

*. . . the first duty of society is justice.*



## **2010 State of the Judiciary**

---

**Marsha Ternus**  
**Chief Justice of the Iowa Supreme Court**

---

January 13, 2010



# State of the Judiciary 2010

## Introduction

Thank you for this opportunity to speak with you about the delivery of justice in Iowa.

Over the last six months, the members of the court and I have traveled around the state to talk with Iowans about the condition of the court system. We have visited with lawyers, local officials, judges, and other community members, in both rural and urban counties. We have listened to their concerns. They have many concerns—and significant ones—about the impact the budget cuts have had on the operation of the court system. However, their overarching concern is reduced access to justice and its effect on individual Iowans and their communities. Today, I speak to you with their concerns, their voices clearly in mind.

Our common concern for justice is why we gather here this morning. Justice is not an optional government service. Justice is “a constitutional imperative.” As Alexander Hamilton, one of the founders of our government and one of the authors of *The Federalist*, observed: “Justice is the end of government” and it is “the first duty of society.” Two centuries later, Hamilton’s conclusions still ring true. Justice is the glue that holds our diverse society together. For these reasons, justice is not only the common obligation of all three branches of government; justice is our primary obligation.

The general theme of my previous reports has been that the state of the judiciary is good. This year, however, I cannot give a favorable report. The budget cuts of the past decade have taken a heavy toll on the ability of the judicial branch to fulfill its constitutional mission. Consequently, the ability of Iowans to receive the court services the Constitution affords them has been reduced, and justice hangs in the balance.

## Condition of the Courts

Although we are a co-equal, independent branch of government, we know our separate powers do not shield the courts from sacrifice in times of fiscal crisis. In fact, we have reduced our operating expenses time and time again in response to the state’s financial problems. In the last decade alone,

we cut the cost of operating the state court system five times—and each time the cuts were deep. Unlike many state agencies and the regents, the judicial branch has no pass-through funds, no programs to cut, and no reserve funds to tap. Nearly all of our operating costs are for people—employees and judges who are the life blood of the court system—so when we cut our budget, we must cut our workforce. Since FY 2002 our staffing levels have plummeted 17%. Last year alone, we cut our workforce by almost 11%. In addition, we are holding open judicial vacancies. These unfilled judicial positions come at a time when the judicial workload formula shows that the state is already twenty-one judges short of caseload demands.

What is the result of our ten years of downsizing? Today, Iowa's court system operates with a smaller workforce than it had in 1987, the year the state assumed full funding for the court system. Yet over the same period, the number of cases filed in our courts, excluding simple misdemeanors and scheduled violations, has increased by 66%. You heard that right: after twenty-two years, we have fewer people to handle a 66% increase in the most serious and time-consuming cases on our docket.

For years, we have managed the growing imbalance between resources and workload remarkably well without too many serious problems rising to the surface. Under the current circumstances, however, we can no longer insulate Iowans from the consequences of inadequately funded courts; we must ration access to justice.

What does this sad state of affairs mean for Iowans? It means their primary point of access to justice, the clerk of court office, is open part time. It means they will lose valuable services such as assistance completing pro se forms for small claims, dissolution of marriage, and mental health commitments. It means Iowans will encounter delays in important services such as the processing of child support checks and docketing liens. It means citizens will wait longer for hearings and trials and will have to settle for assembly-line justice. It means pressures to plea bargain will increase. It means that some matters like distribution of court orders and arrest warrant checks will be vulnerable to mistakes or will fall between the cracks. While we are doing everything in our power to minimize these problems, we simply do not have the staff to prevent them. We are deeply concerned about the effect these problems will have, not only on litigants and others dependent on court services, but also on the safety of our communities.

## **Stop Gap Measures**

To cope with our reduced funding, we have implemented measures that will allow the courts to function as well as possible in the short term. We continue to operate a clerk of court office in each county, although all offices operate with reduced public hours and some operate only a few days a week. We continue to send judges to every county on a regular basis, and to assign one judge to one child or one family in child welfare cases, although more cuts may force us to discontinue these services.

In addition, cases and duties have been ranked in order of priority to ensure that we concentrate our limited resources on high priority cases. Priority cases are cases that involve a constitutional mandate that necessitates timely adjudication, as well as cases that involve the health, safety, and well-being of vulnerable citizens. For example, criminal cases, mental health commitments, and cases involving the welfare of children are high priorities. Of course by concentrating our resources on these priority cases, litigants in non priority cases will see longer delays. Non priority cases that will be delayed include important matters such as foreclosures, divorces not involving children, debt collection actions, personal injury lawsuits, property disputes, probate matters, and judicial review of administrative agency actions such as workers compensation and unemployment compensation cases.

