

MAINE JUDICIAL BRANCH THE STATE OF THE JUDICIARY

A Report to the Joint Convention of the First Regular Session
of the 132nd Maine Legislature

Presented by Chief Justice Valerie Stanfill
February 25, 2025

Governor Mills, President Daughtry, Speaker Fecteau, distinguished Members and guests of the 132nd Maine Legislature, and people of the State of Maine:

I am pleased to be able to report to you on the State of the Judiciary, Maine's third branch of government.

I appreciate the recognition of members of the Judicial Branch by President Daughtry. But I always feel I need to take this opportunity to personally thank members of the Judicial Branch who have accompanied me here today:

- In order of seniority, I again recognize my wonderful and supportive colleagues on the Supreme Judicial Court:

Senior Associate Justice Andy Mead, located in Bangor;

Justice Andrew "Mark" Horton, located in Portland;

Justice Rick Lawrence, located in Portland; and

You have noticed, I am sure, that there are not 7 of us. Justices Cathy Connors and Wayne Douglas were unable to be here today and send their regrets. And we have had a vacancy for a year, but I am hopeful that will be filled very soon!

- The Supreme Judicial Court operates like a Board of Directors, but the Chiefs of the Trial Courts are like the Executive Committee.

Chief Justice Bob Mullen of the Superior Court, based in Skowhegan;

Chief Judge Brent Davis of the District Court, based in Augusta;

and the newest member of leadership,

Deputy Chief Judge Eric Walker, based in Belfast.

- And finally, some of our administrative team. Amy Quinlan is the State Court Administrator, the head of the Administrative Office of the Courts, and my essential partner in the management of the court system. I am grateful for that partnership every day. With her are two people many of you know or will know: Barbara Cardone, our Director of Legal Affairs and Public Relations, and Julie Finn, our Legislative Analyst.

I must also thank all the dedicated staff and judges of the Maine Judicial Branch for all they do every day. I wish I could name each and every one of them. Their extraordinary hard work and dedication in serving the cause of justice in the State of Maine is, in a word, inspirational.

Governor Mills released a statement on Martin Luther King Day in which she said the following:

May we all renew our commitment to building a state and nation grounded in shared responsibility, and to expanding justice, equality, and fairness for all people.

These are not liberal or conservative sentiments. These are the ideals upon which this country was founded. They are embodied in our state and federal Constitutions, the Declaration of Independence, and the Pledge of Allegiance. And yet, I fear that our commitment to these ideals is falling short. For state courts, national events, the continued drumbeats of misinformation on social media and traditional media along with deficits in civics education have led to a crisis across the country.

Courts have traditionally been the most trusted of the three branches of government on both the federal and state level. The National Center for State Courts performs an annual survey and asks citizens across the country how much confidence they have in American institutions. State courts score a bit higher than the other state branches of government or, indeed, than federal courts. But the numbers are low in recent years: in 2024, 54% of Americans rated the job being done by state courts as good or excellent, compared to only 44% in 2021, which was a record low.

I point out these statistics because it translates into increased disrespect for our institutions. Courts rule on disputes and make decisions affecting liberty and property interests. People must be able to trust that rulings are based in law and are not swayed by other factors and that the process is fair. A lack of such trust threatens the very underpinnings of our society.

This growing disrespect also affects the people who work tirelessly to provide a fair and open justice system. According to the American Bar Association¹, serious threats against judges have doubled since 2019. Again, threats against judges have doubled in the last five years. And it

¹ <https://www.americanbar.org/news/abanews/aba-news-archives/2024/04/statement-of-aba-president-re-attacks-on-judges/>

isn't just threats against judges, but also all court staff. Here in Maine, our marshals are called upon with greater and greater frequency to intervene with the public in our courthouses. Indeed, I want to take this opportunity to recognize the Director of our State Marshal Service, Ted Ross, and our Deputy Chief Marshal, Mark Tibbetts. They are both here together with Deputy Judicial Marshall Ben Hall. Gentlemen, thank you, and thank you to all your fellow officers. When people come to court, it is frequently under incredibly stressful and often unhappy circumstances. The men and women of the Judicial Branch Marshal Service do an incredible job of soothing the waters and protecting judges, judicial branch staff, and members of the public every day in an increasingly volatile environment. While I am not here to go through all our budget requests, we have asked that you continue to increase funding for our marshal service, as you have in the past, so that they are able to do their job effectively and keep all of us safe at our courthouses.

So I want to talk to you about some of our biggest challenges, and what we have done and what we can do.

Unlike other professions which are regulated by the Executive Branch and laws passed by the Legislature, the practice of law is regulated and overseen by the Judicial Branch. It is the Supreme Judicial Court that licenses attorneys, and thus the status of the legal profession is directly our concern. And, the availability of attorneys, legal advice and legal representation is increasingly a pipe dream for many of our citizens.

