

INTRODUCTION

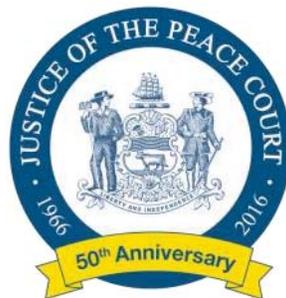
DELAWARE COURTS – TAKING THE ROAD LESS TRAVELED TOWARD THE PROMISE OF EQUAL JUSTICE UNDER THE LAW

The Delaware Courts have a long history. And in 2016, the Justice of the Peace Court commemorated its 50th anniversary as a part of the state court system, the Supreme Court celebrated its 65th anniversary, and the Family Court reached 45 years of age. Delaware’s other state courts have even longer histories—the Court of Chancery has been in operation since 1792 (224 years), the Superior Court since 1832 (185 years), and the Court of Common Pleas for close to 100 years (1917). These courts have tried to bring justice to life in Delaware and continue to seek ways to resolve disputes more fairly, efficiently, and expeditiously.

A History of Change and Modernization

Continuous improvement in the pursuit of excellence is a recurring theme in the Delaware Judiciary’s history. A good example is the Justice of the Peace Court. That court traces its origins back to the 1600s, but society’s needs outgrew its original design. That problem was addressed in 1965 when Governor Charles L. Terry signed legislation bringing the Justices of the Peace into the Delaware state court system. With that change, Justices of the Peace were no longer paid from the fees and fines that they charged, but became the independent judicial officers a just society rightly demands. In the ensuing 50 years, the Justice of the Peace Court has evolved into a modern and well-respected court.

Efforts for reform and improvement have occurred throughout the Delaware Judiciary’s past, with the advent of improvements such as electronic filing, the creation of a Family Court, the emergence of problem-solving courts, and the expansion of alternative forms of dispute resolution. Under the leadership of the presiding judges of our trial courts, those efforts have been invigorated recently, with the separate courts engaging together in a cooperative and systemic review of our justice system, and undertaking initiatives to streamline and improve the services that we provide. A few of the recent improvement efforts are highlighted here.



Recent Efforts to Improve the Courts

Improvements to civil justice—Access to Justice Commission

Access to civil justice—the peaceful resolution of disputes and vindication of personal rights—is critical to the success of a society under law. Recognizing that, the Delaware Supreme Court established the Access to Justice Commission (“ATJ Commission”), which began its work in December of 2014. Composed of diverse stakeholders, including members of the bar, members of the bench, and community leaders, the ATJ Commission has been identifying gaps in critical civil justice needs, as well as potential steps for eliminating existing barriers that impede access to civil justice for our citizens. Three committees were established to analyze various civil justice issues, focusing on:

- Efficient delivery and adequate funding of legal services to the poor;
- Judicial Branch coordination in helping *pro se* litigants; and
- Promoting greater private sector representation of underserved litigants.

These committees have spent the last year and a half collecting information through surveys and interviews of the various stakeholders and are in the process of submitting their final reports and proposed recommendations to the Delaware Supreme Court. An example of one of the proposed recommendations is to reallocate existing resources by rethinking the use of the law libraries and repurposing them to serve as resource centers for litigants.

Old problem, new approach—re-evaluating our criminal justice system

Access to Justice Commissions have typically focused on the delivery of civil services—and not on the criminal justice system. But, the concerns about serious racial disparities in Delaware’s prison populations led to the ATJ Com-

INTRODUCTION

mission’s examination of the criminal justice system to look for systemic changes that could improve racial equity and reduce the on-going effects of 400 years of racial oppression, without negatively affecting public safety. Through subcommittees, the ATJ Commission’s Committee on Fairness in the Justice System (“Fairness Committee”) is focusing on ways to improve the fairness and quality of our criminal justice system. The Fairness Committee has five subcommittees to address important subject areas including:

- Bail and pretrial detention;
- Charging and sentencing;
- Policing strategies;
- Alternatives to incarceration; and
- Root causes.