We are confident that our judges and court staff will, as always, do all they can to enable the judicial branch to fulfill its important mission. It is due to their tireless efforts and admirable work ethic that we have coped as well as we have with dwindling resources. However, even the most productive person can do only so much in a day. We must acknowledge the fact that without restoration of the resources we have lost, we cannot provide the access to justice that Iowans need, and our ability to provide criminal justice consistent with constitutional requirements is in jeopardy.

## **Maintain the Delivery of Justice**

We appreciate the scope and magnitude of the state's fiscal difficulties. In recognition of this grim reality, the judicial branch submitted a status quo budget request for FY 2011. We did so even though a status quo budget means we must continue to ration access to justice. As leaders of the

state's justice system, we would be irresponsible to downplay the importance of access to justice and to disregard the dangers of underfunded courts. We urge you to provide the funds we need to maintain access to justice at the current level. There are many important reasons to do so.

Let's start with the most important reason: the administration of justice is not an optional service. It is "a constitutional imperative." There are some things that only government can do and these things it must do well. Administering justice under the law equally to all people is a function that only government can fulfill. The determination of guilt and innocence, property rights and parental rights, and legal privileges and power are judgments only government can make. In short, providing access to justice is an indispensable function of government. Indeed, the long-term stability of our democracy hinges on the ability of each branch of government to effectively carry out its constitutional responsibilities, a delicate balance that is jeopardized when one branch is underfunded.

Another reason to maintain access to justice at the current level is that during bad economic times, Iowans need the courts more than ever. As a chief justice from another state has aptly observed about the state courts: "We have become the emergency room for society's worst ailments." Consider the kinds of cases that have seen significant growth in numbers just over the past two years:

- Mortgage foreclosures are up 34%
- Debt collection cases are up 21%
- Petitions for domestic violence protective orders are up 15%
- Adult commitments for substance abuse or mental health problems are up 16%
- Juvenile commitments for substance abuse or mental health problems are up 76%

As these figures demonstrate, this is the worst possible time for the people of Iowa to have less access to justice.

I cannot emphasize enough the serious consequences the budget cuts have on vulnerable and troubled children and on young adults in particular. Recent budget cuts have undermined our ability

to monitor troubled youth, identify their needs in a timely manner, and provide the services they require. As you know, we have a small window of opportunity to help these children and young adults. Society pays a high price when we squander that opportunity. When we fail to effectively address their problems early on, we greatly increase the odds these children will end up in the adult correctional and mental health systems. If that happens, not only will we have failed to provide these children with the tools they need to become productive members of society, we will have put the safety of our communities at risk. We cannot allow our vulnerable youth to become casualties of this fiscal crisis.

It would be easy for you to respond that there is nothing you can do; the state's financial situation has never been worse, and every part of government must contribute. But I suggest that the judicial branch has already contributed more than its fair share over the years. The consequences of cut, after cut, after cut now far outweigh the money to be saved. After a decade of downsizing, the time has come to hold the line.

Let me first note that additional cuts in the judicial branch budget will do little to fix the state's looming shortfall. The judicial branch budget represents a tiny fraction—only 3%—of the state budget. We are frequently reminded these days that small amounts add up to real savings. But consider this: small cuts can result in real problems. Even a small reduction in the judicial branch budget will have noticeable and dire consequences on the delivery of justice to Iowans who need court services.

Ironically, underfunding the judicial system is counterproductive to economic recovery because a well-funded court system contributes to the economic well-being of our communities. Besides the obvious impact caused by layoffs of state employees, which harm local communities, cuts in court budgets impact the business community at large. Case delays add to the cost of doing business and create uncertainties for businesses, making them less likely to invest and expand. Recent studies in California and Florida confirm the economic fallout of cutbacks in court services in those states. There is no reason to believe Iowa is immune from such consequences.

