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CELEBRATING 225 YEARS OF THE DELAWARE COURT OF CHANCERY

This past year marked an important milestone in the history of the Delaware Judiciary, the 225th Anniversary of the Delaware Court of Chancery. Our court of equity traces its roots to England and was established by the State of Delaware's second constitution in 1792. Although the Court of Chancery today is known internationally for its leading role in corporate and commercial law, the Court's jurisdiction flows from British equity law, giving it authority over a wide range of issues including trusts, estates, restrictive covenants, guardianship and end-of-life decision cases, labor cases, zoning matters, boundary disputes, and other issues best resolved by a court of equity.

The key to the Court of Chancery's success, and that of Delaware's overall success in entity formation and law, has been a commitment to acting expertly with the speed the business world needs, and to constant improvement and innovation to meet the evolving needs of a dynamic national and world economy. The same commitment to excellence, diligence, and innovation characterizes our Judiciary's approach to all its work. Resting on past achievements is something to do with the grandchildren. Building on our traditions of excellence by embracing and anticipating change, and trying to do the best job we possibly can with our limited resources, is what will keep our justice system in the vanguard for the centuries ahead of us.

Innovation is System-Wide

This unwavering commitment to adapt to meet the challenges of an evolving world produced results in 2017 and corresponds with Governor John Carney's call for greater cost-saving and efficiency in state government known as

the Government Efficiency and Accountability Review or GEAR effort.

Although the Delaware Judiciary's efforts predate the creation of GEAR, the initiatives share the stated goal of GEAR, which is "to develop recommendations for increasing efficiency and effectiveness across state government, including by improving the strategic planning process, improving the use of metrics in resource allocation decisions and developing

continuous improvement practices."

In early 2016, the Delaware State Bar Association and the Delaware Chapter of the American College of Trial Lawyers completed a comprehensive survey of legal practitioners in the state—which had been requested by the Delaware Supreme Court—on how Delaware's courts were functioning. The results of that survey, which involved



Chief Justice Leo E. Strine, Jr. (center) sits on a panel at the Delaware Corporate Law Anniversary Symposium, marking the 225th Anniversary of the Court of Chancery, at the Hotel DuPont to discuss "The Purpose of a Delaware Corporation." From left, Norman Monhait, Esq., Professor Elizabeth Pollman, Chief Justice Strine, Moderator Frederick H. Alexander, Esq., and Professor Lyman P. Q. Johnson. PHOTO COURTESY DSBA

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both face-to-face interviews and more than 1,000 responses to an online questionnaire, were collected in a report entitled “Joint Study of the Delaware Courts” (commonly referred to as the ACTL Report). In accepting the report in June 2016, the Judiciary promised the legal community and the public that the recommendations would not be ignored. In June 2017, the Judiciary honored that promise and formally responded to the ACTL report with its own report, “Response to the Joint Study of the Delaware Courts” (the “Response Report”). The 34-page response to the findings of the ACTL report is posted on the Delaware Courts’ website at <http://courts.delaware.gov/aoc/publications.aspx>. The Response Report detailed how recommendations from the ACTL Report had been implemented, were in the process of being implemented or further developed, or in a few cases, why no action was being taken.

In particular, the Response Report focused on addressing cross-court issues raised in the ACTL Report, and detailed plans to address those issues, including:

- Cooperation between the Superior Court and the Court of Common Pleas to integrate the work of the Drug, Mental Health, and Veterans Treatment Courts, to establish consistent criteria for eligibility and for case management and treatment in those problem-solving courts, and to pool the efforts of the judicial officers in each court, without regard to artificial jurisdictional lines. This recommendation was directly addressed by the Judiciary’s internal Criminal Justice Council of the Judiciary (whose actions are detailed below).
- Improving case management and information sharing between the courts and system providers, with the goal of extending the electronic e-filing system to all civil and criminal cases in the near future. The Court of Common Pleas successfully converted its civil cases to the e-filing system in April 2017 and work continues on bringing other courts into the system.



