



# MESSAGE FROM THE CHIEF JUSTICE

*Honorable Myron T. Steele*

The Court's roles are to preserve the past and serve the future. Delaware Courts have focused their efforts on maintaining and promoting a fair and independent Judiciary, consistent with the constitutional underpinnings of our governmental system, while pursuing a businesslike approach to enhancing the effectiveness of court operations. It is through those efforts, supported by others who appreciate the significance of the constitutionally obligated services provided by the courts, that the Delaware Courts continue to bring value to Delaware resulting from their national and international pre-eminence. Preserving court buildings which have historical importance, such as the recently renovated Kent County Courthouse, while modernizing court facilities to accommodate the demands of busy court operations provide ready examples. With the completion of the first two of three phases of the Kent County Complex improvements in FY 12, members of the public in Kent County have finally joined those in other counties with access to a well designed and secure courthouse for Superior Court, Court of Common Pleas and Court of Chancery operations. We eagerly anticipate completion of the final phase of that project—renovations to the historic Kent County Courthouse - in FY 13.

We suffer from a false illusion, however, if we believe that our courts can continue to manage their growing caseloads - up 16% overall for Delaware Courts in the last ten years - without additional resources to address unmet needs. A review of the Judicial Branch budget over recent years demonstrates our increasing fiscal challenges. In recent years, our funded budget, without considering increases in personnel benefit expenditures, has decreased - by 3.8% in FY 10 and by .4% in FY 11. We must receive sufficient funding to support the core services that the state constitution demands that we provide.

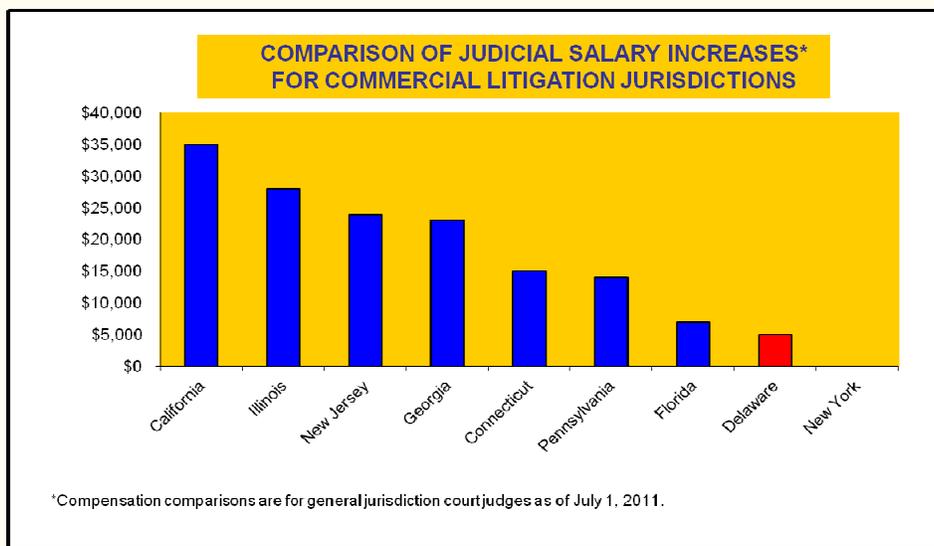
In FY 11, the failure to allocate the funds to annualize costs for two new Superior Court judges and associated staff in New Castle County and to address indigent services funding deficits, such as for Family Court contract attorneys that provide legally mandated representation for indigent parents and children in dependency and neglect proceedings, placed the quality of our justice system in question.

The importance of fully funding the new judges and staff cannot be understated. The Superior Court's caseload in New Castle County increased by 44% between 1994, when the last new judges in New Castle County were added, and 2011. Comparatively, the caseload increases which precipitated the last addition of new judges in New Castle County were significantly less - only 29% between 1989 -1994. Further, the composition of the caseload in New Castle County has grown more complicated. Currently, litigants file the vast majority of complex civil matters, mass torts, asbestos, and medical malpractice cases in the Superior Court in New Castle County, which also serves as the base for the Superior Court's Complex Commercial Litigation Division. While the number of judges in New Castle County has remained unchanged, the numbers of prosecutors and police officers in that county have grown dramatically - by 37% and 27%, respectively, since 1994. Since the last census, Delaware's population grew by 100,000 people. All of these changes demonstrate the court system's limited ability to absorb increases in work through increases in productivity alone.