Here's another reason to hold the line on court funding. Budget cuts impact court services disproportionately, in large part as a consequence of the cumulative effects of past budget cuts. The

judicial branch workforce, unlike the workforce of other government entities, did not bounce back from the cuts imposed earlier in the decade. As you know, most state offices and departments cut personnel in FY 2002. That year, we cut our workforce by 9%. Seven years later, in 2009, before our last round of budget cuts, our workforce was still 7% lower than it was in FY 2002. In contrast, for example, by FY 2009 the executive branch had regained the staffing level it had before the FY 2002 cuts, and the regents had increased its staffing level by 8%. So when this latest financial crisis hit, the playing field was already out of balance.

This imbalance is readily seen in the last round of budget cuts. Notwithstanding the budget reductions implemented by the governor in the executive branch, the delivery of justice was still hit disproportionately harder than most other sectors of government. Our workforce represents only 4% of state government's entire workforce. Yet, our latest workforce reduction, which included the elimination of vacant positions and layoffs, amounted to approximately 23% of the entire state's workforce reduction. Focusing just on layoffs, the judicial branch laid off 110 employees, more than any other entity in state government. On top of our workforce reduction, we have imposed ten days of unpaid leave on all judicial officers and court employees. While employees of other state entities are taking unpaid leave, most are taking far less than ten days, and many are taking none at all.

Here's the bottom line: This past decade, budget cuts have hit court services harder than other state functions. More budget cuts will severely diminish Iowans' access to justice and jeopardize our ability to fulfill our constitutional responsibilities.

We, like you, value the level and quality of justice we have in this state. We, like you, want to avoid any further erosion of access to justice and its ripple effect on our citizens and communities. We pledge to work closely with you and the governor to find solutions that will prevent the further decline of Iowa's court system.

## **Funding Solutions**

Last year, as in previous times of fiscal duress, we worked with you to raise court fees as a way to avoid or minimize budget cuts. We are open to discussions about raising court fees again so long as we raise fees that do not further impair access to justice. We have already identified a list of fees

that meet this requirement, which we will provide to you. We also highly recommend that litigants and other court users realize the full benefit of the revenue raised from such fees.

### **3 Rs: Retooling, Redesigning, Restructuring**

Earlier, I reviewed some of the stop gap measures we have taken to maintain the delivery of justice. I must inform you, however, that these measures do not ensure the same level of access we have provided in the past. Plainly put, it is unrealistic to expect the courts to return to business as usual.

Under these circumstances, we must examine ways to retool, redesign, and restructure court operations so our resources are used as effectively as possible and are allocated to the greatest needs. We have ideas for changes along these lines. Some we can do on our own under our constitutional authority to administer and supervise the courts. Others require action by you. All are prudent measures that improve our service to the people, not only through this financial crisis but well into the future.

#### **Retooling**

In the long run, retooling our operations through the use of modern technology holds great potential for increasing our efficiency and productivity without impairing the quality of our work. Technology can expand access to justice, speed up case processing, increase productivity, lower expenses for litigants and the state, and improve quality.

#### **EDMS**

For years we have been telling you of our plans for a paperless court using a system we call EDMS. EDMS will help us manage our growing caseload and enable us to process cases at any location. For instance, court employees in the smaller counties would be able to handle some of the case processing work of the busier, larger counties. EDMS will make judges more efficient because they will be able to work on cases from any county regardless of where they may be assigned for the day. In short, EDMS is a long-range solution that will allow the judicial branch to maintain access to justice in the face of shrinking resources. I am pleased to report that we have begun testing EDMS in Plymouth County. If all goes well, we aim to have EDMS statewide within four years.

## **DART**

Our citizens expect their government to explore the use of technology that has the potential for effectively providing services to the public within the constraints of smaller budgets. Digital audio recording technology, or DART, may have this potential. Courts in 26 states and most federal magistrate and bankruptcy courts successfully use digital recording to make an official record of some or all court proceedings. Just this month, the Conference of State Court Administrators issued a white paper, which we have included in your materials, recommending, with only two limited exceptions, that “courts should move to digital recording as the method for making the verbatim record.” This report concludes digital technology is reliable and accurate and “is an economic alternative to traditional court reporting that provides savings to both litigants and courts.” Even though Iowa courts are staffed with skilled court reporters, given our serious financial problems, it would be irresponsible for the court to ignore a technology that may allow our courts to run more affordably without sacrificing quality.

For the last eight months, a judicial council committee has been studying DART to evaluate its accuracy and reliability. Late last month, the committee submitted its report. In a nutshell, the committee unanimously concluded that: (1) digital recording technology can reliably record the words spoken during court proceedings if the court uses high quality equipment that has been professionally installed and is operated by a trained employee, and (2) accurate transcripts of court proceedings can be obtained from such digital recordings when prepared by well-qualified transcribers. Please review this report, which is included in the materials we have provided to you. It should settle all questions about the accuracy and reliability of digital audio recording equipment.