Judge William C. Carpenter at the public release of the Criminal Justice Council of the Judiciary Report on April 24, 2017 at the Carvel State Office Building

- Creating a Jurisdiction Improvement Committee to consider jurisdictional issues raised by the ACTL Report and to make recommendations, including legislative proposals, to address those issues. This Committee, which is made up of veteran legal professionals and non-voting members from each Court, is led by David C. McBride, Esquire, and former Family Court and Superior Court Judge Peggy L. Ableman.
- Improving the consistency of procedural practices in all courts.

Court-specific issues were also raised in the ACTL Report and have been addressed by the individual courts including:

- Amendment of the Supreme Court Rules governing interlocutory appeals to make them much easier for practitioners to employ.
- Amendment of the Supreme Court’s internal procedures to enable the Justices to confer in advance of an oral argument when they believe that would be helpful.
- Amendment of Family Court Rules to encourage holding early case management conferences to help resolve cases quickly and with less conflict.

Improving Treatment Courts

Having the Superior Court and the Court of Common Pleas work seamlessly together on problem-solving courts—also known as treatment courts—was the focus of the internal review initiative known as the Criminal Justice Council of the Judiciary (CJCJ). Its work dovetailed with recommendations in the ACTL Report, which, likewise, recommended greater cooperation between the Superior Court and the Court of Common Pleas in the operation of treatment courts. The Supreme Court created the CJCJ—a panel of fifteen trial judges—in 2015 to review the state’s treatment courts with an eye toward making improvements in standardization among, and ef-

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iciency in, those courts to provide the best possible help to litigants, regardless of county, who need help to address the root causes contributing to their involvement with the criminal justice system, such as addiction or mental illness.

In April 2017, the CJCJ unveiled its findings and announced a series of steps to improve, standardize, and streamline the treatment courts. In conjunction with the release of the report, the Supreme Court consolidated the Superior Court and Court of Common Pleas' Drug Courts and Mental Health Courts in New Castle County to test the initiative, and to staff the integrated treatment court as a non-court-specific entity, and assigned a pool of qualified designated judicial officers from each court. The vision of the treatment court was based on the idea that there should be “no wrong door” for a litigant whose case is better dealt with by treatment of the root causes driving the problem, and that all litigants, regardless of the court they enter or the county in which they enter, deserve the same, high-quality treatment services and standards. Put simply, if treatment courts are important—and they are—they should be done right. That means ensuring that all those who must work together to help the litigant—the court, corrections and treatment professionals, lawyers and litigants—have a clear playbook with a consistent, fair, and established system of incentives and consequences. Good intentions must be matched with best practices, and that is what the CJCJ is committed to putting into consistent statewide application.

As part of the initiative, the Delaware Judiciary also received a grant through the Delaware Criminal Justice Council from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Adult Drug Court Program to fund a 36-month project to develop consistent statewide core standards and policies for problem-solving courts in Delaware and to fund a contractual statewide problem-solving court coordinator. Among the duties of the coordinator is the gathering of statistics on outcomes to further refine the operation of the treatment courts and to make sure the courts are pro-

ducing the desired, positive results without overburdening traditional court operations. Core standards are also being developed with assistance from the National Center for State Courts.

Taking this concept further, the Delaware Judiciary is also working to create a “Community Court” in Wilmington. Community Courts can take many forms, but all focus on creative partnerships, with an emphasis on making offenders give back to the community they harmed and finding a productive path forward for all parties. These courts test innovative approaches to public

safety rather than merely responding to crime after it has occurred. They use resources in new ways to address new challenges—something the Access to Justice initiative addressed in its report on the civil justice system. The planned Wilmington Community Court will be accessible to all city residents and offer convenient access to service providers and allow for the development of cross-court programming.

The goal is to make the problem-solving courts even more effective by making them more convenient for litigants, such as by

offering hours outside normal work or school hours, just as the Division of Motor Vehicles does every week. By offering this option, litigants won't have to miss work to go to re-entry or drug court, or miss school to go to truancy court. Service providers, neighborhood associations, the Wilmington Police, local Licensing and Inspections officers, the Department of Labor, and other agencies that help struggling people to become self-sufficient will be welcomed in as full partners with the shared goal of reducing crime and making Wilmington a safer place to live and work and creating a model for the rest of the state. Thanks to help from the General Assembly, work is underway to build out the seventh floor of the Justice Center as, among other things, home for the Community Court. The buildout will also accommodate the relocation of Justice of the Peace Court 20 from the Wilmington Police Department to the Justice Center.