On a more positive note, we are relieved that judicial branch employees received a 2% increase beginning in January 2012. We recognize that, even with that increase, compensation rates for state employees fall further and further behind

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inflation and benefit cost increases. Similarly, Delaware judges' national standing based upon judicial compensation comparisons with other states that compete with us as a center for business disputes resolution has fallen – as a result of negligible pay increases for all judges since 2005 when the last Public Officers' Compensation Commission issued a report. When inflation and individual payments for benefit cost increases during that period are factored in, judges' pay has eroded by more than 14%, or \$23,000 per judge. Further, when compared to general jurisdiction and appellate judges nationally, Delaware judges' rate of pay increases continues to fall below that of the other commercial litigation jurisdictions, except New York. New York judges have not received a pay raise in 12 years and, after litigation (which was degrading to all involved), are poised to receive increases, although inadequate, proportionally over the next three years substantially higher than any increase in Delaware judicial pay since 2005. With the Delaware Compensation Commission scheduled to issue its next report during FY 13, it will be difficult for the Commission to address fairly both past pay inadequacies and future financial growth implications, unless the Commission refocuses on an objective assessment of salaries rather than gauging the political winds at the time. In my view, the Commission's failure to render any assessment three years ago, regardless of the financial climate, constituted an abdication of its statutory obligation.



The growing shortfall in court resources has taken its toll on our ability to address the increasing workload demands on the courts. In an editorial entitled "Threadbare American Justice," published on August 17, 2011, the New York Times opined that: "State courts, which handle a vast majority of civil and criminal cases, are in a state of crisis. Across the country, deep budget cuts and increased caseloads have created long delays and a denial of basic access to justice." It cited a report issued by an American Bar Association task force which recognized that "even the most eloquent constitution is worthless with no one to enforce it." The New York Times editorial concluded that public safety is degraded by the delaying of resolution of criminal cases; vulnerable populations like children and the elderly, who need the courts' protections, are hurt; and our system of government is damaged by the weakening of the judiciary, through the failure to fund state courts properly. In a News Journal editorial, Thomas Sager, DuPont General Counsel, stated that, having "litigated in almost every state in the country on behalf of DuPont over the past 35 years, I can state unequivocally that Delaware's judges and courts are unequaled as measured by every meaningful metric or measurement (impartiality, efficiency and speed of dispute resolution)," and that the Delaware "judiciary and court system are true assets of the state that generate significant revenue and deliver critical services to our citizens every business day. Its national reputation is well deserved." None of us can close our eyes to the fact that our Number One rated court system must be funded adequately if we are to continue as a profit center for state government.

Despite fiscal difficulties, the Delaware Courts continue to enhance system-wide efficiencies and to be recognized for their important role on a national and international level. For example, the Delaware Supreme Court and Court of Chan-

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cery retain positions on the list of the top 100 most influential players in corporate governance compiled by the *Directorship* magazine. The Delaware Supreme Court was named as 13<sup>th</sup> on the Ethisphere magazine's list of the 100 most influential persons in business ethics for 2011.

In addition, Delaware was one of four jurisdictions nationwide awarded a racial and ethnic improvement project grant from the American Bar Association. Delaware's Racial Justice Improvement Project team, led by Justice Ridgely and including Chief Judge Smalls, the Attorney General and Public Defender, is focusing on enhancing racial and justice fairness in the criminal justice system. The Delaware Supreme Court Task Force on Criminal Justice and Mental Health, also chaired by Justice Ridgely, continues its work on improving outcomes for persons with mental illness.

In FY 11, we spurred the creation of a new structure for administering the program for court appointed attorneys providing representation to indigent criminal defendants in conflict situations. In FY 12, a separate division within the Public Defender's office has been established to administer this program, providing benefits to the justice system through the centralization of conflict services under a single agency, the coordination of service providers and the elimination of potential ethical issues that arise when judges are involved in contracting with conflict attorneys and approving their fees and expenses in cases before them. The Judicial Branch worked closely with the Public Defender's office on this initiative and I acclaim the Public Defender's thoughtful and diligent support and implementation of the program.

The Court of Chancery, under the leadership of new Chancellor Leo E. Strine, Jr., is focusing on enhancing operational efficiencies and services provided to litigants in that court. One new resource, an attorney *ad litem* desk reference book, has been developed by the Court of Chancery, in conjunction with the Administrative Office of the Courts.

The Superior Court established the first Diversionary Veterans' Treatment Court, which Resident Judge, and retired Delaware Army National Guard Colonel, William L. Witham, Jr., oversees, to serve veterans with mental illness involved in the court system. The New Castle County Superior Court Mental Health Court received the Governor's Team Excellence Award for 2010.

The Court of Common Pleas established a SPEED docket for expediting civil litigation and new court procedures for consumer debt collection litigation.

With the implementation of the Family Court's new database, Delaware is the first state to collect statewide information on national dependency and neglect performance measures. The Family Court has also modified its website to include a resource center offering a collection of Court FAQ's, instruction packets and official forms on line.

The Justice of the Peace Court's Prosecution Project promises success, with preliminary statistics indicating that 46% fewer traffic cases are being transferred from the Justice of the Peace Court to the Court of Common Pleas as a result of this initiative.

I remain grateful that the Delaware Courts continue to overcome the daunting challenges they face, despite diminishing resources. I worry, however, that the conclusion presented in the New York Times' "Threadbare American Justice" editorial - that courts "may continue to process cases, but they will be less and less able to deliver justice"- may be more prescient than we would wish.