Despite this favorable report, the supreme court has no plan to displace court reporters. The evaluation of this technology is just the first step in determining whether Iowa courts should join the courts of 26 other states and the many federal courts that currently use digital recording to make the official court record. There are many more questions to address before we would ever consider moving ahead with DART. We must fully examine the cost of purchasing, installing, maintaining, and operating this equipment; the method and cost of transcribing recordings; and the cost of providing judges with the support staff they need. I can assure you that the availability of skilled support staff for judges will be a primary consideration in reaching any conclusion about the use of

DART. I can also assure you that our decision will be based on facts and on what is in the best interest of the court system as a whole, including the interests of judges, litigants and the public. I trust you will respect our constitutional authority in this area.

## **Redesigning**

Now let's move from retooling our operations to redesigning court procedures.

## **Civil Litigation Reform**

Last year I told you of our goal to make Iowa's civil justice system faster, less complicated, more affordable, and better equipped to handle complex cases. Civil justice system reforms in other jurisdictions show that these improvements are attainable. To achieve such improvements in Iowa, we have established a steering committee that will develop a plan for a multi-option civil justice system that will include proposals for new court processes and improvements in current procedures. We have asked the steering committee to complete this challenging task by June, 2011.

## **Mediation in Family Law Cases**

As requested by the legislature, each of our judicial districts has examined how mediation of family law cases could be implemented or expanded in their districts. A report summarizing these efforts is included in the materials provided to you this morning. We will continue to examine ways in which we can make this dispute resolution option available to Iowa litigants within the limits of our current funding.

In addition to our study of civil litigation reform and our expansion of family law mediation, our employees and judges are constantly searching for ways to streamline our procedures and work flow in a way that will allow us to do more with less. We have learned that even small changes can make a big difference in our ability to handle the work of the courts.

## **Restructuring**

Our final option to better meet the demands on our courts within our budget constraints is restructuring our delivery system.

## **Consolidation**

When meeting with citizens around the state to talk about the budget question, they always want to know: Do we plan to consolidate the courts, particularly in rural areas of the state? Our answer is: No, the judicial branch has no plans to consolidate the courts. Although the supreme court has reached no conclusion about whether consolidation is a prudent policy decision, we think consolidation has obvious drawbacks for the operation of the courts. While it is true that consolidation might make our clerk of court offices easier to manage and supervise, it would reduce our expenses by only a negligible amount. We tapped all the savings we would have achieved through consolidation when we cut our clerk of court workforce last year and reduced the smallest offices to part-time. At this point, consolidating clerk of court offices may actually increase our expenses, not lower them. We would need to move mountains of court records from closed offices to the new permanent location. Because we are required by statute to hold court in every county, we would need to transport case files and exhibits back and forth between counties with and without clerk offices as required for court hearings. Moreover, merging clerk of court offices would shift considerable costs to litigants and local governments by requiring parties to travel farther and prisoners to be transported longer distances.

Notwithstanding the lack of significant savings to the courts by the consolidation of clerk of court offices, additional budget cuts could eventually starve us into consolidation because we simply will not have enough employees to staff 100 clerk offices. Currently, some of our small, part-time clerk of court offices operate with only one employee. In Judicial District 5B in south central and southwest Iowa, we have sixteen employees running nine clerk offices. Last month we had to close one county's clerk office for two days in one week because we had no one available to staff the office those days. Given our current staffing levels, such closures will continue to occur. More budget cuts will worsen this situation and expand it to more counties. The result: de facto consolidation. In the past, you have made it clear that you do not want to consolidate court services; yet, your recent funding decisions suggest the opposite and drive us toward that result. We ask that you not force consolidation of our courts through the back door of underfunding. Whether

to have court consolidation is an important policy matter that should be made by careful deliberation, not by default.

## **Magistrates**

Now let's shift to another important topic: magistrates.