The Fairness Committee held a series of statewide public hearings in late 2015. Nationally recognized criminal justice experts and members of the public spoke about ways to address racial disparities, improve the quality of justice, and increase public safety. One of the key recommendations of the experts—to conduct a detailed racial disparity study—was completed in September 2016

by the University of Pennsylvania. The report, entitled “Evaluating the Role of Race in Criminal Justice Adjudications in Delaware,” looked at the outcome of all cases involving adults arrested between 2012 and 2014 to see if there were trends or patterns that might explain racial disparities in the State’s prison population. Although the study does not identify the stark fact that black people comprise a much larger percentage of our prison population than of our overall population, factors such as poverty and other socioeconomic factors appear to be important contributors, leading more black offenders to have an earlier involvement in the criminal justice system, less access to pretrial release, less access to a private lawyer, and without the vocational and educational skills to get a good job in a legitimate economy. These sad realities highlight the need to address the persistence of economic

inequality in our state, where more than 56% of black families are at 200% or less of the federal poverty level. Another recommendation that came out of the public hearings was the utility of a systemwide implicit bias training program for all professionals in the justice system, including judges. An initial implicit bias training session, organized by the Judicial Branch, was held in October 2016 for over 500 Judicial Branch and Executive Branch employees. Work is underway to develop practical training modules for use in police and correctional officers’ academies, and continuing legal education programs for judges, defense attorneys and prosecutors that are effective, scalable, and sustainable and to develop approaches to counteract implicit bias.



Over 500 members of the criminal justice system gathered in October 2016 for a joint training session at Dover Downs to learn about implicit bias.

The Fairness Committee’s Subcommittee on Bail and Pretrial Reform joined forces with the Executive Branch’s Smart Pretrial Demonstration Initiative to examine our bail system. In 2014, Delaware was one of three recipients of a grant by the federal Bureau of Justice Assistance’s Pretrial Justice Institute to test alternative ways of handling pretrial procedures and detention without compromising public safety. The goal is to move toward the adoption of an unbiased, objective risk assessment tool that would allow

for the prompt release of low-risk individuals of limited financial means who have previously been unable to post bail, while making sure that dangerous offenders—regardless if they are wealthy drug kingpins—are detained so that the public is protected.

The Judicial Branch is also helping the Delaware General Assembly’s Criminal Justice Improvement Committee (“CJIC”) with its Criminal Code Improvement Project. Delaware’s criminal code was first adopted in 1973 and involved a streamlined, coherent code based on the Model Penal Code but, as new laws were enacted, the code lost much of its coherence, comprehensibility, and rationality and has grown to mammoth proportions, causing one leading police chief to call it “Franken Code.” To address this, the General Assembly asked the CJIC to review the

Continued on next page

INTRODUCTION

criminal code to identify “disproportionate, redundant, outdated, duplicative or inefficient statutes.” Members of the Judiciary, consistent with long-standing Delaware tradition, were asked to help the General Assembly in this process. The CJIC Criminal Code Improvement Project is working to simplify the existing criminal code by reducing outdated, inconsistent, and redundant parts of the Code that have cropped up over the past 40 years, and providing an improved Code that will help police, prosecutors, defense attorneys, judges, and citizens have a clearer, more coherent, and easier-to-understand criminal code. The improved Code is not a Code from scratch. Rather, it involves following the epilogue mandate to restore and distill the Code down to the more coherent, clear, and therefore fairer form it originally had.

Improving specialty courts—new solutions to old problems

The Criminal Justice Council of the Judiciary (“CJCJ”) completed its review of specialty or “problem-solving” courts, like Drug Court, Mental Health Court, DUI Court, and Veterans Court. The CJCJ was created by the Supreme Court and charged with reviewing Delaware’s problem-solving courts to ensure their effectiveness, consistency, and reliance on best practices. Led by Superior Court President Judge Jan Jurden and Superior Court Judge William C. Carpenter—and comprised entirely of trial judges—the CJCJ’s final recommendations include: 1) the eventual consolidation of the “big three” problem-solving courts (Drug Court, Mental Health Court, and Veterans Court) into one treatment court—jointly run by the Superior Court and the Court of Common Pleas on a no “wrong door” concept and with combined staff with cross-court jurisdiction to address all cases, 2) the creation of core standards and “bench books” for the problem-solving courts to ensure consistent treatment in each case and that the Judiciary, lawyers, correctional officials, treatment providers, and litigants are singing from the same well-crafted hymnal, and 3) the implementation of coherent and convenient scheduling that allows treatment providers, the Department of Correction, the Department of Justice, and Public Defender personnel to spend less time on uncoordinated calendars and more time serving the litigants and public. Grant funding available through Delaware’s Criminal Justice Council will be used to develop those statewide core standards. In time, implementation of the Council’s recommendations will allow for the creation of a comprehensive statewide “treatment” court

following national best practices and the build out of a re-entry community, along with the capacity to measure performance and deliver services consistently and fairly.