In the vast majority of civil and family cases at least one of the parties is unrepresented. And as you know, the Constitution requires that the state provide an attorney to those who cannot afford one in certain kinds of cases, primarily criminal, juvenile, and child protective cases where

significant rights are at stake. But the crisis in the availability of constitutionally required counsel has only grown. The Maine Commission on Public Defense Services recently released its annual report. As of December 30, there were 1,150 matters pending without counsel, including 998 criminal, post-conviction review, and juvenile matters; 112 child protective cases, those cases where DHHS has intervened; and 40 appeals. While the public defender offices hold promise for the future, they cannot currently meet the demand.

I know in the Supreme Judicial Court alone, we have had about 40 child protective appeals awaiting appointment of counsel at the same time– a process that frequently is now taking months more than it should in cases involving Maine’s most vulnerable children.

In other words, the lack of attorneys adds to delay and backlog.

So, what are we doing? And what else can we do?

Last year I wrote to some of Maine’s law firms who employ former Supreme Judicial Court law clerks to ask if they would take child protective appeals. Some agreed to do so, and I am pleased to report that the briefs filed by those young lawyers were some of the best we have seen, confirming that they are more than competent to handle that particular type of case. I have so informed the Maine Commission on Public Defense Services – called PDS - and hope to encourage more.

In September, we amended Rule 11C of the Bar Admission Rules to authorize temporary permission to practice (up to 2 years) for an attorney who is a member in good standing of the Bar of another state if

that attorney is employed by the Maine Commission on Public Defense Services, or PDS, as well as those employed by civil legal services providers. This is primarily to aid in recruiting attorneys from out of state, as the formal process of admission by motion can take months to complete.

In November, we amended the Bar Rules to permit attorneys to receive up to 3 continuing legal education credits for undertaking certain types of pro bono work in an effort to try to expand the pool of civil legal services for Maine's poorer citizens.

We have expanded the student practice rules that allow law students to represent clients in court under the supervision of an attorney. Those rules now identify the PDS as an appropriate entity for student practice, in addition to prosecutors' offices and civil legal service providers. In December, we also authorized a pilot with the Law School to allow supervision by private contract attorneys rostered with the PDS.²

Earlier this year, the Supreme Judicial Court met with the first-year class and the faculty of the University of Maine School of Law with the goal of encouraging public interest work here in Maine. I understand the Law School is expanding its doctrinal and clinical offerings for both criminal defense and child protective cases.

Finally, we have submitted a bill to provide that when there is no attorney available through the PDS, the courts may appoint any attorney who agrees to take the case, something we have always had the inherent right to do. Under the bill we have proposed, however, the PDS would have to

² AO-JB-24-03 (December 18, 2024).

pay that attorney. The bill is crafted as emergency legislation and will also sunset in 3 years. The purpose is not to pull away lawyers away from the PDS roster, but to bridge the next three years until the public defender offices are fully up and running and able to fill what is now a yawning gap in appointed counsel services.

We can also think outside the box. We are looking at whether we should expand who can provide some legal services, at least in a limited fashion. Perhaps it is time to allow trained paraprofessionals, without a law degree, to handle some straightforward legal issues. There are many questions to be answered, of course. Who? What kind of training and education? What kind of experience? Licensure? What area or areas of law? Would a paraprofessional need to work for a licensed attorney, or could they practice independently? In short, what are the guardrails to ensure that such paraprofessionals are actually a benefit to Maine citizens.

Another issue: What can we do to recruit and keep lawyers in the rural deserts of our state? The national research seems to show that lawyers most likely to practice in rural areas and stay there are from there. It may be that increased online and remote legal education would allow people who already live in the rural areas of our state to attend law school without having to uproot themselves and their families to move to Portland for three years.

There is also national research showing deficits in the practice readiness of new lawyers, and that is also related to whether they can competently step into some of the lanes I have described. The economics of law practice have changed, making formal mentoring more difficult. And, importantly, the significant increase in remote appearances means the

informal mentoring many lawyers had in the office or at court appearances has all but disappeared. These are of course broader societal issues, not just lawyer issues. But, I fear things are not getting better.

Speaking of remote appearances, we continue to encourage the use of remote technology for court appearances where appropriate. Indeed, all traffic violations are heard remotely. Remote technology is a tool that may mean that a litigant need not take a day off from work to attend a short court appearance and that lawyers can save their clients money by not traveling all around the state. It also means that the limited pool of court-appointed attorneys are able to handle cases in different locations, and it means fewer continuances to accommodate busy schedules. It may also mean we can hold a court proceeding even when we don't have any marshals or clerks available.