Last year, I told you of our task force that examined Iowa's judicial magistrate structure, and you approved one of the key recommendations of the task force: the requirement that judicial magistrates must be attorneys licensed to practice law in Iowa. We appreciate your support of that improvement, and now ask you to follow through with more. Specifically, we ask you to approve the following recommendations of the task force:

- Allow the judicial branch to convert two part-time magistrate positions to one full-time magistrate position.
- Eliminate the mandatory minimum of one magistrate per county but require that magistrate court be held in every county on a regular basis.
- Allow a magistrate to reside in a county that is contiguous to the county of appointment.

These changes will result in a more efficient and effective use of Iowa's magistrates that will increase their collective productivity, reduce disparities in workload, increase the pool of applicants for magistrate positions, and reduce the number of conflicts that plague magistrate courts, particularly magistrate courts in smaller counties.

It's been said, "There is much we can do to chart a better course than the one we're on." I have mentioned four improvements that will chart a better course for the judicial branch, enhancing the delivery of justice and enabling the courts to operate more efficiently. We recognize that improvement necessarily requires change, and change can be difficult for some people. Nonetheless, we cannot handle a 66% increase in workload with fewer employees without changing the way we deliver court services. So although change is always challenging, it is inevitable, as we simply cannot afford to continue "business as usual."

## **Iowa's Fair and Impartial Courts**

I turn now to a brighter note. Even though the budget cuts of the past decade have severely impaired Iowans' access to justice, the quality of justice in Iowa remains strong. The credit for this good news belongs to our dedicated court employees and our high-caliber, fair and impartial judiciary.

Iowa's judiciary is recognized as among the best in the nation. For example, in surveys conducted by the Harris Poll for the United States Chamber of Commerce from 2002 to 2008, Iowa's judiciary has consistently ranked among the top ten in terms of competence, fairness and impartiality. In addition to the results of this survey, I have learned since becoming chief justice that chief justices from many other states hold Iowa's court system in high regard. They view our judges as competent, fair, and highly ethical.

Iowa's high standing is, in large part, a result of its constitutional commission-based, merit selection process for choosing judges. Because merit selection emphasizes professional qualifications, Iowa's judges tend to possess the attributes most valued in judges—integrity, legal excellence, and above all else, fairness and impartiality.

Fair and impartial justice is the hallmark of Iowa's court system and is central to the ultimate quality of justice. Iowa's dedicated judges and staff are committed to ensuring that everyone who comes to our courts receives fair and impartial justice. Fair and impartial justice does not mean everyone will agree with court decisions or that courts are immune from error. Fair and impartial justice means that our judges and the process for resolving legal disputes are even-handed. Fair and impartial justice means that Iowa's courts follow the rule of law: when a person stands before an Iowa judge he or she can trust that the judge will make a decision based upon the facts of the case and the consistent application of the law and the constitution, not based upon political pressures or promises or personal beliefs. But fair and impartial justice means little to those people who do not have access to that justice. And now, because of a decade of budget cuts, we are rationing Iowans' access to justice.

## **Conclusion: Iowa Cannot Afford to Ration Justice**

The judicial branch cannot stop the erosion of access to justice by itself. We are doing all we can within the constraints of our current statutory framework and our appropriations. Your support and cooperation are imperative. We depend on you to marshal the resources we need to provide access to justice. If adequate resources are not available to support access to justice, then you must take other measures to help us improve the situation. Eliminate our statutory duties that have no bearing on the resolution of cases. Remove statutory restrictions that impede prudent improvements that would maximize the use of our scarce resources. Approve our ideas for statutory changes that will strengthen the delivery of justice. And finally, if you cannot find adequate resources to support access to justice, join us in explaining to Iowans, your constituents, why their access to the courts has been diminished.

You may think that rationing access to justice is not too much to ask of Iowans given the state's dire financial circumstances and the sacrifices being made by all Iowans during this recession. But think again. Iowans need court services now more than ever.

- Abused and neglected children depend on our courts for timely placements in safe and stable homes.
- Victims of violence depend on our courts for protective and no-contact orders to help shield them from further harm.
- Communities depend on our courts to address and stop juvenile delinquency, to try criminal charges, and to impose sentences on convicted criminal offenders.
- Business owners depend on our courts to resolve contractual disputes that undermine productivity and profits.
- Broken families depend on our courts to provide some measure of order to their lives.

Most importantly, all Iowans, whether they realize it or not, depend on our courts to uphold the rule of law, which guarantees an open, accountable, and predictable legal process that fosters a civil, stable society.

It is our common obligation, our first duty to society, to ensure that our citizens have access to justice, even in times of fiscal stress. As justice hangs in the balance, we can do nothing less.