

**REMARKS FOR THE DELAWARE JUDICIARY'S
FY 2019 BUDGET HEARING
WEDNESDAY, NOVEMBER 1, 2017**

**Leo E. Strine, Jr.
Chief Justice, Supreme Court of Delaware**

Thank you for this opportunity to talk about the Judicial Branch budget request for Fiscal Year 2019. I know how busy you are and will cut to the chase. When I first spoke to budget issues and management policy as Chief Justice four years ago, I pledged that the Judicial Branch would develop a budget approach based on long-term policy goals tied to consistent budget themes. Four years later, we remain committed to consistent policy objectives that invest in our most critical assets: our employees and our infrastructure. We also consider ways to boost the state's economy, and to create efficiencies that will keep our court system nimble while using taxpayer dollars wisely. Our top priorities do not stray from the critical core missions of the Judiciary.

Before discussing our budget, I would like to comment on an important issue. It would be an understatement to say that we were surprised and disappointed when we learned that the General Assembly eliminated the appropriation for Civil Indigent Services from the state's budget. This decision must be reversed, and it should not come out of vital funding for other parts of our justice system. In FY 2018, Delaware became one of four states (along with Florida, Idaho, and Wyoming) to not provide a state appropriation to fund civil legal services for the poor. That is unconscionable. Access to civil legal services is vital to the lives of our citizens on profound matters like housing discrimination, employment, public benefits, disabilities law, domestic violence, consumer rights, and bankruptcy. The three main legal service providers—Community Legal Aid, Inc., Delaware Volunteer Legal Services, and Legal Services Corporation of Delaware—are only able to help about one-eighth of Delaware's low income population. And that was before the state appropriation was cut. Can we really look ourselves in the mirror and allow this to happen? Our state is unique in that the legal services industry (including entity formation) is the leading source of state revenues, and a major employer. For a state like ours to not acknowledge a responsibility to help the poor get justice is embarrassing and impossible to defend. We know the Governor believes that too. But it must be said, and it must be rectified.

Investing in Our Employees

For years now, our number one priority has been to resolve the long-standing inequitable situation regarding our City of Wilmington employees and their parking and benefits. Almost one-half of the Judicial Branch employees receive substantially less take-home pay than similarly situated employees because they happen to work in the City of Wilmington and have no access to free parking. And by substantially, we mean substantially; 58% of City of Wilmington employees in the Judicial Branch earn less than \$32,000 per year. By now you know that the typical annual cost of parking in downtown Wilmington is \$1,700, meaning employees who earn under \$32,000 take home more than 5% less money for living expenses. With the salaries we can offer most employees, virtually every penny is truly “living expenses”; it goes for core necessities like rent, groceries, and heating bills. Colleagues with the same job in the same court effectively earn different amounts, just because of where they are based. This severe inequity not only hurts employee finances and morale, but it also hurts state operations.

Be clear, this is a critical recruitment and retention—and therefore an operational—issue. For example, Superior Court broke down their turnover by county. In FY 2017, turnover in New Castle County was 35%, while it was 11% and 13% in Kent and Sussex, respectively. Due to the disparate turnover rates in combination with the geographic distribution of Superior Court employees, 86% of

employee separations took place in New Castle County. Knowing that many employees work two jobs to make ends meet, Superior Court surveyed several employee groups: 58% of court security officers, 58% of investigative officers, and 50% of Prothonotary employees work two jobs. Some of the employees who work additional jobs reported that it is difficult to take public transit and park in remote (less expensive) lots when they have limited time restraints to get to their next job on time, but they cannot afford the better parking locations.

We cannot fault employees for working second jobs when we do not pay them enough to support their families, but a building full of overworked and tired Court Security Officers is hardly ideal. The real-life events behind these statistics are everyday problems for court operations. For the past 10 years, there have been pay cuts in real inflation-adjusted terms, and positions have been eliminated from the budget, though demand for services and workload escalates. Adding unnecessary and constant turnover to the mix magnifies the problem. When the people providing services are always new and inexperienced, and the workload never lets up, this can add up to bad customer service, mistakes, and further turnover. And administrators have to spend valuable time constantly reviewing applicants, conducting interviews, and training employees instead of focusing on other core operational needs.

