governor. Thank you for your past support, and thank you in advance for your support of the judicial branch's critical needs in the coming session.

I look forward to our branch's continued collaboration with the legislative and executive branches. I know that we all share the same intentions – to act for the good of the people of Wyoming.

The founders of our republic and our State intended for there to be tension between our three branches of government, so that we can keep the balance necessary to maintain the rule of law and preserve our democracy.

I appreciate that despite that tension, relations between our branches continue to be cordial and respectful.

Thank you again for the opportunity to speak with you. And thank you for your service.