But there are drawbacks to many remote appearances too. In criminal cases, when dispositional conferences are held remotely, even when an agreement is reached the case frequently must be reset for yet another court appearance in order to enter a plea because the defendant is not in the conference or courtroom or is in a different location from the lawyer, meaning they will have to discuss the matter later. Effectively, it can double the number of court events.

When attorneys and parties are not in the same location, they don't talk. They don't exchange information. They don't negotiate. They don't settle cases which should be settled. Think about how much business gets done here in the halls of the State House or outside a hearing room, and how little might get done if you never actually saw your colleagues outside of the formal process in the chamber.

In other words, remotes appearances can help with backlog by minimizing continuances because of scheduling conflicts but they can also increase backlog it because the appearances are less effective at moving cases and often need to be rescheduled. We have an administrative order laying out presumptions for what kind of proceedings should be remote, the ability to request that any other proceeding be held remotely, and the factors to consider. Every day judges balance these competing needs in the individual cases before them.

That leads me to another point. Last year I said that courts have changed rapidly in the past few years, and technology is not a luxury. We must look at technology as infrastructure of the court system, just as the courthouses across the state are infrastructure. Technology must be maintained, updated and improved on a regular basis, just as we maintain roofs and HVAC systems. Maintenance includes replacement at various interludes. And we must fund it in the same way as we fund infrastructure.

What does that mean? It means that the annual fees, licenses, maintenance and replacement of technology – hardware and software - must be part of the general fund budget. Back when we contracted for Maine eCourts, the Legislature authorized bond funding to purchase and install the system. But, there are annual fees, licenses and maintenance that are not covered by the bond funds. You asked us to raise the money by placing surcharges on filing fees, fines, and the like. And we did that. The biggest single source of projected revenue was the surcharges on traffic ticket fines – the volume of those fines dwarfs anything else. But fine revenues have gone down, and the funds generated are far from adequate to pay for the system maintenance – we will be about \$1.8

million short each year of this next biennium. Trying to pay for the system with surcharges on fines and fees is not a sound plan, because surcharges are often imposed on those least able to pay. And, of course, the higher fees are, the more they get waived because people can't afford them.

The cost of technology is not just the ongoing maintenance and fees for Maine eCourts. Technology permeates everything we do. Electronic evidence - body cams, social media, and recordings - is standard in every case. That means courtrooms must be equipped with display screens, appropriate sound systems, and computers so that jurors, witnesses, attorneys, the judge and the public can see and hear it. The same is true for remote appearances of parties, witnesses, and attorneys: Zoom. You can't just do it from a laptop for court proceedings. If a witness or attorney is on a screen, that witness needs to be seen and heard by the judge, the jury, parties, and the public.

What else? Courts are required to electronically record every case, which means a sophisticated system of recording and microphones so that every word is captured as people move around the room. Courtrooms can't be used when the equipment isn't working. We are installing public access kiosks in courthouses for accessing electronic files. We need robust Wi-Fi and cell service at all courthouses. We need to increase the safety of everyone, which means not only marshals but again, technology: security cameras, recordings, screening, control rooms.

I hope you can see why I say that technology is infrastructure, and why it needs to be included in our general fund budget. Without working technology these days, proceedings would grind to a halt.

Another thing: we also need to protect against increasingly sophisticated cyber threats. We are the keepers of immense amounts of sensitive and personal data which we must safeguard. And, by the way, there are more demands for data every year because data helps us understand the cost and benefits of programs and strategies. Moreover, having better data available also fits with the goal of increasing transparency and openness in the Judicial Branch.

The implementation of Maine eCourts will help us in marshaling that data in the future, one of its many benefits. To back up, as many of you know, we are in the process of implementing an electronic e-filing and case management system in all case types across the State. It will be integrated with law enforcement systems and other partners for bail, protection orders and the like. This is the system that was known as Odyssey; it was upgraded to Enterprise Justice this year. We don't want to change the name every time Tyler Technologies upgrades the system, so we call it simply Maine eCourts.

We have now successfully implemented Maine eCourts in all civil and family cases in Bangor, Androscoggin, Oxford and Franklin Counties, as well as in the Business and Consumer Docket. This is in addition to the Violations Bureau. We also successfully implemented protection from abuse and protection from harassment cases onto Maine eCourts in those locations. That implementation was more complex because of the law enforcement integrations and was the first big test of how that would go. (By law enforcement integrations, I am referring to the automatic transfer of information between the courts and law enforcement agencies which is critical when liberty interests are at stake, as they are in protection orders and criminal dockets.)