Vacancy data from the other courts show similar trends. Employees have expressed frustration that Chase Bank employees park next to them in the

Courthouse Parking Garage for free, while they have to pay. Employees have reported feeling unsafe walking to remote (but more economical) parking lots. Some who are older or have medical conditions have no choice but to pay for the highest priced lots so that they do not have to walk distances.

If our Judiciary is truly a priority to our state, and I believe it is, then treating 50% of employees fairly should be a priority. We have a well thought-out plan to do this with yours and the Governor's support.

We also have made another important employee equity request. Our FY 2019 budget request again includes the conversion of 12 ASF casual/ seasonal security positions to full-time ASF positions, as well as a 0.5 ASF constable position (via the Court Security Assessment Fund) for the Justice of the Peace Court to make a part-time position whole. The current situation is unjust. One security officer will have state benefits as a full-time employee, while the security officer on the next shift will not because she is in a casual/seasonal position. Court security is neither casual nor seasonal. This is an important matter of equity and morale: fairness requires that persons working in the state system on a full-time basis should receive the same benefits provided to all full-time employees. This is also a matter of credibility for our state. We encourage private sector employers to be responsible and give their full-time workers access to affordable, high quality healthcare. The state should set an example and live up to its own stated policy, by doing so itself.

Investing in Our Infrastructure

Consistent with our focus on productivity and giving our employees the tools to serve the public better, we continue to request funding to address the Judicial Branch's deteriorating technology infrastructure. We are grateful and relieved that we have one-time funds, which are annually approved through the Fee Increase Spending Plan, to work on some of our most critical technology needs. As we have argued before, private sector businesses plan for replacement of technology to achieve cost savings by purchasing technology in a careful way, taking advantage of scale. By having the resources necessary to plan for technology needs appropriately, we would achieve efficiencies in overall replacement approaches and in technology purchasing.

As a result, we are again requesting a stable "Technology Fund" to enable us to address all of our regular technology needs as they arise, consistent with a well-thought-out technology approach. Without this funding, we have fallen behind other more forward-thinking states that invested in their technology infrastructure to develop e-filing and case management systems to handle cases efficiently and to provide accurate information sharing. We cannot continue to neglect this critical need.

Investing in the State's Economy

There is one important new request, and that is for two additional Vice Chancellors and support staff. Not only have the Court of Chancery's new civil filings increased 64% during the past 10 years, but the increase has involved the more complex and time-consuming matters that corporate America looks to Chancery to solve with real-world speed. During the same 10-year time period, the number of pages filed in cases increased 72%, and the number of pages of briefings increased 113%. The number of motions to expedite has gone up 148%. The good news is that the increased workload reflects Delaware's increasing share of the entity formation market and high demand for Chancery's services from businesses that form in Delaware, which are vital contributors to the state's economy. Any business or economy that grew at this rate would be regarded as a remarkable and market-leading success.

The Court of Chancery, celebrating its 225th anniversary this year, is the nation's preeminent forum for the determination of disputes involving the internal affairs of major corporations and alternative entities. Long recognized for the quality, consistency, and speed with which it renders decisions of national and international significance, the Court of Chancery must have the resources needed to do its critical work. The strength of Delaware's well-respected Judiciary is what drives this state's entity formation and legal services industry. To keep competitive,

Delaware must ensure that the Court of Chancery has sufficient resources to maintain its ability to manage its increasing caseload. No business can succeed without a sound capital allocation strategy.

A personal note here: I was privileged to serve on the Court of Chancery for 15 years. I love that Court, its judges, and their staff. I know the personal toll the workload and pressure imposes. My friends on Chancery are busting their humps and doing a great job. But too much is being asked of them. Giving them two more judges will provide relief, and most importantly, will give them the extra time to think and write—time is essential to doing work at the high level demanded of them. The Court of Chancery is very strong and committed. We owe it to them and our leading industry to support this request.