Justice Karen L. Valihura accepting the final report from the Access to Justice Civil Subcommittees on Sept. 18, 2017 at the offices of the Delaware State Bar Association.

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By consolidating Court 20's operations, the move will achieve savings for the justice system because all courts will be in one location, saving time and money for our partners like the Department of Justice, the Office of Defense Services, the police, the Department of Correction, and all litigants.

Access to Justice

The Delaware Access to Justice Commission—comprised of business and community leaders—also continued its work in 2017, reviewing Delaware's civil and criminal justice systems to identify barriers to access to justice and to recommend ways to reduce or eliminate those impediments. Three Access to Justice Subcommittees presented their Final Report to the Delaware Supreme Court on September 18, 2017, in observation of Constitution Day. The final report represented over three years of work by the Subcommittee on the Efficient Delivery and Adequate Funding of Legal Services for the Poor, the Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants, and the Subcommittee on Promoting Greater Private Sector Representation of Underserved Litigants. The report contained a host of recommendations to improve Access to Justice in the civil justice system, including turning courthouse law libraries into self-help centers for pro se litigants, initiatives to increase funding for community legal groups that serve the indigent, and programs to encourage more attorneys to volunteer their time free of charge to represent impoverished litigants.

The Access to Justice Committee on Fairness in the Criminal Justice System, also continued its work in 2017. Most notably, the Fairness Committee's Bail and Pre-Trial Detention Subcommittee combined forces with the Smart Pretrial Initiative Demonstration Program and the General Assembly's Criminal Justice Improvement Committee to work on legislation to modernize Delaware's Pretrial processes. As part of that work, public hearings were held to introduce the public to the Pretrial Modernization proposal, and legislation was introduced in the General Assembly in 2017.

A second package of legislation, with a constitutional amendment relating to preventative detention for the highest risk offenders and implementing legislation, is expected to be introduced in 2018 and would need to pass two consecutive sessions of the General Assembly.

Answering the General Assembly's Call to Help Improve our Criminal Code

A related, complementary effort to the Pretrial Modernization effort is an initiative that the Delaware Judiciary is cooperating with to review and streamline the state's Criminal Code.

Delaware's Criminal Code has not undergone a comprehensive revision since the 95-page national Model Penal Code was adopted in 1973. Since that time, the Code has ballooned to over 407 pages and crosses several different titles. The hundreds of statutes added since 1973 were generally adopted without consideration to the general effects of the change on the Criminal Code's overall structure, its terminology, or its application, creating numerous inconsistencies, redundancies, ambiguities, and contradictions. In 2014, the General Assembly established the Criminal Justice Improvement Committee and charged it with restoring the Code to a clear, readable, and proportional Code, thereby improving how criminal cases are handled and enhancing public understanding and trust in the Criminal Code.

The Improved Criminal Code will:

- Provide clear guidance to police, prosecutors, and judges for bail, charging, and sentencing decisions;
- Provide for mandatory minimum sentences for the most serious offenses—crimes of violence, sex crimes, and gun crimes—while tempering their application to non-violent offenses;
- Enable the creation of more effective sentencing guidelines that have clear and predictable consequences; and
- Provide the basis for model jury instructions that cut down on errors that lead to defendants being acquitted or getting a new trial based on technicalities.

A draft of the Improved Criminal Code, produced by a subcommittee of the Criminal Justice Improvement Council, comprised of experienced attorneys and jurists working under Professor Paul Robinson of the University of Pennsylvania, was released to the public in March 2017 and posted online for review by all. Public input following those meetings, along with additional feed-

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back provided in numerous meetings with key stakeholders including law enforcement, victims' rights groups, and the Delaware Attorney General's Office, has resulted in additional refinements. The final draft will be introduced to the Delaware General Assembly for its consideration and adoption in 2018.

Reentry Reform

Another important and related criminal justice initiative involves giving prisoners a better shot at reentering society and turning away from a life of crime. The Delaware Judiciary is working on a plan with the Department of Correction to reduce the debt burdens on ex-offenders as they reenter society to make it more possible for them to pay other important obligations such as rent and child support. Too many offenders have fines they cannot pay, and many would not have committed those crimes if they had money in the first place. The heavy fines hanging over offenders limit their chances to move on and continue to grow because of interest. By giving offenders positive incentives to take advantage of rehabilitation and vocational opportunities and by reducing their debt burdens, we will give them a better chance to become productive, law-abiding citizens and to meet important needs such as being able to support their children.