Next up is the implementation of all criminal and juvenile case types, which is scheduled for later in the spring in Androscoggin County. We have a mighty team in our Office of Information Technology, but we are also dependent on Tyler Technologies for some development pieces as well CPI, the vendor used by the Department of Public Safety for the message switch. The implementation of e-filing in criminal and juvenile matters is a huge undertaking, not only for the Judicial Branch, our vendors and law enforcement agencies, but also for the district attorneys and public defense counsel who will be mandatory filers on this new system. We have been working closely with all of the stakeholders in this endeavor to make a smooth transition into the world of electronic filing.

On a side note, I must give a shout out and special thanks to Dave Packard, our Director of Information Technology, who has been leading our IT department for years. Dave is retiring this summer. While I am happy for him, he will be sorely missed at the Judicial Branch. He does, however, leave behind a terrific team. And we expect to stay on schedule overall for statewide implementation of all case types within two years. I look forward to that day - it is when we can unplug our Apple computers and our obsolete and dying electronic docketing system known as "MEJIS."

As many of you have probably noticed, I have made it my mission to try to "right-size" the Judicial Branch, to ensure we have adequate resources to be able to provide an efficient and impartial system of dispute resolution. The old saying, "justice delayed is justice denied," has a great deal of truth to it. The Judicial Branch in this state has been underfunded for decades. And although we have made progress, the backlogs that were created during the pandemic persist. To be clear, the additional resources we

have received in the past few years have helped enormously, but we are not there yet.

As many of you know, we have experienced an enormous backlog of cases since the pandemic. By backlog I mean cases take longer to resolve, which results in more pending cases. For a Judicial Branch that was already working to capacity before being hit with a pandemic, reducing the backlog is a struggle. We have made progress: the criminal caseload now stands at about 35% above pre-pandemic levels, down a bit from a year ago and about half what it was at its height. But we have a long way to go, and I fear the remaining backlog will be stubborn.

I have also been alarmed at what was happening in our family dockets. The number of pending child protective cases has increased; there are about 25% more protective custody cases pending now than before the pandemic. And, the average length of time it is taking to complete family cases had steadily increased since the beginning of the pandemic: cases were taking about twice as long to resolve as before the pandemic. We put some concerted effort into turning that around in 2024, and I am pleased to report that we seem to have turned a corner. The average age of family cases is now falling after a peak at the end of 2023. But it is still taking far too long to reach cases. Every one of those cases is not just a statistic but a real person in crisis. You and the Governor have listened in the last few years, but in these times of belt-tightening it is critical that you continue to listen. We need to have enough people – clerks, marshals and others – to support our judges in the courtrooms. And they need to be paid appropriately. There are still judicial vacancies (it is a never-ending process), and so I have not asked for more judicial positions. But, the supporting staff positions included in the Governor's budget are

critical. I hope we have your continued support in this Legislative session to ensure we can provide the services Maine people need.

Again, I understand that pennies are tight this year, and there may be some financial uncertainty ahead. But I am not doing my job if I don't continue to advocate for appropriate judicial salaries. You may recall that in the last biennial budget, there was an increase in judicial salaries. At the time, Maine's judicial salaries ranked 51st in the country when adjusted for the cost of living – after every other state and the District of Columbia. Believe me, we appreciate your attention to this. And so, I can now report that, after the raises in the last biennium, as of January 2025, Maine judicial salaries now rank . . . 51st in the country when adjusted for cost of living. Still last after every other state and the District of Columbia. It is not just an issue of fairness and equity for Maine's hard-working judges. Judicial salaries also impact other salaries in the Judicial Branch, making it harder to attract and appropriately compensate other high-level professionals. Think of what a director of information technology can command in the private market

When I advocate for “right-sizing” the Judicial Branch and ensuring there are adequate resources, I am sure that some of you think, “but there are many worthy causes.” And that is true. But that is also why we must remember the critical and central role of courts in our system of government. You have heard me remind you that the Judicial Branch is the co-equal third branch of government in both our state and federal systems. Those aren't words spoken lightly. The Judiciary plays an integral role in maintaining the rule of law. The Judicial Branch does so through competent, ethical, and independent judges delivering justice in a timely and accessible fashion.

We are all partners in upholding the “Rule of Law”, a phrase being bandied about these days. What is it?

By “Rule of Law,” I mean that all people and institutions are accountable under laws that are publicly promulgated, equally enforced, and independently adjudicated.

Laws that are publicly promulgated by the Legislature;
Equally enforced by the Executive;
And independently adjudicated by the Judiciary.

It matters not whether I think a law is wise or foolish; the promulgation of laws is the role of the Legislature. The role and duty of judges is to adjudicate independently, fairly, and in a timely fashion. These are the ideals and indeed requirements of our state and federal constitutions. And to carry out our duty, the Judicial Branch must have adequate resources. This is what we all owe to the citizens of Maine.

Thank you for inviting me here today and for listening.