If we fail to make these investments, we are risking our primary industry’s ability to remain preeminent and to grow. It is wrong to think of this budget request like most other spending. The reality is that the spending has a multiplier effect for our state revenues and jobs. We must invest in our leading industry if it is to thrive and grow.

Looking for Efficiencies

I want to commend the Governor and the Executive Branch for the Government Efficiency and Accountability Review (i.e., “GEAR”) initiative. The Judicial Branch is a strong supporter of, and active participant in, Governor Carney’s

GEAR Board. The efficient functioning of state government affects all Delawareans. The judicial system in particular has a strong interest in having an effective state government that provides Delawareans with excellent educational opportunities, chances to improve their economic circumstances, and services that stabilize families and communities. Much of our work in criminal cases results from the reality that people in poverty and without hope are more likely to commit crime. To the extent the Judiciary can help this Committee help our state get more out of its resources and devote them more effectively to addressing the needs of our most vulnerable citizens, that will help us make our state a fundamentally more just place.

Consistent with the Governor's approach to more efficient government, we are working with GEAR to consider more appropriate locations for the following non-judicial agencies: the Office of the Public Guardian, the Office of the Child Advocate, the Child Death Review Commission, and the Delaware Nursing Home Residents Quality Assurance Commission. These agencies are advocacy or monitoring organizations, some of whom represent clients in court. It remains a concern of the Judicial Branch that their roles constitute, at the very least, the appearance of a conflict of interest with the necessarily "neutral" role of the Judicial Branch.

The Judicial Branch is working with OMB and GEAR to establish a transition plan for the non-judicial advocacy agencies, along with other State of Delaware

advocacy agencies. These agencies generally have important roles and functions within the state system and for the community-at-large, but there are likely more efficient and more appropriate organizational structures in which these agencies can strongly advocate for their clients and their own operations, and in which they are not competing with the Judicial Branch's core missions. In addition, the Judicial Branch also has no ability to provide proper oversight of these agencies with the current levels of staffing, or without creating additional conflicts.

Besides the Judicial Branch advocacy organizations, there are other organizations throughout state government that could also appropriately fit with them into an advocacy organization, such as the Developmental Disabilities Council and the State Council for Persons with Disabilities, both of which are currently housed under the Department of Homeland Security.

The Judicial Branch is spear-heading GEAR's criminal justice focus group, which is an excellent opportunity to address criminal justice issues from a system-wide lens. Unless all elements of the system—police, corrections, youth rehabilitation, treatment and vocational providers, prosecutors, defense counsel, judges, and the information professionals who are vital to everyone—work together, we cannot accomplish the comprehensive improvements that are needed. At times, elements of the system must oppose each other—that is the obligation of a prosecutor and defense counsel in the courtroom—but never without understanding

the shared desires of all for a just, fair, and safe society. Some of our focus group initiatives include:

- Supporting the General Assembly’s Criminal Justice Improvement Committee (CJIC) to eliminate the redundancies, inconsistencies, and disproportionality that have arisen in two generations since Delaware adopted a criminal code based on best practices;
- Working with the General Assembly and the CJIC to modernize the pretrial—a/k/a bail—system;
- Giving prisoners minimum wage credit for work and education efforts to reduce their debt burden and help them have a better chance to re-enter society and become productive citizens who support themselves and their families; and
- Developing a Wilmington Community Court to focus on community partnerships and connections to the judicial system and provide resources to litigants.

Investing in Our Infrastructure—Judicial Facilities

I will now turn to our capital budget request. The Judicial Branch Capital Improvement Program request for Fiscal Year 2019 remains focused on remedying the inadequate and unsafe conditions of the Family Courts in Kent and Sussex

Counties, and using courthouses (i.e., the headquarters of our leading industry: entity formation and legal services) to make our core cities more attractive to other employers.