Improving the way we do business—American College of Trial Lawyers Report

In cooperation with the Supreme Court, the Delaware Chapter of the American College of Trial Lawyers (“ACTL”) and the Delaware State Bar Association (“DSBA”) conducted a year-long survey of members of the bar and members of the bench. The “Joint Study of the Delaware Courts” (the “ACTL/DSBA Study”) published June 14, 2016 compiled the responses of more than 120 face-to-face interviews and 1,300 online survey responses. The ACTL/DSBA Study outlines the strengths and weaknesses of each court and administrative law practices and suggests recommended reforms.

The courts have seized on these recommendations to promote the process of change. A number of recommended changes have been implemented and many more are underway. One recommendation of the ACTL/DSBA Study focused on inefficiencies in criminal scheduling processes. In partnership with the National Center for State Courts and the University of Delaware, and with the aid of a grant from the State Justice Institute, a review of our criminal scheduling processes is currently underway. The goal is to reduce litigant wait time by more effectively leveraging court resources and making schedules more convenient and consistent for lawyers, correctional officials and other constituents.

Improving the way we do business—rethinking old processes

November 2016 marked the second anniversary of the Judiciary’s 10-year partnership with the University of Delaware’s Alfred Lerner College of Business and Economics to implement a single, high-quality approach to process improvement throughout the Judiciary, to instill a common management culture in the Judiciary, and to invest in the skills of our employees. Administrative leaders, high-level managers, and others in the courts and partner agencies, including the Attorney General, Office of Defense Services, Department of Correction, Division of Youth Rehabilitative Services, Governor’s Office, and the police have been trained in Lean Six Sigma process improvement techniques. In its first year, process improvement

INTRODUCTION

initiatives saved the Judicial Branch and participating partner agencies more than 4,250 staff hours. In its second year, the program helped Family Court to reduce litigants' wait time in Family Court's resource centers, standardized the Court of Common Pleas' scheduling process and improved its case management resulting in 100 hours of saved staff time, and increased efficiency in the Department of Correction's Central Offender Records and the Office of Defense Services' billing and budgeting.

Deepening our efforts to bring better management practices to our work, the Judicial Branch has entered into yet another collaboration with the University of Delaware—we instituted a Judicial Fellows program, beginning in January 2017. Like the Legislative Fellows program, the courts will have graduate-level students from the University helping with some of our most pressing management and policy issues. We are working with the Institute of Public Administration

and the Lerner College of Business on this initiative. The brainpower of the University of Delaware graduate students (and, as important, their faculty mentors) will help our administrators drive initiatives to improve productivity.

Improving the way we do business—integrated e-filing

The Delaware Judicial Branch has been working to establish a single state e-filing system for all civil and criminal cases. This will be a major step for Family Court, which still operates on a paper and manila folders system and does not have an e-filing system. Transitioning to a single e-filing system is a complex and difficult task. When achieved, this project will put the Delaware Courts in the forefront of court systems in the nation and save taxpayers money, help lawyers and litigants process their cases more efficiently, and give them better organized and more timely access to their case files. And, critically, e-filing will give all criminal justice agencies (including the police

and Department of Correction) the ability to file all key documents electronically and access criminal justice information more easily. The courts expect to begin implementation of the new system with civil cases in the Court of Common Pleas in March 2017 followed by implementation in the Justice of the Peace Court and Family Court later in the year. Expansion to criminal case e-filing is expected in 2018.



ABOVE : A September 2016 process improvement class, led by University of Delaware, at the Leonard Williams Justice Center in Wilmington.

Improving the way we do business—investing in our capital infrastructure

Safe, dignified, accessible, and efficient courthouses are necessary if the Delaware Courts are to live up to our commitment to the rule of law. When litigants feel unsafe or intimidated, they do not feel the law or society protects them. When a courthouse is run down and in tawdry shape, it makes litigants feel like their cases—and thus they—do not matter. But, investments in judicial facilities in Delaware have another unique value. In large part inspired by the reliability of our corporate laws and

Judiciary, the formation of business entities and the legal services industry are Delaware's leading economic drivers, in terms of tax revenue and jobs. As important, Delaware's legal industry has remained loyal to the state's core downtowns, remaining there when many other industries have left. The loyalty of the legal community provides a stable business base for our county seats, and also drives customer flow to downtown local businesses. Furthermore, the legal industry's loyalty to downtown areas reduces sprawl and helps preserve open space—both important state policy priorities. And, if courthouses are built in a historically coherent and aesthetically attractive way, they make other businesses want to locate there, helping the state's efforts to grow its business base.