The Delaware Supreme Court building in Dover.

Using the Best Private Sector Business Practices to Serve the Public Better

The Delaware Judiciary's long-term relationship with the Lerner College of Business and Economics at the University of Delaware is now entering its fourth year. The partnership is designed to bring the best in private sector business practices to the daily operation of our courts. As part of the partnership, students and faculty from Lerner are training our managers in the most advanced techniques in process improvement—something called “Lean Six Sigma.” Process improvement means removing

waste and cutting unnecessary steps from the way we handle cases and otherwise run our operations to make our processes as efficient as possible. In this partnership, the Judiciary is not looking primarily for “one-time” process fixes. We are working to change the mindset of our employees. Having a common Judiciary-wide management culture is essential to our ability to implement changes quickly and establish consistent cross-court practices, just as it is essential for any large business with many departments to have a common management culture to keep its operations functioning efficiently.

In this relationship with Lerner, we have made process improvement a complete team effort, not just by having different courts work together, but by inviting the Department of Justice, the Public Defender, the Department of Correction, the Department of Services for Children, Youth, and Their Families, and the Governor's Office to take the Lean Six Sigma training with us and to use the process improvement resources we brought to the table. By these means, we best assured that the resulting approaches would work for all affected agencies, and thus for the public.

Our commitment to process improvement is one that we hope to suffuse in all aspects of our management. The way private sector companies become more efficient is they analyze each step of every process with a critical eye toward eliminating unnecessary steps and utilizing technology to accomplish tasks faster. This is exactly what the courts are doing as part of this initiative. We are taking a hard look at our back office functions to see if there are places where we can consolidate while improving the level and quality of service. The reality is many of the mechanisms for creating efficiencies and improving processes that are utilized in the private sector can be applied to aspects of government operations. This has been the case with our Treatment Court initiative and the creation of a Community Court.

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Conclusion

Any organization is only as strong as its people. And that is true of our Judiciary, whose staff is committed to customer service, quality, and friendliness that are critical to our Judiciary's international reputation for excellence. As this report illustrates, we are asking a lot of our workforce. And we are doing so in a time when they face adversity in terms of their compensation and benefits.

For that reason, our number one priority for years now 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. The average cost of parking around the Justice Center is \$1,700 per year, in pre-tax dollars, dollars that these employees (58 % of whom make less than \$32,000 a year) need for essentials like rent, food, and healthcare.

Not surprisingly, given the resulting consequences, this is not only a matter of simple fairness to our Wilmington employees, it is a critical recruitment and retention—and therefore an operational—issue. For example, in Superior Court turnover in New Castle County in FY 2017 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. Furthermore, because of issues related to pay, many New Castle County 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.

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 escalated. Adding unnecessary and constant turnover to the mix magnifies the problem. When many of the people providing services are always new and inexperienced, and the workload never lets up, this can lead to poorer customer service, mistakes, morale issues among emerging and veteran employees, and further turnover. And administrators then have to spend valuable time constantly reviewing applicants, conducting interviews, and training employees instead of focusing on other core operational needs.

We hope that the Governor and the General Assembly will work with us to finally remedy this long-standing inequitable situation. Our employees are the reason why Delaware Courts enjoy the national and international reputation we have and treating our employees equitably is necessary to maintaining that reputation. ♦

LEGISLATION

The Judiciary's legislative team brings together representatives of the Courts and the Administrative Office of the Courts to enhance the effectiveness of the Judicial Branch's relationship with the General Assembly by serving as the main Judicial Branch contact for legislative matters and by monitoring and analyzing legislation for impact on the Judiciary. The following legislation proposed by the Judicial Branch was passed during FY 2017 by the 149th session of the General Assembly:

BILL NUMBER	DESCRIPTION
HB 56	Second leg of a Constitutional Amendment that adds the Chief Magistrate of the Justice of the Peace Court to the Court on the Judiciary, ensuring that the six state courts are represented on the Court on the Judiciary.