As you know, our downstate Family Court facilities fail to meet modern day court security and operational requirements. This was made plain over a decade ago in the 2006 Southern Court Facilities Space Study and in the U.S. Marshal's 2012 review of our Family Court facilities that underscored the concern. I know you are already familiar with these reports and understand the gravity of the situation.

We in the Judicial Branch appreciate the support that we have received so far in our efforts to replace these deficient facilities with safe, dignified, accessible, and efficient courthouses, at a time when capital funds are at a premium. The Bond Committee provided us with \$500,000 in the FY 2017 Bond Bill for the preliminary construction process elements of planning, design, land acquisition, and architectural and engineering work. The Committee also granted us additional spending authority in the FY 2018 Bond Bill. As a result, we are now in the process of purchasing property to secure the new Family Court building sites in both Dover and Georgetown.

From the FY 2019 Bond Bill, we request an additional \$13.7 million in capital funds for design fees and to hire a construction manager. Even if these courthouses

must be built sequentially, they will share a common design, to minimize architectural costs.

Investing in courthouses is not simply an investment in a core function of a republican democracy—providing justice under law—but it is also an investment in Delaware’s legal community, a crucial part of our state’s leading industry. It is also a visible and critical investment in the downtown development of these key cities, which helps make them more attractive to other industries and employers.

In large part inspired by the reliability of our corporate laws and judiciary, the formation of business entities and the growing legal services industry are Delaware’s leading economic drivers in terms of tax revenue and jobs. Delaware’s legal industry is also loyal to its core downtowns, remaining there when many other industries have moved away. This loyalty provides a stable business base for our county seats, and also creates customers for downtown local businesses.

Our Branch’s decision to locate new facilities in the downtown areas of our key cities reflects this same loyalty. We are promoting important state development policies that reduce sprawl and preserve open space. We are also working in partnership with our colleagues in city and county government to design courthouses that are historically coherent, aesthetically attractive, and that enhance existing downtown development plans by strategically locating these economic development

projects in locations that meet local needs for improved public access to services, safety, walkability, and even brownfield remediation.

Even more ambitiously, we are making an important investment in the future capital needs of the New Castle County Judiciary by acquiring the historic Custom House on King Street in Wilmington. This strategic purchase will secure the adjacent property for the future expansion of the Justice Center and, like the investments in Dover and Georgetown, it will preserve and transform one of downtown Wilmington's historic treasures while providing a more dignified "front door" to the Delaware Court of Chancery, the symbol of our state's leading industry.

Finally, I want to reiterate our gratitude for your recent approval for the 7th floor renovations in the New Castle County Leonard L. Williams Justice Center. Planning is underway to move the Justice of the Peace Court 20 from its current location with the Wilmington Police Department to its new home in the Justice Center. Locating all Wilmington trial court operations into one court facility will support the efficiency of overall court operations and enable justice system partners (including the Department of Correction, Attorney General, Public Defender, and other service providers) to better meet operational needs, as well as streamline security needs. We hope this concept will make our problem-solving courts more effective by making them more convenient for litigants, such as by offering hours outside normal work or school hours so that litigants won't have to miss work to go

to re-entry or drug court, or school to go to truancy court. Planning is underway for a Wilmington Community Court that will be accessible to all city residents and offer convenient access to service providers and allow for the development of cross-court programming—involving Court of Common Pleas and Justice of the Peace Court, as well as other Courts, as appropriate. We hope to welcome service providers, neighborhood associations, and others vital to community empowerment and improvement. And, we hope to work with partners in the Administration, community, police, the Department of Justice, and others to help Wilmington reduce crime and become a safer place to live and work.

We appreciate this opportunity to review the Courts' needs for the next fiscal year with you. We have worked hard to be thoughtful and deliberate with our requests. We understand the need to do our part and approach our important work together with a collaborative spirit because the citizens deserve nothing less. We would be grateful to have your support and we stand ready to answer any questions that you may have.