Therefore, investing in judicial facilities is not simply an investment in a core function of a republican democracy—providing justice under law—but also maintains our state's preeminence in its leading industry and makes its key cities more attractive to other industries.

Continued on next page

INTRODUCTION

To promote the economic health of our towns, we want to strengthen Wilmington as a legal center and create centralized legal centers in Dover and Georgetown to make the lives of those who do the difficult job of handling important cases easier—folks like Deputy Attorney Generals, Assistant Public Defenders, Correctional Officers, Department of Services for Children, Youth and Their Families case workers, law enforcement, and private attorneys. It's hard to be responsible for handling a high volume of difficult cases and even more difficult when the facilities in which you must work are not safe, built to purpose, or conveniently located. The courts are the hub of all legal activities: where the courts go, the legal communities go. Law firms are among our major downtown employers, and their employees eat at restaurants, shop at stores, and go to plays and performances near their work places. We also want the courthouses to be built where people can easily arrive by public transit or walking. If we can transform vacant, underutilized, unappealing, and possibly environmentally unsound areas of the downtowns into dignified and beautiful courthouses that are a symbol of our respect for the rule of law, the positive effect on the look and the vitality of our downtown districts should be substantial.

A key piece of this vision is replacing the unacceptable downstate Family Court facilities. The Family Court facilities in Kent and Sussex Counties suffer from serious inadequacies and fail to meet modern day security and operational requirements. A 2006 Southern Court Facilities Space Study rated the Sussex Family Court facility as “inappropriate” and the Kent County Family Court as “inadequate,” with operational deficiencies related to circulation zones, courtroom sizes, detention areas, and support spaces. Functional issues within those courthouses have only worsened since that report was issued—*over a decade ago*. Further, security concerns have increasingly become a focal point. The U.S. Marshal's 2012 review of the Family Court Sussex Courthouse confirmed that there are serious security issues with that facility's outdated design, including the failure to provide separate victims' waiting rooms, or to separate inmates from the public, judges, or court staff. In the Kent and Sussex facilities, inmates are either brought into court through the public lobby area or in the elevator which the judges also use—this is not safe. As troubling is that the inadequacy of these facilities diminishes the perception of justice in those courts. Preliminary efforts in planning, design, land acquisition, and architectural and engineering work for the downstate Family Court facilities are underway, although

funding for construction of those facilities has still not been obtained.

Change and Taking the Road Less Traveled By

The Delaware Courts recognize that to make important progress in the justice system overall, we must choose different approaches than we have in the past. Or, as Robert Frost's poem “The Road Not Taken” describes—we must take the road “less traveled by.” New approaches are often difficult and cause concern because they take us out of our “comfort zone.” In particular, for generations, it has been common for trial courts to work in isolation from each other and even to think of themselves as a separate court for a particular county, not the State of Delaware as a whole. However comfortable, that approach leads to the perpetuation of outdated practices, to some litigants getting better service than others, to mistakes that cause cases to be retried at great expense, to inefficient uses of scarce taxpayer dollars, and to an uneven quality of justice. The Delaware courts realize that it is critical to move toward an integrated, consistent *statewide* approach, which varies only when rational, sensible, reasons dictate. An approach that is chosen because it is best for the public, not because of inertia or turf protection. Changes in this direction must, of course, be thoughtfully and carefully developed, but it is only through finding new ways to become productive and adaptable that we can prepare ourselves to meet the challenges of the future. Our efforts today will determine what our courts will look like in five or ten years—and even in 50 years, when the Justice of the Peace Court will be celebrating its 100th anniversary. But, the road we are taking is leading toward a key promise of our republic—that all citizens have equal rights under the law. By working together, not as separate trial courts, but as one Delaware Judiciary, we ensure that the public gets the best bang for its buck and all litigants in all counties get the same, high-quality service. By thinking of ourselves as courts of one state, and not separate fiefdoms, we can identify the best approaches to common problems and implement them statewide, better assuring equal justice for all. Doing justice is the duty of the Delaware Judiciary, and we have committed ourselves to be open to new ideas, to making our system function as one coherent statewide unit, and meeting our obligations to resolve the diverse legal disputes important to Delawareans expertly, efficiently, and fairly. ♦